

Specialist Disability Accommodation (SDA) Guide to Suitability

10 April 2017

SDA Guide to suitability

The SDA Guide to Suitability is a key document in assisting providers to understand the requirements that relate to the supports they provide and their obligations as providers of SDA supports.

Different supports have different levels of risk associated with their delivery. To minimise risk and enhance participant outcomes certain experience, qualifications and expertise are required of registered providers of NDIS supports. As quality and safeguarding of disability supports remains the responsibility of States and Territories in transition, some of these requirements may differ between States/Territories to align with existing systems and requirements.

There are 36 registration groups one of which (the 'SDA Registration Group') relates to the provision of SDA supports. The specific requirements of the other 35 Registration Groups are set out in a separate Guide to Suitability.

Specialist disability accommodation

Specialist disability accommodation (SDA) refers to accommodation for participants who require specialist housing solutions including to assist with the delivery of supports that cater for their significant functional impairment and/or very high support needs. SDA does not refer to the support services but to the homes in which these are delivered.

Providers are required to meet several requirements in order to register for SDA. They are required to meet their obligations under the NDIS and they are also required to meet the obligations that apply in relation to the particular supports that they provide to participants. For SDA this includes:

- the obligations in the National Disability Insurance Scheme Act 2013 (NDIS Act) and the NDIS (Specialist Disability Accommodation) Rules 2017 (SDA Rules);
- all State and Territory laws, codes and standards that apply to the properties they use to provide SDA; and
- all State and Territory quality and safeguarding requirements.

Providers of SDA must also meet the suitability requirements set out below.

Providers and others should note that the information and other assistance the NDIA provides in this guide is only to be relied on in relation to the NDIS and not in relation to the requirements and obligations beyond the NDIS.

The National Disability Insurance Agency (NDIA) accepts no liability to any person for any loss, damage, cost or expense suffered as a result of reliance on the information given to providers and others about SDA beyond that which relates specifically to requirements and obligations under the NDIS. The information about the requirements and obligations under the NDIS may change over time and should also not be relied on for any action or failure to act. Providers and others seeking to obtain SDA payments should seek assistance if they are unclear about the requirements they must meet or their obligations.

Provider suitability

Providers wishing to register for the SDA Registration Group must:

- 1) be a registered provider. For details see [Module 2 of the Provider Toolkit 'Registering as a Provider'](#);
 - a) providers of SDA must be registered for the SDA Registration Group;
 - b) the requirement to be a registered provider applies to all providers of SDA, including State and Territory governments, not-for-profit organisations, community housing organisations, market providers, family members of participants and self-providing participants.
- 2) once registered, continue to comply with the obligations of a registered SDA provider (for example, those outlined in the NDIS Act, SDA Rules, Quality and Safeguard Working Arrangements, the NDIA's Terms of Business, and Declaration of Suitability).

Dwelling suitability

Providers wishing to use a dwelling for SDA must ensure that the dwelling meets the requirements for SDA to be funded under the NDIS, including:

- 1) the dwelling is enrolled (see Enrolment of dwellings below);
- 2) the number of bedrooms and similar sized private rooms in the dwelling is at least equal to the number of residents for which it is enrolled;
- 3) at least one private bedroom has been made available for the participant or, if the participant is a member of a couple, at least one private bedroom and a second room that may be a bedroom or another similar sized private room has been made available to the couple; and
- 4) comply with any density restrictions that apply to the dwelling. Density restrictions apply to New Build or refurbished Existing Stock when there are a number of dwellings on a single parcel of land. See SDA Rules 6.14 to 6.17 for further detail.

The requirements above are the requirements about the suitability of a dwelling to be used for SDA. There are also other requirements that must be met in order for SDA to be paid. For example, requirements about the participant such as that the participant resides in the dwelling and that the participant's parents do not live in the home. See SDA Rules, NDIA's Terms of Business, Declaration of Suitability and NDIA's Price Guide for SDA.

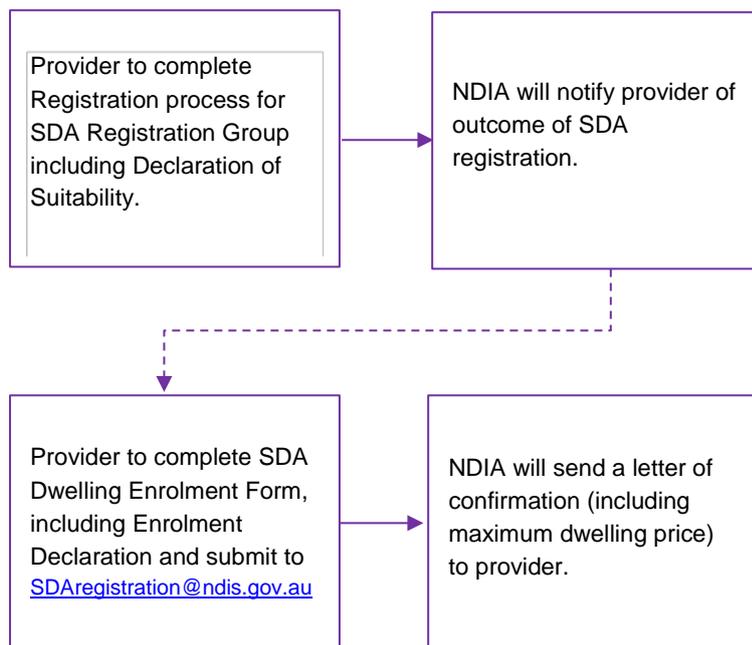
Enrolment of dwellings

A dwelling is eligible to be enrolled for SDA only if:

- 1) the dwelling meets the minimum conditions because it is:
 - a. a permanent dwelling (for example, it is not a mobile home);
 - b. intended to provide long-term accommodation for at least one participant (for example, is not used only for respite, emergency or temporary accommodation);
 - c. the dwelling is not already being funded as accommodation by the Commonwealth, a State or Territory under a scheme unrelated to disability; and

- d. the dwelling is not excluded from SDA because it has previously received home modifications funding from the NDIA of the type described in SDA Rule 6.9;
- 2) it is either a New Build, Existing Stock or Legacy Stock (see SDA Rules and NDIA's Price Guide for SDA, for example, New Builds and Existing Stock must house five or fewer long-term residents);
- 3) the registered provider holds a written assessment that the dwelling complies with the requirements in the SDA Rules and the NDIA's Price Guide for SDA about its type, location and features:
 - a. providers who are capable to do so may complete this written assessment for the dwellings they have enrolled or engage a third-party assessor such as a Livable Housing Australia (LHA) certified access consultant or building assessor;
- 4) the provision of SDA and the dwelling itself both comply with all Commonwealth, State and Territory codes and laws that apply (see the list of examples of Commonwealth, State and Territory codes and laws below). Including that the registered provider holds, for each dwelling enrolled, a written certification that the dwelling meets relevant building codes and laws in the following form:
 - a. in the case of dwellings owned or operated by a State or Territory Government:
 - i) either certification from an appropriately authorised building authority or entity such as an occupancy certificate (or equivalent); or
 - ii) certification from the relevant State or Territory government department responsible for disability or housing or;
 - b. in the case of other dwellings:
 - i) certification from an appropriately authorised building authority or entity, such as an occupancy certificate (or equivalent) or certification from a building assessor accredited by a local or state government authority.

Registering as a provider of SDA and enrolling an SDA dwelling



Examples of Commonwealth, State and Territory codes and laws

Providers of SDA must ensure that SDA is provided in compliance with all applicable Commonwealth, State and Territory codes and laws. For example, habitability requirements, quality and safeguards requirements, building standards and tenancy laws.

For SDA this includes:

- the obligations in the *NDIS Act* and the *SDA Rules*;
- all State and Territory laws, codes and standards that apply to the properties they use to provide SDA; and
- all State and Territory quality and safeguarding requirements.

This Guide does not purport to provide an exhaustive or definitive list of acts, regulations or policies that a provider of SDA must comply with. Those listed are current as at March 2017. Providers must still undertake standard due diligence to ensure they are aware of all relevant obligations that will apply in their particular situation.

The laws, codes and standards that apply for providers of SDA include but are not limited to:

NSW

SDA dwellings

- *Home Building Act 1989*
- *Building Professionals Act 2005*
- *Local Government Act 1993*
- *Environmental Planning and Assessment Act 1979*
- *State Environmental Planning Policy (Affordable Rental Housing) 2009*
- *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*
- *Disability Inclusion Act 2014 (until the later of 30 June 2018 or the implementation of the National Quality and Safety Framework)*
- *Swimming Pools Act 1992 (where applicable)*

In NSW other 'standards' that may apply are detailed on page 3 of the NSW group home design Guidelines publically available [here](#), and include:

- *Building Code of Australia*
- *Disability (Access to Premises) Standard 2010*
- *AS-1428.1 Design for access Mobility Part 1*
- *State Environmental Planning Policies including Affordable Rental Housing.*

All SDA must also conform to Local Government regulations such as Local Environment Plans and Development Control Plans.

For SDA operated by disability services providers, the NSW Government will provide sample occupancy agreements that comply with the SDA Rules. For further information refer to the FACS website for details.

Please note that FACS NSW is not in a position to provide legal advice on the applicability of these laws or standards. General queries however on SDA can be forwarded to SDA@facs.nsw.gov.au and will be directed as appropriate.

SDA Providers in NSW

All providers in NSW must be registered with, and approved by, the NDIA for the provision of SDA supports. Organisations who do not wish to register for SDA supports, can enter into a contractual arrangement with an approved SDA provider.

If a provider wishes to enroll a property owned by the NSW Government, they must first seek the approval of the NSW Government (as the owner of the property) before the property can be enrolled as an eligible SDA dwelling with the NDIA. This includes existing organisations receiving Group Accommodation funding from FACS (ADHC), who are operating from NSW Government owned properties, and who wish to register as an SDA provider under the NDIS.

Further information and advice in relation to NSW Government properties can be sought by contacting: SDA@facs.nsw.gov.au

Victoria

- *Building Act 1993*
- *Building Code of Australia*
- *Building Code of Australia Requirements for Fire Risk Management in NDIS Specialist Disability Accommodation- Practice instruction*
- *Building Regulations 2006 (Vic)*
- *Occupational Health and Safety Act*
- *Building and Construction Industry Security of Payment Act 2002*
- *Domestic Building Contracts Act 1995*
- *Residential Tenancies Act 1997 (VIC)*
- *Disability Act 2006 (VIC) (Disability Act)*
- *Supported Residential Services (Private Proprietors) Act 2010 (Vic).*
- Offering Residency in Specialist Disability Accommodation Policy and Standards

Prospective SDA providers are strongly advised to contact the Victorian Government to check requirements prior to registering with the NDIA. For further information contact: hsstandards@dhhs.vic.gov.au

SDA providers may register with the NDIA and enroll dwellings without seeking approval from the Victorian State Government. However, SDA providers should note that in order to ensure compliance with Victoria's quality and safeguards arrangements the NDIA will share information about enrolled dwellings, SDA provider information and their contact details, with the Victorian Government.

SDA must be offered in alignment with:

- legislative obligations for providers of accommodation and support in-scope of the Disability Act
- the Offering Residency in Specialist Disability Accommodation (Vacancy management) Policy
- Building Code of Australia Requirements for fire risk management in NDIS Specialist Disability Accommodation
- requirements for Supported Independent Living providers in SDA as listed in the Victorian section of the Guide to Suitability for Providers and amended from time to time.

Where Supported Independent Living is provided in SDA, and the service is a residential service as defined under the Victorian Disability Act, the support provider must be registered under the Disability Act and approved by the Victorian Department of Health and Human Services to deliver the registration group Daily Tasks/Shared Living.

SDA and support providers must work together to address requirements in the department's *Offering Residency in Specialist Disability Accommodation Policy and Standards*.

In addition, there must be an arrangement between the accommodation and support providers that meets requirements under the Disability Act.

The Victorian Government has provided sample agreements to guide SDA and support providers on the form of agreements that meet requirements of the Disability Act as follows:

- Disability Accommodation Collaboration agreement between the SDA and support provider
- Residential statement – Agreement between the participant and in-home support provider (required under the Disability Act).

These documents can be found at [this link to DHS](#)

These sample agreements are examples only. SDA and support providers are advised to seek their own legal advice and draft agreements in consultation with their support provider.

Refer to the Guide to Suitability for Providers for a description of services in scope of the Disability Act and for information on requirements for providers of Daily Tasks/Shared Living.

SDA for people with mental illness or mental disorder and associated psychiatric disability

Providers of existing accommodation owned by the Victorian Government for people with psychiatric disability, must meet requirements set out in the Department of Health and Human Services' Offering Residency in Specialist Disability Accommodation Policy Standards and Victoria's Quality and Safeguards requirements.

Queensland

- *Building Act 1975*
- *Building Regulation 2006*
- *Building Fire Safety Regulation 2008*
- *Fire and Emergency Services Act 1990*

- *Queensland Building and Construction Commission Act 1991*
- *Sustainable Planning Act 2009***
- *Body Corporate and Community Management Act 1997*
- *Building and Construction Industry Payments Act 2004*
- *Plumbing and Drainage Act 2002*
- *Professional Engineers Act 2002*
- *Subcontractors' Charges Act 1974*
- *Residential Services (Accreditation) Act 2002 (QLD)*
- *Disability Services Act 2006 (QLD)*
- *Housing Act 2003 (QLD)*
- *Housing (Freeholding of Land) Act 1957 (QLD)*
- *Residential Tenancies and Rooming Accommodation Act 2008 (RTRA Act).*

Queensland local council planning scheme requirements may also apply. Further information can be obtained [here](#).

General queries on SDA in Queensland can be forwarded to the Department of Housing and Public Works (DHPW) to NDIS@hpw.qld.gov.au.

Tasmania

- *Building Act 2000 (to be replaced by the Building Act 2016 on 1 January 2017)*
- *Housing Indemnity Act 1992 (to be replaced by the Residential Building Contracts and Dispute Resolution Act 2015 on 1 January 2017)*
- *Occupational Licensing Act 2005*
- *Housing Indemnity Act 1992*
- *Building and Construction Industry Training Fund Act 1992*
- *Residential Tenancy Act 1997 (TAS)*
- *Disability Services Act 2011 (TAS).*

Northern Territory

- *Building Act and Regulations*
- *Residential Tenancies Act (NT)*
- *Housing Act (NT)*
- *Planning Act.*

To comply with the SDA requirements in the Northern Territory a dwelling would be required to have;

- Certification under the Northern Territory Building Certification System comprising either an Occupancy Permit, a Certificate of Substantial Completion or a Certificate of Existence.
 - This certification establishes a compliance with the provisions and requirements of the National Construction Code, The Building Act and relevant local regulations.

Further information can be obtained from the Northern Territory Government Website [here](#).

The administering authority for this system is the Northern Territory Government – Building Advisory Services – contact details are available [here](#).

South Australia

Noting the individualised approach of the NDIS, the following list may not cover every scenario in which SDA currently operates or in which it may operate in the future.

Organisations that intend to build or operate SDA should seek independent advice to ensure compliance with all Commonwealth, State and Local Government requirements.

Residential housing in South Australia may be subject to a range of requirements including those contained in:

- *Development Act 1993*
- *Development Regulations 2008*
- *Minister's Specifications (relate to specific building issues that require attention in South Australia referenced in the Development Regulations 2008)*
- *Planning, Development and Infrastructure Act 2016 (operation date TBA)*
- *The Real Property Act 1886*
- *Community Titles Act 1996*
- *Building Work Contracts Act 1995*
- *Building and Construction Industry Security of Payment Act 2009*
- *Building Code of Australia (National Construction Code) as it applies to South Australia*
- *Housing Improvement Act 1940 (pending replacement by Housing Improvement Act 2016)*

- *Residential Tenancies Act 1995*
- *Water Industry Act 2012*
- *Work Health & Safety Act 2012*
- *Work Health & Safety Regulations 2012*
- *Work Health & Safety Codes of Practice.*

Certain accommodation providers may also be required to comply with:

- *Community Housing Providers (National Law) (South Australia) Act 2013*

General enquiries regarding these requirements may be directed SDA-info@sa.gov.au.

The South Australian NDIS trial has focused on children and young people and local SDA will not begin to transition until late 2017-18. Further information will be made available in coming months as local transition arrangements are finalised.

Australia Capital Territory

Providers of Specialist Disability Accommodation in the ACT will need to comply with the following legislation.

Providers are responsible for undertaking standard due diligence checks to ensure that they are aware of, and comply with, all relevant obligations applicable to them.

Buildings

- Building Act 2004
- Construction Occupations (Licensing) Act 2004
- Building and Construction Industry Training Levy Act 1999.

Tenancy and Occupancy

- Residential Tenancies Act 1997 (ACT)
- Disability Services Act 1991 (ACT)
- Community Housing Providers National Law (ACT) Act 2013.

Any enquiries in relation to these requirements should be directed to the office of the ACT Human Services Registrar on: email DSA.registrar@act.gov.au or [\(02\) 6205 4608](tel:0262054608).

Western Australia

Please note that NDIA trial sites in WA will be phased into the WA NDIS from July 2017, and that this Guide does not apply to the WA NDIS.

The Guide does not purport to provide an exhaustive or definitive list of acts, regulations or policies that a provider of SDA must comply with. Those listed are current as of 29 November 2016. Providers must still undertake standard due diligence to ensure they are aware of all relevant obligations that will apply in their particular situation.

Legislation, regulation and policies listed under 'buildings' may contain obligations related to tenancy and occupancy, and vice versa. Again, providers should be strongly encouraged to conduct their own due diligence to ensure they are aware of all their obligations.

Buildings

- *Home Building Contracts Act 1991*
- *Housing Act 1980*
- *Building Act 2011*
- *Strata Titles Act 1985*
- *Building Services (complaint Resolution and Administration) Act 2011*
- *Building Services (Registration) Act 2011*
- *Architects Act 2004*
- *Building Services Levy Act 2011*
- *Construction Contracts Act 2004*
- *Dividing Fences Act 1961*
- *Plumbers Licensing Act 1995*
- *Emergency Management Act 2005*
- *Environmental Protection Act 1986*
- *Fire and Emergency Services Act 1998 (including Emergency Services Levy provisions)*
- *Fire Brigades Act 1942*
- *Health Act 1911 (and relevant local government Health Local Laws)*
- *Land Administration Act*
- *Local Governments Act 1995*
- *Occupational Safety and Health Act 1984*
- *Occupational Health and Safety Regulations 1996*
- *Planning and Development Act 2005 (and relevant policies)*
- *Relevant electricity, gas and water legislation (including residual current devices requirements under the Electricity Act 1945).*

Tenancy and Occupancy

- *Residential Tenancies Act 1987 (WA)*
- *Residential Parks (Long-stay Tenants) Act 2006*
- *Retirement Villages Act 1992*

- *Dog Act 1976 (Note for DSS/NDIA – standard tenancy agreements used by the WA Housing Authority exclude dog breeds prescribed under this Act from residing in the premises)*
- *Liquor Control Act 1988 (Note for DSS/NDIA – where providers are experiencing tenant issues related to alcohol they can voluntarily apply to have the property listed as a prescribed liquor control premise)*
- *Mental Health Act 2014*
- *Occupiers Liability Act 1985.*

Other relevant laws, regulations and policies that providers should be familiar with

- *Local Government (Miscellaneous Provisions) Act 1960*
- *Disability Services Act 1993 (WA)*
- *Association Incorporation Act 2015*
- *Criminal Code*
- *Equal Opportunity Act 1984*
- *Magistrates Court Act 2004 (and related Rules)*
- *Road Traffic Act 1974 (and related legislation)*
- *State Administration Tribunal Act 2004.*