



# Joint Standing Committee on the National Disability Insurance Scheme

Submission on the issue of accommodation for people with disabilities  
under the National Disability Insurance Scheme

Public Guardian  
March 2016

## About the Office of the Public Guardian

On 1 July 2014, the Office of the Public Guardian (OPG) was established as a new independent statutory body to protect the rights and well-being of vulnerable adults with impaired decision-making capacity, and children and young people in out-of-home care (foster care, kinship care, residential care) and youth detention. This new statutory body was created as a result of the acceptance by Government of recommendations contained in the report from the Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*.<sup>1</sup>

The OPG combines roles that were previously separately undertaken by the Office of the Adult Guardian, and the community visitor function of the former Commission for Children and Young People and Child Guardian.

The OPG supports children and young people through two specific programs:

- the community visitor program, which aims to ensure children and young people in out-of-home care are safe and are being properly cared for, and
- the child advocate program, which gives children engaged with the child protection system an independent voice, ensuring their views are taken into consideration when decisions are made that affect them.

The *Child Protection Act 1999*, section 74 and Schedule 1, sets out the Charter of rights for a child in care. This Charter establishes core rights that apply to every child and young person who is in the child protection system in Queensland, including the right to be provided with a safe and stable living environment, and to be placed in care that best meets their needs, and is culturally appropriate.

The OPG also works to protect the rights and interests of adults who have impaired capacity to make their own decisions, recognizing that everyone should be treated equally, regardless of their state of mind or health.

OPG's charter with respect to adults with impaired capacity is to:

- make personal and health decisions if OPG is their guardian
- make health decisions as the statutory health attorney of last resort
- investigate allegations of abuse, neglect or exploitation
- advocate and mediate for people with impaired capacity, and
- educate the public on the guardianship and attorney systems.

The OPG also provides an important protective role in Queensland by administering a community visitor program to protect the rights and interests of the adult if they reside at a visitable site. Visitable sites for children and adult community visitors include mental health services authorised under the *Mental Health Act 2000*.

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<sup>1</sup> Recommendation 12.7, Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, June 2013 available at <http://www.childprotectioninquiry.qld.gov.au/publications>.

The *Public Guardian Act 2014* and *Guardianship and Administration Act 2000* set out OPG's legislative functions and powers, and the *Powers of Attorney Act 1998* regulates the authority for adults to appoint representative decision-makers, and who can act as statutory health attorneys.

## Position of the Public Guardian

The Public Guardian welcomes the opportunity to provide a submission to the Joint Standing Committee on the National Disability Insurance Scheme (NDIS) on the issue of accommodation, to address possible solutions, innovations, pilot programs, and in particular, possible funding models.

The OPG works to protect the rights and interests of adults with impaired decision-making capacity and in so doing implements internationally recognised obligations under the United Nations *Convention on the Rights of Persons with Disabilities*. Specifically, in respect of adults with impaired decision-making capacity the OPG has power to:

- make personal, health care and accommodation decisions when the Public Guardian is their appointed guardian or attorney
- investigate allegations of abuse, neglect or exploitation
- make representations to accommodation and service providers for the benefit of the adults
- visit adults (and children) at certain residential disability services.

In the OPG's experience, many clients who are currently housed in residential facilities, hostels and other institutional settings could be accommodated in 'normal' housing, provided they receive appropriate levels of disability support. It is hoped this issue will be addressed by the introduction of the NDIS, with appropriate levels of disability support facilitating higher levels of access to regular housing.

Further, there are often limited accommodation options for persons with serious intellectual and cognitive disabilities, and complex behavioural or health problems. Many of the OPG's clients currently live in residential facilities, and for those clients with high and complex needs, often the only available accommodation is residence in an aged care facility, regardless of the appropriateness of the facility to meet the disability, and support needs of our clients.

The OPG notes that the NDIS will support the availability of specialist disability accommodation for participants who are assessed as requiring such specialist accommodation. While the Disability Reform Council agreed on 13 November 2015 that further consideration needed to be given to the broader disability housing issues associated with the roll-out of the NDIS in conjunction with State and Commonwealth Ministers responsible for housing, the OPG is concerned that the lack of available and appropriate accommodation for OPG clients remains an ongoing significant issue.

## Summary of Recommendations

### Recommendation 1

It is recommended that investment in infrastructure and workforce development be prioritised under the NDIS and under housing programs to ensure appropriate levels of tailored support are available so as to enable persons with disability to live in regular housing in the community.

### Recommendation 2

Focus should be given to building and/or modifying accommodation for persons with significant and complex needs, who are at the highest risk of having no accommodation choices available to them.

### Recommendation 3

All levels of government should support the incorporation of the principles of universal housing design into all housing models.

### Recommendation 4

A continuum of accommodation models needs to be established to cater for the individualised needs of people with disability.

### Recommendation 5

Innovative accommodation projects should be located within the community, ensure easy access to mainstream services, and be purpose built based on expert advice from multiple service systems to ensure that the accommodation is designed to support the complex health, disability and other needs of residents.

### Recommendation 6

It is recommended that innovative accommodation projects be focused upon building high quality, affordable accommodation in local communities, that are able to be adapted or modified to meet individual disability needs, and provide secure and permanent tenancy where desired.

### Recommendation 7

Models of care need to be funded and developed, to complement the design of accommodation. Both the models of care and accommodation should be able to be individualised and adaptable, to meet the prospective resident's holistic support needs.

### Recommendation 8

Investment should be provided for the development and building of culturally appropriate, Aboriginal and Torres Strait Islander community based accommodation for persons with disability, particularly for those with high and complex needs.

### Recommendation 9

Appropriate systems of care, and most importantly, appropriate out-of-home accommodation needs to be developed to address the high level of support required to meet the complexity of behaviour and needs of children and young people with severe disability, particularly as they mature and age.

## Supply and availability of appropriate accommodation

A critical issue for many OPG clients is that there are few (if any) suitable options that are available to meet their individual accommodation or service needs. The work of OPG often involves engaging considerable effort in advocating, negotiating and escalating issues with government funding bodies, and non-government service providers, in order to achieve suitable outcomes for our clients, and protect their rights and interests.

While a central tenet of the NDIS is to provide an individual with disability with more choice and control over how, when and where supports are provided, maximising a person's independence, 'choice' and 'control' must be predicated on the basis that there is a real choice available.

Many of the OPG's clients would benefit from an expanded stock of regular housing in the community, coupled with sufficient levels of support to help them to maintain their tenancy and care for themselves adequately. One of the main problems faced by people with impaired capacity relates to the challenge of maintaining their tenancy, due to behavioural issues and/or an inability to care for themselves and their property. Tailored, integrated support will go a way to addressing these issues.

The OPG suggests that the sector requires more options which provide better integration of accommodation, tenancy support, clinical (mental health) interventions and disability support. The Micah Common Ground model is a good example of the provision of such integrated supports and OPG commends such models to the Committee for its consideration.

The OPG has also observed that as the complexity of disability needs increases; the availability in choice of services, supports and accommodation decreases. There are therefore limited accommodation choices for people with high and complex needs. For many OPG clients there is often only one accommodation 'choice' (e.g., residence in an aged care facility), with no alternative accommodation option being available.

There is also concern that smaller services struggle to compete in establishing alternative accommodation options in the market, as against larger, more established disability organisations. If only one or two organisations dominate the disability accommodation market, there is effectively no real alternative or 'choice' other than residence in an aged care facility.

Persons with complex disability and support needs are as entitled to real choice in accommodation choice and service provision, as those in the mainstream with moderate disability. Investment in alternative accommodation is required to ensure that these individuals with complex needs are not the 'last cabs off the rank' or 'left behind'. Without inter-governmental commitment to funding and cooperation between the Commonwealth, disability service providers, and health and housing, prior to full implementation of the NDIS, the impact of the NDIS on people with complex disability support needs and their ability to find more appropriate accommodation is likely to be negligible.

### **Recommendation 1**

It is recommended that investment in infrastructure and workforce development be prioritised under the NDIS and under housing programs to ensure appropriate levels of tailored support are available so as to enable persons with disability to live in regular housing in the community.

### **Recommendation 2**

Focus should be given to building and/or modifying accommodation for persons with significant and complex needs, who are at the highest risk of having no accommodation choices available to them.

## **Need for a broader range of accommodation types**

As noted above, many of the OPG's clients could successfully reside in normal housing, provided they receive appropriate levels of support. In this area, OPG also supports the incorporation of principles of universal housing design into all housing models, particularly to address clients with significant physical impairments.

Universal housing design is intended to create flexible housing for all people with varying abilities, and at different stages of their lives. It also supports the ready adaptation of a home to meet the changing needs of residents over time. Incorporation of universal housing design principles into housing and accommodation developments will better place the sector to increasingly provide in-home supports. The consequence is a greater supply of flexible and suitable accommodation over time.

Co-tenanting is also an option suited to certain individuals. In relation to existing options, in the OPG's experience, accommodation and support models which are based on co-tenanting arrangements work well for some clients, but are not suited to a large cross-section of our clients. While there are benefits to co-tenanting for many people with disability, there is a group for whom co-tenanting will have an adverse impact.

Co-tenanting arrangements need to take adequate consideration of the compatibility of tenants, with many concerns observed by the OPG related to issues associated with co-location of people with different types and levels of disability. Further, the lack of choice for individuals over who they reside with can be problematic. Such issues can exacerbate a client's challenging behaviour.

On the other hand, some clients thrive in communal environments, including hostel-type settings. In the OPG's experience, in Queensland, there are few quality options available, and those available do not always provide specialist disability support. Noting the positive experiences of some clients who have resided in quality hostel settings, the OPG supports moves to explore and provide new models for communal, hostel-style accommodation. As noted above, such accommodation needs to be accompanied by appropriately tailored supports for each individual resident.

### **Recommendation 3**

All levels of government should support the incorporation of the principles of universal housing design into all housing models.

### **Recommendation 4**

A continuum of accommodation models needs to be established to cater for the individualised needs of people with disability.

## Need for accommodation to meet holistic needs

Accommodation should ensure that people with disability are socially included in the broader community, and that accommodation solutions assist in addressing the issue of social marginalisation of people with disability, particularly those with high and complex disability needs.

Many of the OPG's guardianship clients require and interact with a myriad of different service systems. There are also a number of OPG guardianship clients who have significant, multiple and complex needs, and for whom no one service system response is appropriate or adequate. The primary issue for this group of people is the severe and persistent social exclusion from mainstream services and opportunities. Many of these clients have a combination of dual diagnosis (combination of intellectual/learning disability, mental health issues and/or brain injury); serious medical issues; drug and alcohol problems; behavioural issues; a history with child protection; and frequent interaction with the criminal justice system. These issues are often combined with experience of homelessness or transiency, exclusion from public housing, and no (or highly fragmented/dysfunctional) social networks.

Accommodation solutions for persons with significant and complex needs, should therefore be located close to mainstream services within the community, with easy access to services through local transportation, as well as being able to be easily accessed by community services in order to provide support services in the person's home. Any innovative housing solutions should therefore work closely with the multiple service systems that might be engaged in care of complex clients, to ensure that accommodation is purpose built, and designed to meet any complex and multiple needs of the potential resident.

### Recommendation 5

Innovative accommodation projects should be located within the community, ensure easy access to mainstream services, and be purpose built based on expert advice from multiple service systems to ensure that the accommodation is designed to support the complex health, disability and other needs of residents.

## Quality and purpose-built housing

Accommodation should be prioritised for those persons with disability who have complex needs, and/or require high level, or 24/7 care. It is this cohort that currently finds themselves at the bottom of the queue for available social housing. The problem is exacerbated by a shortage of purpose-built community-based accommodation that is accessible, and can provide disability services and support for mainstream clients, let alone for persons with complex and high support needs.

Developing high quality housing alternatives for people with high and complex needs, and people with disability is a critical need. Housing should be affordable for those on low incomes; provide access for the mobility impaired; be individualised to meet the disability support needs of the person; and prioritise the independence, safety, health and well-being of the person for whom the accommodation is intended. Modifications should be customised to meet individual needs of the person with disability. Housing initiatives for this cohort should also be focused upon ensuring security and permanency of tenancy, so that persons with complex and high needs do not find themselves vulnerable to losing their housing either due to their complex needs, or external market pressures.

New and quality accommodation should also be located in areas where community activities, and facilities are easily accessed within the community.

In order to achieve this, there need to be innovative responses between Governments and the non-government sector to address the high costs associated with finding appropriate land to build upon, or current housing to re-develop, re-fit and modify.

#### **Recommendation 6**

It is recommended that innovative accommodation projects be focused upon building high quality, affordable accommodation in local communities, that are able to be adapted or modified to meet individual disability needs, and provide secure and permanent tenancy where desired.

### **Accommodation that engages alternative systems of care**

Developing alternative systems of care should go hand-in-hand with the design and development of purpose built accommodation for people with disability. Investment is needed to develop and fund alternative systems and care, which should in turn influence the nature and type of accommodation that should be built, or adapted, to support different types and levels of disability or impairment.

Without innovation and alternatives, there is a risk of a return to institutionalism. Although there are alternative systems of care that have emerged for some persons with serious disabilities, such as the Youngcare model and Endeavour Foundation residential accommodation services, these models are appropriate for some individuals, but not for all.

Appropriate systems of care should be developed that include plans for care, rehabilitation and habilitation, holistic care and supports that enhance a person's autonomy and assist them in either living or transitioning to living in the community, either independently or with support, regardless of the complexity of the person's support needs.

#### **Recommendation 7**

Models of care need to be funded and developed, to complement the design of accommodation. Both the models of care and accommodation should be able to be individualised and adaptable, to meet the prospective resident's holistic support needs.

### **Culturally appropriate accommodation**

A significant issue of concern for OPG clients is the lack of appropriate accommodation for persons with disability from Aboriginal and Torres Strait Islander descent.

Every person is entitled to placement in a care environment that not only meets their needs, but is also culturally appropriate. In practical terms, with limited choice of accommodation for Aboriginal and Torres Strait Islanders, particularly in regional or remote communities where a person has high or complex needs, there may be no alternative other than to move a person to an aged care facility located some distance from their cultural community.

In addition, the person may find themselves placed in a culturally inappropriate and unduly restrictive environment due to their disability and behaviour. Innovative accommodation solutions, particularly for persons with high and complex needs should be developed within local Aboriginal and Torres Strait



Islander communities, rather than requiring these persons to be accommodated long distances from their community and land.

### **Recommendation 8**

Investment should be provided for the development and building of culturally appropriate, Aboriginal and Torres Strait Islander community based accommodation for persons with disability, particularly for those with high and complex needs.

## **Accommodation options for children and young persons with disability**

Article 23 of the United Nations Convention on the Rights of the Child provides that children who have any kind of disability should receive special care and support so that they can live a full and independent life. The current residential models available for care for children and young people with disability in Queensland, particularly if they reside in aged care facilities, risk falling short of this obligation.

Children and young people with high or complex needs, may sometimes have no alternative accommodation option, other than placement in an aged care facility. This may be due to the inability of families to continue to care for the high needs of the child<sup>2</sup>, or for the purpose of respite care. Such placements (whether on a permanent or respite basis) are not a safe option for children, nor appropriate for their development. Models of care, and age appropriate accommodation, are needed to be specifically designed for children and young people to maximise their development; ensure their best interests, safety and well-being; encourage families to be involved in the child's life, care and support; and provide a therapeutic and nurturing environment.

### **Recommendation 9**

Appropriate systems of care, and most importantly, appropriate out-of-home accommodation needs to be developed to address the high level of support required to meet the complexity of behaviour and needs of children and young people with severe disability, particularly as they mature and age.

## **Concluding Comment**

The OPG would be happy to lend further support as required to the Committee as it progresses this review, in the interests of ensuring that future arrangements to address accommodation for people with disability meet the needs of the people that they are designed to support.

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<sup>2</sup> In 2013, the Carmody Inquiry found that approximately 14 children per year in Queensland had been subject to relinquishment and cared for by Child Safety Services until their 18th birthday. These children require extreme levels of support in their home for more than 50 per cent of the time which could not be provided by Disability Services and that there was no available out-of-home placement for these children within the disability service system. Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, June 2013 p.111