



Closed setting SIL homes

Policy Position Statement by the Summer Foundation

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Key messages

- The closed setting Supported Independent Living (SIL) home model does not resemble a contemporary independent living option.
- The National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission (NDIS Commission) does not have regulatory oversight of matters relating to the home and tenancy management in closed setting SIL homes, bringing risk to NDIS participants (participants).
- Standard residential tenancy law is not designed to respond to quality and safety risks in closed setting SIL homes.
- Participants and their support networks need capacity building to effectively assess the quality and safety of closed setting SIL homes.
- A lack of accessible and affordable housing in all states and territories increases participant reliance on closed setting SIL homes.

Our position

The National Disability Insurance Agency (NDIA) and the NDIS Commission must ensure that Specialist Disability Accommodation (SDA) eligible participants are able to access SDA funding and are not forced to reside in accommodation settings which are not appropriate for their needs, including closed setting SIL homes. All participants must be supported to access independent living options that uphold their legal rights, choice and control.

The term ‘closed setting’ or ‘closed system SIL home’ is used by the NDIA in the June 2021 [Home and Living Consultation Paper](#) to describe an arrangement where a provider of SIL, who is not registered to provide SDA, owns or rents a property and offers a head lease or sublet lease to NDIS participants. The offer is built around the participant purchasing SIL and/or other support exclusively from the organisation that owns or rents the property.¹ The organisation provides accommodation in the property at a fee, usually made up of the Disability Support Pension and Commonwealth Rent Assistance.

This service model presents risks for participants who require support to live independently in their communities:

- It creates a ‘closed setting’ where the SIL provider can regulate, restrict and control a participant’s access to other support services.
- The model undermines a participant’s choice and control over accommodation and supports, as the provision of accommodation is made conditional on their use of the support provision offered.
- Tenancy management is not an NDIS funded support where it is not delivered by a registered Specialist Disability Accommodation (SDA) provider. As such, SIL home agreements fall beyond the regulatory reach of [NDIS Practice Standards for SDA](#) (SDA Practice Standards) that require minimum tenancy terms and conditions to uphold a participant’s legal rights and ensure their choice and control over NDIS support services.
- The tenancy terms and conditions for a closed-setting SIL home may be established in an NDIS service agreement that is not required to comply with state/territory residential tenancy law.

Background

Following the widespread de-institutionalisation of disability accommodation, the shared supported accommodation (SSA) model became the predominant way of providing housing to people with disability. The SSA model typically saw a single service provider block-funded by a state government to deliver property or tenancy management and in-home support services to residents in large group home settings. This model still exists in some states, with the state government owning the accommodation and the support services funded through the NDIS.

The ‘one-size-fits-all’ approach of the SSA model is now widely recognised to reduce the stability, quality and safety of a resident’s home life² and increases the vulnerability of residents to abuse, violence, neglect, exploitation and discrimination.

In 2014, the National Disability Insurance Agency (NDIA) signaled its preference for complete separation of housing and support and full tenancy rights or “home ownership like control”³ for participants over their living arrangements. NDIS housing and support services are assessed, funded and regulated as separate service areas.

¹ NDIA, Home and Living Consultation - An Ordinary Life at Home, June 2021, p. 11, [link](#)

² Joint Standing Committee on the NDIS, Inquiry into SIL, May 2020, [link](#)

³ NDIA, Housing Discussion Paper, 2014, p.13, [link](#)

SDA

SDA is the only NDIS funded housing service that provides long-term, accessible housing to participants with extreme functional impairments and very high support needs. While it is in scope for an SDA provider to deliver tenancy management services, including maintenance and repair, vacancy management, serious incident reporting and complaints management, the SDA Practice Standards ensure minimum tenancy terms are contained in SDA service and/or tenancy agreements. This provides a number of safeguards to SDA tenants, including that:

- Terms and conditions must comply with state/territory residential tenancy law
- SDA dwellings must meet minimum accessible design standards and comply with building and safety laws
- When an SDA provider delivers SDA and other NDIS supports to the same participant, separate SDA and SIL service agreements are developed that are independent and each can be upheld should the other cease
- SDA providers must uphold a tenant's right to exercise choice and control over other NDIS support services, including by who, when and how they are provided.

In addition, the NDIS Commission classifies SDA tenants as a complex and high-risk service group, mandating all registered SDA providers to undertake a certification audit.⁴

SIL

SIL is a separate but related home and living service area that provides help and/or supervision to a participant to undertake daily living tasks that increase independence. NDIS data to 30 June 2021⁵ shows 25,320 (5.4%) of active participants receive SIL supports. Slightly more than half of these participants also receive SDA support and an additional third of SIL eligible participants have yet to receive SDA in their plans.⁶ SIL support is funded separately from SDA to ensure maximum choice and control for participants.

⁴ NDIS Commission, Registration Requirements by Supports and Services, March 2020, p. 2 and 4, [link](#)

⁵ NDIS Quarterly Report to Disability Ministers, Q4 to 30 June 2021, p.596

⁶ NDIS Annual Financial Sustainability Report Summary - Interim Update, July 2021, p. 64.

Shared Supported Accommodation

As the disability housing sector has transitioned to the NDIS, the SSA model of delivering housing and in-home support as a service package has endured, with some existing and new housing providers favouring this approach over the SDA model which is seen to have a heavier compliance burden and associated costs:

“For us as a housing provider, it's based on the market rent, whether or not it's a viable option for us. I know recently there's been some changes in the Building Code which means that, even if [an SDA dwelling] is classified as a group home through council, it needs to have certain Building Code requirements such as sprinklers and all that sort of stuff - that would cost us money on a one/two/three year lease. It is a really tricky environment to work in. But if the capacity was there just to go find a home that was suitable for SIL participants, that might have less limitations in regards to mobility and assets, work-related solutions like hoists and ramps and level ground and all that. It's definitely an option for us and there's a huge interest for that at the moment.” (SDA provider)

This service trend has progressed despite the anticipated cessation of the SSA model under the NDIS and has enabled the closed-setting SIL home model to establish in response to a growing demand from participants, many of whom have been deemed ineligible for SDA, are facing SDA approval issues or they have been discouraged from applying for SDA due to a lack of information and widespread confusion around eligibility.

While there is currently no data available from the NDIA or the NDIS Commission to indicate the number of closed setting SIL homes in operation, the SIL homes sector is rapidly gaining traction.

The Housing Hub

Summer Foundation's [Housing Hub](#) is a platform that connects housing seekers to accessible housing options. Vacancies are listed by housing providers, independent of the Summer Foundation, and include SDA-enrolled and non-SDA properties.

The Housing Hub [Listings Snapshot report](#) shows that at June 2021 there were 560 non-SDA properties listed on the site. 66% of these were advertised as share houses where the tenant rents only a bedroom and shares support with other tenants.⁷ It can be assumed that many of these properties are operating as closed-setting SIL homes.

⁷ Summer Foundation, Housing Hub Listings Snapshot, June 2021, p. 14

The Summer Foundation has identified the following problems:

1. Conflict of interest removes participant choice and control.

Participants who live in closed-setting SIL homes do not have the same protection of their right to exercise choice and control as that afforded to SDA-eligible participants.

Across the emergent SIL home sector, there is evidence of limited support for housing seekers to exercise choice and control. Data from the Summer Foundation's [Housing Hub](#) revealed that of the 560 properties listed as non-SDA, only 41% offered participants a choice over their NDIS supports.⁸ This suggests that more than half these advertised properties had a predetermined provider selected to deliver services within the home and that, in some cases, a participant would need to find alternative housing if they wished to engage a different in-home service provider.

Participants who reside in closed-setting SIL homes do not have adequate protection from service arrangements that represent a conflict of interest because they limit the participant's choice and control over their NDIS services.

By contrast, the SDA Terms of Business contained in the [NDIS Pricing Arrangements for SDA 2021 - 22](#) explicitly recognises a conflict of interest risk for SDA tenants and requires the SDA service agreement to "declare to the participant any conflict of interest in relation to other services provided to the participant. In particular, any affiliation with a provider of Supported Independent Living supports to the participant."⁹

Further, the [SDA Practice Standard](#) for Conflict of Interest Performance Outcome, asserts a participant's right to "exercise choice and control over other NDIS support provision" and reinforces that this right must not be "limited by their choice of SDA dwelling."

The SDA provider must proactively manage any service arrangements that represent an actual or potential conflict of interest by constraining a participant's understanding or capacity to exercise choice and control or by threatening their security of tenure.

Existing SDA tenants reinforce the importance of choice and control when the inability to make decisions about personal care provision increases an individual's vulnerability and fundamentally undermines their capacity to live independently.

"A person with disability often faces this serious problem when it comes to being forced to use a certain company for their personal supports. Imagine living day to day with bullying and harassment from a company that has control over who gets you out of bed, who helps you in the shower, or who helps you eat dinner. It's not how anyone should have to live. And this is where SDA comes in."

(SDA Tenant)

⁸ Summer Foundation, Housing Hub Listings Snapshot, June 2021, p. 16

⁹ NDIS Pricing Arrangements for Specialist Disability Accommodation 2021 - 22, p.34

2. Many NDIS participants living in closed setting SIL homes are likely to be eligible for SDA

Over 24,000 NDIS participants are currently receiving SIL funding. Of these, 14,000 also receive SDA funding.¹⁰ Given the similar eligibility requirements for both SIL and SDA support, it is reasonable to assume that many of the 10,000 remaining SIL-only participants would also be eligible for SDA.

It is not known how many of these participants are living in closed-setting SIL homes; however, Housing Hub [data](#) shows that 69% of the 560 non-SDA properties advertised offer 24/7 support, which is consistent with many service models supporting the four design categories of SDA. This data suggests the extent to which closed setting SIL homes are operating to meet the needs of participants with the highest level of support needs and reinforces the imperative to assess the eligibility of participants currently living in these homes for SDA.

3. Current trends in SDA determinations increase demand for closed setting SIL homes.

While SIL payments are made to only 6% of all NDIS participants, they account for 30% of the total committed support in current plans. At an annual cost of over \$8.2 billion, SIL funding is growing at an “unsustainable” rate of 17% per annum.¹¹

In what appears to be a move to control SIL costs, the NDIA have begun delivering determinations that effectively restrict SDA eligibility and limit entitlements. A growing number of participants are seeking reviews of determinations that deny their eligibility for SDA or provide for a level of shared support that is inadequate for meeting their stated needs and preferences for independent living.

The emergence of SIL homes as an alternative to SDA, has the effect of removing vital legal protections and safeguards for tenants assured under the SDA Practice Standards and undermines the broader mandate for the NDIS to support quality mainstream housing options for people with disability.

Summer Foundation’s [Welcome Home](#) project engaged with stakeholders in the SDA sector to learn about emerging issues. SDA providers reported a growing demand for housing from participants who had only managed to secure SIL funding in their plans.

“We're finding that there is a demand but the demand is not for SDA. We're getting lots of SIL customers that are eligible for SIL applying for the homes”
(SDA provider, Welcome Home Project)

¹⁰ NDIA (2020). ‘Improving outcomes for participants who require Supported Independent Living (SIL): Provider and Sector consultation paper.’ p. 3

¹¹ NDIA, Improving outcomes for participants who required Supported Independent Living (SIL): Provider and Sector consultation paper, 2020, [link](#)

While closed setting SIL homes do not represent a contemporary approach to housing services for people with disability, they are responding to an unmet demand from participants seeking a range of independent living options, including those who receive SDA determinations that are not adequate for meeting their stated housing support needs and those who are deemed ineligible for SDA despite having high levels of physical impairment and complex support needs.

4. The NDIS Commission does not regulate the quality and safety of tenancy management practices in closed setting SIL homes.

Registered providers of support who establish closed setting SIL homes are not bound by NDIS rules or practice standards governing the delivery of housing and tenancy support, including management areas that impact participant safety and security such as property maintenance, vacancy management, emergency management, conflict management in shared housing, serious incident reporting and the receipt and handling of complaints. The term 'closed setting' is not included in either the [NDIS Act 2013](#) or the [NDIS \(Provider Registration and Practice Standards\) Rules 2018](#). As such, neither the NDIA nor the NDIS Commission gather structured data on the operation of closed-setting SIL homes.

Reduced compliance obligations and associated oversight by the NDIS Commission effectively leaves SIL home providers to self-regulate their tenancy management practices and stands in stark contrast to the [conditions of registration](#) for SDA providers that require certification audits against the SDA Practice Standards. Notwithstanding the regulatory framework for SDA, the level of awareness and understanding of the SDA Practice Standards amongst SDA providers is low. The SDA sector does not currently offer much in the way of good practice models or precedents that SIL home providers can look to, to develop their understanding of participants' housing and other rights.

Beyond the limitations of self-regulation, the safety and quality of tenancy management practices in closed setting SIL homes may be compromised if residents fail to report concerns or make formal complaints about any aspect of their service delivery because they fear this will threaten their housing security.

This lack of regulatory policy presents significant quality and safety risks to participants and increases their vulnerability to violence, abuse, neglect and exploitation within the home.

5. Standard residential tenancy law does not provide adequate protection to participants living in closed-setting SIL homes.

While a participant living in a closed-setting SIL home may have legal protections under state/territory tenancy laws if they are charged rent, bond or board payments. However, a registered SIL provider is free to establish an NDIS service agreement that outlines tenancy terms and conditions but does not offer the rights and protections that would typically be contained in a standard tenancy agreement under state/territory residential tenancy law.

Further, there is great variability across the states and territories regarding the application of residential tenancy law to NDIS supported housing options. Victoria is the only state to have comprehensively assessed the *Residential Tenancies Act 1997* against NDIS rules and significant legislative amendments have been made to ensure there is adequate legal coverage for SDA tenancies.¹² By contrast, in New South Wales, there is a recognised lack of tenancy law protection for participants, as neither the *Residential Tenancies Act 2010* nor the *Board Houses Act 2012* include residency protections for supported group accommodation such as group homes for people with disability.¹³

The NDIA and the NDIS Commission have both signaled that tenancy matters in closed-setting SIL homes fall beyond the scope of their jurisdiction and are a matter for the state or territory tenancy regulator. The absence of a national standard for protecting the tenancy rights of participants supported by a range of independent living options creates an unacceptable level of risk for these individuals. The NDIA and the NDIS Commission must be accountable to their intrinsic role in addressing this issue and ensure the consistent protection of all NDIS participants' rights as they relate to home and living supports.

Only SDA service agreements are required to comply with residential tenancy law and meet minimum tenancy standards outlined under the [SDA Practice Standard](#) for Service Agreements. By contrast, other NDIS service agreements must satisfy requirements under the [NDIS Pricing Arrangements and Price Limits](#) for basic information about service provision, including duration, cost and procedures for making changes and reviews. This creates the potential for SIL providers to establish agreements with participants living in closed setting SIL homes that fail to apply basic tenancy rights such as minimum notice periods and conditions for termination of tenure.

¹² <https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation> (retrieved 20/08/2021)

¹³ [FACS \(NSW\) 'Technical Issues Paper: Protections for Residents of Long Term Supported Accommodation in NSW', January 2018](#)

6. Participants and their support networks require capacity building to assess the quality and safety of closed-setting SIL homes.

Participants and their support networks do not have the knowledge or skills to adequately assess independent living options, including closed-setting SIL homes, for quality and safety.

Summer Foundation's [UpSkill](#) program offers professional development to NDIS support coordinators and allied health professionals and has a Community of Practice with over 500 registered members. The program has identified a growing need among support coordinators for guidance on assessing the suitability of closed-setting SIL homes for participants, including those facing SDA approval issues. Common challenges for support coordinators include limited or no access to information about the terms and conditions contained in SIL home agreements and the need for greater clarity around the service obligations of registered SIL providers delivering housing related services, including their tenancy management responsibilities.

In a service environment that is failing to meet the demand for a range of independent living options, the inability to assess the quality and safety of available closed-setting SIL homes creates significant frustration for support coordinators who are unable to act as effective gatekeepers to safe and suitable housing options for participants.

“SIL providers are operating in a supply and demand market, they are often new, there is no information on their policies, procedures, governance etc. - rock and a hard place.” (UpSkill Community of Practice member).

7. A lack of accessible and affordable housing exacerbates the demand for closed-setting SIL homes and increases the cost of independent living support.

A lack of accessible and affordable housing remains a barrier to the full social and economic participation of people with disability and is a contributor to the cost of providing formal independent living support.¹⁴

Reviews of the National Disability Strategy 2010 – 2020, uniformly acknowledge a persistent gap in the availability of affordable and accessible housing for people with disability, including those with the highest level of support needs such as SDA and SIL-eligible participants.¹⁵

¹⁴ Senate Community Affairs Reference Committee, 'Delivery of Outcomes under the National Disability Strategy 2010 – 2020', November 2017, p.30.

¹⁵ Productivity Commission, 'Review of the National Disability Strategy: Study Report', January 2019; Senate Community Affairs Reference Committee, 'Delivery of Outcomes under the National Disability Strategy 2010 – 2020', November 2017.

While eligible participants seeking SDA for the first time are no longer able to include 'Basic' design level SDA in their plans, existing and legacy housing stock with no specialist disability features still accounts for just over one third (35%) of enrolled SDA dwellings (excluding in-kind).¹⁶ More broadly, only 5% of Australia's existing housing stock meets a recognised Liveable Housing Standard.¹⁷

A lack of accessible and affordable housing reduces the options for participants to access mainstream housing and participant-led models of independent living. In the current market, SIL and SDA eligible participants commonly rely on third parties such as service providers to act as guarantors before they can secure a private residential tenancy that gives them control over their living arrangements and basic tenancy rights. Similarly, heavy reliance among participants on housing that fails to meet high standards of accessibility increases the need and cost of formal in-home support, such as SIL, further eroding the NDIA's capacity to support genuine independent living options and leaving participants vulnerable to unsafe and unsuitable housing alternatives.

The way forward

The NDIA and NDIS Commission must work to reduce the demand for closed setting SIL homes and apply a consistent approach to protecting the legal rights of all NDIS participants who require independent living options and specialised housing.

We recommend:

- A. The NDIS Commission must undertake a quality audit of existing closed-setting SIL homes and implement a regulatory framework as an interim measure, supporting SIL providers to conform to contemporary standards and uphold NDIS participants' legal rights. This work must be done in partnership with the NDIA and state and territory tenancy regulators.
 - NDIS service agreements must not be used as proxy lease agreements, containing tenancy terms and conditions that do not comply with state/territory residential tenancy law.
- B. The NDIA must ensure no SDA-eligible participant lives in, or is reliant on, closed-setting SIL homes:
 - Actively target participants living in closed setting SIL homes to test their SDA eligibility.
 - Provide adequate reasonable and necessary supports to SDA-eligible participants and ensure SDA determinations reflect the true housing support needs and preferences of participants to reduce the demand for closed setting SIL homes.

¹⁶ NDIS Quarterly Report to Disability Ministers, Q4, 30 June 2021, p.602

¹⁷ Senate Community Affairs Reference Committee, 'Delivery of Outcomes under the National Disability Strategy 2010 – 2020', November 2017.

- C. The NDIA must take a stronger market stewardship role, addressing the emergence of outdated housing options for participants:
- Work with the states and territories to establish targets for increasing accessible and social housing and the transition of participants out of closed setting SIL homes.
 - Establish a regulated surety system that removes participant reliance on service providers as guarantors for private residential tenancies.
- D. The NDIA and NDIS Commission should provide supports to build the capacity of participants to effectively assess independent living options and identify suitable alternatives to closed setting SIL homes.
- Strengthen awareness of registered provider obligations for the delivery of non-SDA housing and related services in different jurisdictions.
 - Explore capacity building models that strengthen participant independence, such as social enterprise services and consultations supporting due diligence