



# Separation of Housing and Support

## Policy Position Statement by the Summer Foundation

July 2021

### Key messages

- The conflict of interest present when a single provider has control over tenancy management and the delivery of other NDIS supports, limits or removes participant choice and control.
- In accordance with the National Disability Insurance Scheme Act 2013 (NDIS Act 2013), people with disability have the right to exercise choice and control over their National Disability Insurance Scheme (NDIS) supports and services.
- A large number of participants receive a mixture of Specialist Disability Accommodation (SDA), Supported Independent Living (SIL) and support coordination from the same provider, presenting a conflict of interest that brings risk to participant safety, compromises housing security and limits or removes a participant's right to exercise genuine choice and control.
- The conflict of interest present when a single organisation delivers both SDA and other NDIS supports cannot be fully resolved through regulation alone.
- The practice of third line forcing must be addressed in order to ensure genuine choice and control is facilitated.
- A non-SDA NDIS support provider should not be involved in tenancy related matters for NDIS participants (participant).
- The issue of conflict of interest and its limitations on participant choice and control will potentially impact outcomes for young people living in residential aged care and the way in which the Federal Government achieves the ambitious targets of [the Younger People in Residential Aged Care Strategy 2020-2025](#).

## Our position

The NDIS Quality and Safeguards Commission (NDIS Commission) must mandate the complete separation of housing from other NDIS support as a condition of NDIS provider registration. No single organisation should support a person with disability in relation to housing and tenancy management while also supporting the delivery of core or capacity building NDIS activities.

We make the following recommendations:

- 1) The NDIS Commission must address the problem of conflict of interest by mandating the complete separation of housing and support.
- 2) The NDIS Commission must address and prevent third line forcing.
- 3) The NDIS Commission must prevent non-SDA NDIS providers engaging beyond their responsibilities in tenancy management, particularly where this isn't in the best interest of the NDIS participant.

## Conflict of interest

A conflict of interest exists when one provider delivers housing related support and other NDIS supports, or the provider delivers two conflicting support types. The stability, quality and safety of a participant's home and their right to exercise genuine choice and control is limited or removed when a provider has competing interests and independence is compromised.<sup>1</sup>

When one provider delivers both housing and support services, a number of conflict of interest risks are present, including:

- Weakening the participant's awareness of available housing and support service options
- Weakening a participant's appreciation of their right to choose their NDIS support service providers
- Weakening a participant's understanding of the separate responsibilities of the SDA provider role and other in-home support roles
- Reducing the participant's ability to distinguish the separate delivery of their housing and support services
- Creating pressure on a participant to use 'in-house' services
- Impacting the participant's confidence in making a complaint or raising a concern
- Creating a 'closed system' that reduces service provider transparency and accountability and increases the risk of abuse, neglect, violence and exploitation of people with disability

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<sup>1</sup> [Joint Standing Committee on the NDIS, Enquiry into SIL](#), May 2020

## Choice and control

The right to freely exercise choice and control underpins the NDIS. As legislated by the NDIS Act 2013, people with disability have the right to make decisions that will affect their lives and exercise choice and control over where, when and by whom NDIS supports and services are provided.<sup>2</sup> Disability service providers are obligated to uphold the NDIS Act 2013 and Quality and Safeguarding Practice Standards to support participant choice and control, without influence or persuasion.

## Background

Prior to the rollout of the NDIS, housing and support services were often combined through block funding of disability supports. Disability housing was generally owned by state governments or funded by grants from government and philanthropy. Disability service providers were contracted to deliver housing and daily support in a one-size-fits-all approach that offered very little, or no, choice and control, commonly known as shared supported accommodation (SSA).

The introduction of the NDIS split the SSA model into two distinct service delivery streams. One being the support an participant requires to undertake activities of daily living including tasks such as personal care and meal preparation, claimed in a number of ways through the NDIS core budget, and the other being the capital support called SDA, which relates to the dwelling itself or the 'bricks and mortar'. SDA is the only long-term housing related support recognised and funded under the NDIS and it is the only support where it is in scope of service delivery for an NDIS provider to be involved in tenancy management including vacancy management.

In 2014 the National Disability Insurance Agency (NDIA) signalled its preference for complete separation of housing and support as a means by which to ensure participants have full tenancy rights or "home ownership like control" of their living arrangement.<sup>3</sup> Rather than continuing to require complete separation as the market developed, the NDIA relaxed this position allowing a single organisation to deliver SDA in conjunction with other NDIS supports. This given, the provider's conflict of interest was identified and managed through organisational policies and procedures, as regulated by the NDIS Commission. The NDIS Commission classifies SDA as a complex and high risk support type, mandating that all organisations delivering SDA be registered providers of NDIS support and undertake the certification audit process.<sup>4</sup>

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<sup>2</sup> [Part 2 Objects and Principles](#), (1)(e), NDIS Act 2013 (e) enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports

<sup>3</sup> [NDIA, Housing Discussion Paper](#), 2014, p.13

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

NDIS data as of March 2021 shows that 24,928 participants have SIL included in their plan and 15,842 have SDA included in their plan.<sup>5</sup> In the June [2021 Home and Living Consultation Paper 2021](#), the NDIA expresses concern about the issue of conflict of interest and whether participants have true choice and control considering the high variability among providers in terms of their independence. The paper references NDIS data as at 31 December 2020 that shows a large portion of participants receive a mixture of SDA/SIL/support coordination from the same provider. It states, “there are 2,388 participants receiving SIL and SDA supports from the same provider; 5,604 participants receiving SIL and support coordination from the same provider; and 1,120 participants receiving SDA and support coordination from the same provider.”<sup>6</sup> These figures suggest the risks related to conflict of interest and its impact on choice and control have the potential to result in poor outcomes for a high number of participants.

## The Summer Foundation has identified the following problems:

### 1. The conflict of interest resulting when a single organisation delivers both SDA and other NDIS supports cannot be fully resolved through regulation alone.

The NDIS Commission takes a regulatory approach to overseeing how organisations manage, rather than remove, conflict of interest. The approach fails to truly safeguard a participant's right to exercise genuine choice and control without experiencing, or the fear of experiencing, adverse consequences.

The only additional requirement in the SDA module of the NDIS Practice Standards for a single organisation delivering both SDA and other NDIS supports is that there are separate service agreements in place; one for SDA and one for the other NDIS supports. Ensuring independence between housing and other NDIS supports, most notably the delivery of SIL and support coordination, requires more than separate service agreements. It must be an ‘all of organisation’ approach to removing conflict of interest that can only be achieved through complete separation. Until a time that the NDIS Commission mandates the complete separation of SDA and other NDIS supports as a condition of NDIS provider registration, the issue of conflict of interest will continue to bring risk to participant safety, compromise housing security and limit or remove a participant’s right to exercise genuine choice and control.

The NDIS Commission has released little information relevant to how providers are performing against the [NDIS Practice Standards](#) and the [NDIS Code of Conduct](#), or how effective the standards have been in addressing the problem of conflict of interest. The Summer Foundation’s [Housing Hub website](#) lists properties for rent or sale that may be suitable for people with disability and is used by housing seekers, supporters and providers.

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<sup>5</sup> NDIA, Appendix P, 2020-21 [Q3 Quarterly Report to Disability Ministers](#), March 2021, p. 530

<sup>6</sup> [NDIA, Home and Living Consultation - An Ordinary Life at Home](#), June 2021, footnote 2, p. 12

According to data released in the Housing Hub's [Listings Snapshot June 2021 report](#), 1,031 housing providers across Australia have a registered Housing Hub account with 33% of providers indicating 'SDA enrolled' as the type of housing provided. The report shows that only 44% of SDA providers allow their tenants to choose which organisation delivers core support.<sup>7</sup> This suggests that over half of the SDA providers with listings on the Housing Hub are potentially not conforming to the conflict of interest outcome in the SDA module of the [NDIS Practice Standards](#) which states that "each participant's right to exercise choice and control over other NDIS support provision is not limited by their choice of SDA dwelling."<sup>8</sup> This shows that the NDIS Commission's regulatory approach is failing to ensure SDA providers are acting independently, limiting the choice of core support available to that which is delivered by the same organisation or by another organisation in which the SDA provider is exclusively involved.

Equally the figures highlight that work must be done to support SDA providers to build their capacity in understanding their responsibility in facilitating choice and control, and the impact of conflict of interest. The Summer Foundation's [Welcome Home](#) training package for SDA providers has been designed to support providers to understand their obligations under the NDIS Practice Standards, including to undertake the training as part of their NDIS provider registration.

Participants continue to share stories about the infringement of their right to exercise choice and control, showing the inadequacy of the regulatory framework in practice.

The NDIS Commission must address conflict of interest by requiring complete separation of housing and support, and that support coordinators are operating independently.

*"The benefits are two areas of life are separate so the person who is providing your home is not providing your daily activities and personal care. Therefore if something is wrong with one of them you have the option to just change just one of them. The impact is that it takes away the fear of upsetting someone, if it's all together in one organisation then all other areas of your life can suffer. When housing and supports are separate you have more power over your choice and control, it takes away the fear.*

*In my son's current situation even now, he's not committed to anybody, he has choice to move and it doesn't affect anyone, he will still have his own choice of support, this would not have to change with a move. Compared to when he lived in a group home where there was no choice."*

– Linda, mother of SDA participant

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<sup>7</sup> [Summer Foundation, Housing Hub Listings Snapshot](#), June 2021, p. 6, 7 and 16

<sup>8</sup> [NDIS Commission, Conflict of Interest, SDA Module, NDIS Practice Standards](#), Jan 2020, p. 38

## 2. Third line forcing compromises participant choice and control.

The Australian Competition and Consumer Commission (ACCC) defines third line forcing as a type of anti-competitive exclusive dealing that occurs when a business establishes a condition that the purchaser buys goods and services from a particular third party.<sup>9</sup> This type of exclusive dealing is an ongoing trend between separate SDA and SIL organisations. The organisations partner either formally or informally to guarantee uptake of their respective service offering. The outdated practice serves only the interests of the provider and is being used as an approach to income security and vacancy risk mitigation.

A participant's housing options and security should not be limited by, or dependent on, the disability support a person receives. Although the SDA and SIL organisations may be separate business entities, the outdated practice compromises organisational independence and presents a significant conflict of interest that brings risk to the participant's safety, housing security and infringes on the right to exercise genuine choice and control. The participant is locked into receiving services from an organisation chosen by the SDA provider and the option to change SIL provider in the future is taken away. The practice eliminates any choice by the participant(s) and restricts their ability to control issues that may arise.

A common example of third line forcing is where an SDA provider pre-selects an organisation to deliver SIL support within the home and issues the participant with an offer of tenancy subject to the condition that they purchase some or all of their other NDIS supports from the predetermined SIL provider. In this example, the SDA provider is in breach of the [NDIS Practice Standards](#) as the participant's right to exercise choice and control over their SIL support is limited by their choice of SDA.<sup>10</sup> To secure the SDA, the participant is forced to accept services from a SIL provider despite their individual needs and preferences. The participant is presented with an ultimatum; choose the pre-selected SIL provider or forgo tenure of a suitable home.

In the current underdeveloped SDA market, third line forcing may result in a participant entering or remaining in inappropriate living arrangements such as hospital or residential aged care, living with family when this is an unsuitable arrangement or homeless, because of the exclusive relationship between the SDA and SIL providers. Capacity building initiatives are required to build the capacity of participants and support coordinators in identifying anti-competitive practices and those that impede on a participant's freedom to exercise their rights.

The practice of third line forcing contravenes the conflict of interest outcome of the SDA module in the [NDIS Practice Standards](#) and a provider's obligations under the ACCC. The NDIS Commission must implement a strategy to address third line forcing and prevent the practice from occurring, including by ensuring Approved Quality Auditors are trained to identify and respond to third line forcing when undertaking provider audits.

*“As tenants we had no say in this at all. In fact, the SIL company was chosen before any of us were. The SIL company was appointed to supply all supports to tenants. This not only included the usual shared support or concierge component, but also each tenant's personal care, one-on-one supports...”*

– Person living in SDA

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<sup>9</sup> [Australian Competition and Consumer Commission, Exclusive Dealing, website](#)

<sup>10</sup> [NDIS Commission, Conflict of Interest, SDA Module, NDIS Practice Standards](#), Jan 2020, p. 38

### 3. Non-SDA disability service providers are involved in tenancy management for participants.

There is a growing trend of non-SDA disability service providers that are purchasing or leasing mainstream housing and offering a head lease or sublet lease to participants. In this arrangement the disability service provider has control over tenancy management and in most cases, also delivers a type of NDIS support to the tenant. The issue of conflict of interest and its impact on participant choice and control is prevalent and unmonitored in these settings. Unlike SDA providers, non-SDA organisations operating in this way are not required to conform to the NDIS Commission's Quality and Safeguard Framework in relation to the housing domain and conflict of interest; this is because tenancy management is not considered an NDIS support type in this arrangement.

Of the 1,031 housing providers with a registered [Housing Hub](#) account, 37.9% indicated they offer non-SDA properties. The Housing Hub [Listings Snapshot June 2021 report](#) shows that 560 properties were listed as non-SDA. Housing seekers were encouraged and supported to exercise choice and control over their NDIS support in only 41% of these listed non-SDA properties.<sup>11</sup> This suggests that over half of the non-SDA providers with listings on the Housing Hub do not support participants to exercise choice and control, presenting risks to participant housing security and risks to the quality and safety of their other NDIS supports.

It is unclear how the NDIA envisaged the separation of housing and support to be managed in non-SDA arrangements as compared to SDA providers delivering other NDIS supports. The NDIA and the NDIS Commission have authority to impose policy frameworks relevant to the delivery of NDIS supports only. Considering the non-SDA provider offers housing that is not an NDIS support type, like that of SDA, regulation of operational matters as well as tenancy management and safeguards are not considered the responsibility of the NDIA or the NDIS Commission. Regulation of tenancy management would most likely fall under state or territory standard residential tenancy law, which is not designed to respond to quality and safety risks for people with disability when renting a home from a disability service provider who also delivers daily living support. Considering the significant control, the non-SDA provider has over the participant's home and the delivery of associated NDIS supports, the NDIA and the NDIS Commission must be held accountable for regulating the arrangement and ensuring the safety of participants is not compromised and rights are upheld.

The separation of housing and support must extend to non-SDA settings. There needs to be a coordinated effort between the NDIA, the NDIS Commission, departments of housing and state and territory residential tenancy regulators to address this issue. The NDIS Commission must undertake an analysis of NDIS providers offering non-SDA housing and implement an interim quality and safeguard mechanism to ensure participant safety until complete separation is achieved. This analysis must include any setting where housing and support is delivered by the same provider and conflict of interest is present. It must also include an analysis of any environment where a landlord offers tenancy to people with disability under relevant state and territory legislation as standard tenancy law is not designed to maintain safeguards for people with disability and must be strengthened.

The NDIS Commission must mandate, as a condition of NDIS support provision, that non-SDA tenancy management is not provided by an organisation that delivers or seeks to deliver NDIS supports to the same individual.

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<sup>11</sup> [Summer Foundation, Housing Hub Listings Snapshot](#), June 2021, p. 6, 7 and 16

#### 4. The issue of conflict of interest places young people with disability living in residential aged care at risk as they transition to other housing options.

The Federal Government's [Younger People in Residential Aged Care Strategy 2020-2025](#) (YPIRAC Strategy) recognises and prioritises the rights of young people living in residential aged care to determine where and how they choose to live. Addressing the issue of conflict of interest, as it relates to housing and support, will potentially increase the positive outcomes achieved through the YPIRAC Strategy by enabling people with disability to access quality housing and support options and prevent the risk of being admitted to residential aged care (RAC) or re-admission.

The strategy demonstrates a dedicated effort by the Australian Government and aims to ensure that:

- No people under the age of 65 entering residential aged care by 2022
- No people under the age of 45 living in residential aged care by 2022
- No people under the age of 65 living in residential aged care by 2025

Mandating the complete separation of housing and support and removing the inherent conflict of interest present when housing and support is delivered by a single organisation will ensure younger people with disability are supported to exercise genuine choice and control over their lives, as prioritised in the YPIRAC Strategy.

The risk of RAC admission and re-admission or admission to other unsuitable accommodation is far greater when conflict of interest exists and housing security is subsequently compromised. YPIRAC that transition from RAC to an unsuitable housing option are at risk of unsafe service delivery, compromised rights and the possibility of homelessness or re-admission to aged care or hospital in the event a complaint is made or a concern raised.

Suitable housing options are further impacted by the perpetuation of third line forcing and exclusive relationships between SDA and SIL providers. The participant is forced to enter or remain in RAC unless they choose to receive support from a potentially unsuitable SIL provider or forgo their right to exercise choice and control over which organisation they choose to deliver SIL support.

## The way forward

To ensure people with disability have the right to exercise genuine choice and control over their living arrangements and NDIS supports, the NDIS Commission must mandate the complete separation of housing and support. We recommend the following:

### Recommendation 1

The NDIS Commission must address the problem of conflict of interest by mandating complete separation of housing and support.

- a) The NDIS Commission must develop a strategy and set a deadline for complete separation.
- b) The NDIS Commission must amend the NDIS provider registration conditions to disallow the delivery of SDA and other NDIS supports by a single organisation.
- c) The NDIS Commission must release further and more detailed information relevant to conflict of interest compliance and enforcement actions to build the capacity of the NDIS provider sector to better understand their obligations.
- d) All SDA providers should be required to undertake the Summer Foundation's Welcome Home training package as part of the provider registration process.

### Recommendation 2

The NDIS Commission must address and prevent third line forcing.

- a) The NDIS Commission must implement a strategy to respond and prevent third line forcing.
- b) The NDIS Commission must work to build the capacity of participants and support coordinators to identify third line forcing and other anti-competitive practices.
- c) The NDIS Commission's Approved Quality Auditors must be trained to identify, report and respond to instances of third line forcing.

### Recommendation 3

The NDIS Commission must prevent non-SDA NDIS providers engaging beyond their responsibilities in tenancy management, particularly where this isn't in the best interest of the NDIS participant.

- a) The NDIS Commission must mandate as a condition of NDIS support provision that non-SDA tenancy management is not provided by an organisation that seeks to deliver NDIS supports.
- b) The NDIS Commission must conduct a quality analysis of non-SDA NDIS providers that are involved in participant tenancy management and implement an interim quality and safeguards mechanism. The NDIS Commission should consider broadening the scope of the SDA module of the NDIS Practice Standards as an interim measure.
- c) The NDIA and the NDIS Commission must work with departments of housing, and state and territory residential tenancies authorities to provide a coordinated response to address the issue.

## Separation of Housing and Support: Good Practice Guide for NDIS Providers

The Summer Foundation is set to release a good practice guide for NDIS providers in relation to the separation of housing and support. The guide will include a good practice case study and promote an understanding of the past, current and future landscape of housing and support models. It will promote an understanding of the NDIS Commission's Quality and Safeguard Framework and explore the benefits of separation for disability service providers and participants. The separation of housing and support is important because it enables:

### **Choice and control**

Complete separation removes the conflict of interest present when a provider has influence or control over both housing and support. Separation makes it easier to change, switch or remove supports without the fear of experiencing adverse consequences. Complete separation acknowledges the participant as the decision-maker in their lives and is a way in which organisations can ensure their business does not impede on how a person exercises their rights. It shows a commitment to contemporary independent living arrangements.

### **Accountability and transparency**

Separation is an organisational commitment to ensuring safe and quality service delivery. Organisations are more accountable for their actions and the delivery of service is more transparent when more than one organisation is involved in supporting a participant with housing related matters and support provision. Stronger accountability and transparency provides stronger safeguards against the risk of violence, abuse, neglect and exploitation of people with disability.

### **Clarity and specialisation**

Separation allows organisations to focus on their core business. It makes it easier to develop expertise in either tenancy management or NDIS support provision. Organisations are better placed to respond to opportunities in their specialised field and more prepared to adapt and change to their chosen market. It is clear to people with disability, their families and carers as to the role the organisation plays in their lives and supports an understanding of how matters related to the home are different from matters related to NDIS supports.