



Welcome Home Webinar 2

FAQs

The SDA provider role

Q: Is the SDA provider the same as the 'housing provider'?

A: A registered SDA provider is free to take on several roles:

- The term 'housing provider' refers to the entity that is registered to deliver the SDA dwelling. This entity is responsible for enrolling an SDA property, providing tenancy management and ensuring the conditions or enrolment and registration are consistently met.
- A registered SDA provider may not necessarily be the owner or investor/developer of an SDA dwelling. If there is a separate owner/investor/developer, the registered SDA provider needs to gain written authority from them before they can carry out any dwelling modifications or other works on the property.
- A registered SDA provider is responsible for tenancy management. These responsibilities may be carried out directly by the entity registered as the SDA provider or the tenancy management role may be contracted to a third party such as a community housing provider. The registered SDA provider remains responsible for setting policies and procedures to guide tenancy management and ensuring all employees, officers, agents or subcontractors in their employ comply with tenancy management policies and procedures.

Tenancy law

Q: Does residential tenancy law apply to SDA?

A: Yes. An SDA service agreement must comply with state/territory residential tenancy law:

- At the time of writing, there was no standard national approach to SDA agreements with different residential tenancy laws in place in each state and territory. A state's tenancy regulator can confirm how state laws apply to an SDA tenancy. The [Welcome Home resource hub](#) includes a list of state/territory tenancy regulators.
- Victoria is currently the only state to have amended residential tenancies legislation to cover SDA tenancies. The Victorian [SDA Residency Agreement](#) and associated information statement are considered to be one of the best examples of an SDA agreement currently available.

Q: Are there specific legislative conditions that override any agreement condition or vice versa?

A: Yes. The SDA Agreement must satisfy minimum tenancy term requirements outlined in the SDA Practice Standards for Service Agreements AND comply with state residential tenancy law. If there is a conflict between the SDA Practice Standards and state law, the state legislation must prevail.

An SDA provider can design their own SDA agreement that satisfies the minimum tenancy terms for SDA and applies the relevant state residential tenancy provisions. Alternatively, a standard residential tenancy agreement can be used alongside an SDA service agreement that contains any required terms not contained in the tenancy agreement.

Welcome Home Module 4: Service Agreements provides more information about SDA agreements including how to adapt standard residential tenancy provisions to be more appropriate for SDA tenancies.

Making a tenancy offer

Q: Should an SDA provider wait until they know the SDA and SIL funding outcomes for a participant before they enrol an SDA dwelling?

A: No. A registered SDA provider should enrol an SDA dwelling, establishing the building type, the SDA design category and maximum number of tenants, before they make any tenancy offers.

- When a participant assesses an SDA provider, they should have clear information about the SDA building type, design category, maximum number of tenants and the tenancy terms and conditions. Having this information up front allows the participant and their supporters to independently assess the SDA provider's suitability to support their needs and preferences and avoids the potential for any undue influence by the SDA provider over the person's decisions.
- The delivery of SDA and SIL are assessed and funded separately by the NDIA. An SDA provider has a responsibility not to interfere in or constrain a person's choice and control over their other NDIS support services, particularly SIL. This responsibility is outlined in the [SDA Price Arrangements 2021 – 22](#) (SDA Terms of Business).
- The conditions of enrolment for SDA properties should not be determined by the level of SDA and SIL supports in a participant's Plan.
- An SDA provider should not make a tenancy offer based on a participant's SIL support even though this may be a legitimate consideration if the provider offers Onsite Overnight Assistance (OOA).

SDA design categories

Q: How does it work when 2 clients want to live together and their individual SDA design category differs?

A: A participant has some flexibility to live in an SDA that meets a different design category to the one they have been deemed eligible for.

- They may be able to live in an SDA that has a 'higher' design category if they are prepared to make personal contributions to meet the higher SDA price.
- If a tenant chooses, they can request to remain living in Basic SDA even though they are eligible for another SDA design category, such as Improved Liveability.
- In all cases, a participant must negotiate their SDA arrangements with the NDIA and have their Plan amended accordingly. At the time of writing, proposed revisions to NDIS rules may lead to greater flexibility to change details of a participant's Plan without a full Plan review.

Support to understand tenancy conditions

Q: Who is the appropriate body to assist people with the SDA service agreement? Tenancy services or other?

A: An SDA provider has a responsibility to ensure a participant has adequate information and support to understand their tenancy terms and conditions, and their rights and responsibilities as an SDA tenant. This is so they can give informed consent to their SDA agreement.

- The SDA provider should lead all communications about the SDA agreement and provide appropriate information about tenancy terms and conditions and a person's rights and responsibilities as an SDA tenant. [Consumer Affairs Victoria](#) has developed a range of resources to help Victorian SDA providers explain tenancy terms and conditions to prospective tenants. These include information statements in accessible formats.
- An SDA provider should ensure the person has any communication or decision-making supports they require to understand their SDA agreement and give informed consent to the terms and conditions. The SDA provider should document how they work with a person to explain their tenancy conditions as evidence they have supported them to make informed decisions.
- A tenant can nominate supporters to be involved in this process. An SDA provider should document the involvement of supporters, including formal guardians or administrators, and any legal authority a supporter has to make decisions on a prospective tenant's behalf, such as entering into an SDA agreement.
- An SDA provider should have a policy for working with participants and tenants who do not have access to appropriate support to make informed decisions about their tenancy. Some SDA providers require a person to have adequate support in place before they will make a tenancy offer. An SDA provider should seek advice on the most appropriate advocacy options for a person who does not have access to support and avoid becoming directly involved in their decision-making.
- Module 2: Rights and Responsibilities includes more information and resources about working with a tenant's support network, including supported decision-making and working with people who do not have adequate supports in place. Also check the [NDIS website](#) for updates on procedures and resources for supported decision-making by participants.

Q: Is it the role of the support coordinator or the SDA tenancy manager to explain SDA terms & conditions?

A: The registered SDA provider, who is responsible for tenancy management, has a responsibility under the SDA Practice Standards to ensure a tenant *"is supported to understand the terms and conditions that apply to their specialist disability accommodation dwelling and the associated SDA service and/or tenancy agreements."*

This is a tenancy management responsibility that should be filled by a role in the direct employ of the SDA provider. A tenant can also nominate supporters to be involved in this process, including a support coordinator.

- The conversation a support coordinator has with a participant about their SDA options may include an assessment of the tenancy terms and conditions offered by a particular SDA provider. An SDA provider should ensure a support coordinator has appropriate information to effectively explain tenancy terms and conditions. This conversation should complement but not replace the SDA provider's responsibilities to discuss a tenancy directly with a prospective tenant.

- An SDA provider should communicate directly with a prospective tenant about any issues, including the person's options and risks related to changing, extending or terminating their tenancy.
- An SDA provider should be available to answer any other questions a prospective tenant has about their tenancy.
- The process of explaining tenancy terms and conditions should reinforce who a prospective tenant will need to deal with to address any issues throughout their tenancy.

SDA and SIL

Q: Is it against the rules for an SDA provider to make it a condition of tenancy that a person has to receive their SIL support from a particular service provider?

A: Yes. The SDA Practice Standards for Conflict of Interest state:

“Each participant’s right to exercise choice and control over other NDIS support provision is not limited by their choice of specialist disability accommodation dwelling.”

- This is one of the performance outcomes that an SDA provider must meet as part of their registration with the NDIA. When an SDA provider requires a tenant to work with a particular support provider, such as a SIL provider for their personal care needs, they are breaching the conditions of their registration.
- The NDIA recognises this practice is still common across the SDA sector because housing and support packages were the status quo under the pre-NDIS system. The SDA Practice Standards include performance indicators that allow an SDA provider to declare any such arrangements they have with other service providers, particularly SIL providers, as a conflict of interest. This allows a participant to decide whether they are comfortable with these service arrangements before they enter into a tenancy with that SDA provider.
- The NDIA have signalled that over the long-term they will require complete separation of SDA and in-home support and will no longer tolerate SDA providers requiring tenants to engage specific support service providers.

Tenancy Management

Q: Is it better for an SDA provider to provide tenancy management and monitor compliance or to contract the tenancy management role to another organisation?

A: The tenancy management role has a broad range of responsibilities including mainstream ‘landlord’ responsibilities and the provision of specialist supports to tenants.

- Regardless of whether a third party is contracted to fill the role or not, the registered SDA provider is responsible for establishing all policies and procedures guiding tenancy management practices and ensuring compliance by employees, officers, agents and subcontractors with those policies, procedures and any applicable laws.
- Whatever entity fills the tenancy management role, they should have appropriate systems in place for managing information and monitoring compliance. They also need specialist knowledge and skills to apply a person-centred approach to all practices and to provide specialist supports to tenants such as behaviour support management.

Choice and Control

Q: Is there any evidence that the NDIS' vision of participants exercising choice to change service providers has materialised?

A: There is evidence of a growing number of NDIS participants exercising choice and control including changing their service arrangements and providers:

- Approximately 10% of participants who are currently living in SDA are formally seeking alternative SDA options. The NDIA have only been reporting this data for a short time in their quarterly reports, but the data shows the proportion of participants seeking alternative SDA is gradually increasing.
- Anecdotal evidence from NDIS participants and NDIA data indicate a growing number of participants are seeking reviews to their SDA determinations, particularly when they receive funding for shared housing despite demonstrating their need and preference to live independently.
- The recent NDIA public consultation on home and living services may lead to policy reforms that make it easier for participants to seek changes to their NDIS plans and service delivery arrangements.
- For useful data on the NDIS and SDA market, visit the [Summer Foundation's resources](#) and [Housing Hub](#). Also keep an eye on [NDIS quarterly reports](#) and any papers, reports or submissions the NDIA publishes about home and living services.

Q: What is the difference between the SDA provider role and the Tenancy Manager role?

A: Tenancy management is a part of the SDA provider role however it can be contracted to a third party, such as a Community Housing Provider. The Tenancy Management responsibilities outlined in the SDA Practice Standards are:

- Property maintenance and repair
- Service modifications (incl. dwelling modifications) to meet a tenant's changing support needs
- Emergency management (to ensure continuity of care)
- Tenancy feedback and complaints management
- Behaviour management
- Conflict and serious incident management and reporting
- Issuing tenancy notices

In shared housing, tenancy management also involves:

- Managing vacancies and consulting with existing tenants to ensure the mix of people in a household is appropriate and will ensure each person's safety, security and welfare.
- Collaborating with tenants and SIL providers to coordinate the delivery of supports, including arrangements for dwelling access and information sharing. The SDA provider is responsible for documenting these arrangements and reviewing them regularly with tenants and SIL providers to make sure they are working well.

Tenancy Management policies and procedures must comply with a range of state and commonwealth laws and guidelines for the use of authorised restrictive practices, supported decision-making, emergency management and dwelling safety. They must also comply with NDIS rules governing the reporting of serious incidents and complaints management.

- The registered SDA provider is responsible for developing policies and procedures that guide tenancy management practices and comply with all applicable laws.

- The SDA provider is also responsible for ensuring compliance by employees, officers, agents and subcontractors, with their policies and procedures. This is regardless of which entity fills the Tenancy Management role.

Q: How would I find a third party that is reputable and knows how to do the Tenancy Management role properly?

A: There are a number of not-for-profit service providers that are suitable to fill the SDA Tenancy Management role.

- Community Housing Providers (CHPs) have skills and experience supporting vulnerable tenants and complying with regulatory systems for tenancy management. However, CHPs do not necessarily have experience working with people with disability including those with the highest level of support needs.
- Registered providers of supports do not have legal responsibility for Tenancy Management unless they are also registered to deliver SDA and have entered into separate SDA agreements with tenants.
- Service providers who deliver in-home support such as SIL are not appropriate to fill the Tenancy Management role. This is because a tenant's right to exercise separate choice and control over their housing and in-home supports can be compromised by this arrangement.
- An SDA Tenancy Manager does not need to be a registered real estate agent.

The registered SDA provider needs to ensure their tenancy management policies and procedures are clear and appropriate for guiding a Tenancy Manager to implement person-centred procedures that meet the needs of SDA tenants and comply with applicable laws. The organisation filling the Tenancy Management role should have the demonstrated expertise to manage both standard tenancy and specialist support issues.

Module 6: Tenancy Management provides more information and resources to support policy development and compliance.

Supported decision-making

Q: What supporting documentation do you need for an alternate decision-maker for a tenant?

A: Decision supporters and substitute decision-makers can be established in a number of ways.

- A tenant can nominate any person to help them communicate and make decisions about their tenancy.
- An NDIS participant can formally nominate a person to receive correspondence from the NDIS or participate in any process concerning their NDIS Plan.
- A substitute decision-maker who makes decisions on behalf of a tenant must be formally authorised by a court or tribunal with specified legal authority to make decisions about the person's lifestyle or finances.

An SDA provider should always confirm and document details about the legal authority of any person who presents or is nominated by a tenant to make decisions on their behalf. This includes documented evidence of their legal authority and confirmation about the tenancy issues they can address. Some state-appointed guardians or administrators will have limited legal authority to address SDA tenancy matters.

For more information about supported and substitute decision-making, see the [NDIS](#) and [NDIS Quality and Safeguards Commission](#) websites and the Public Advocate or Guardian's Office in your state or territory.

Maintenance and repair

Q: Aside from standard compliance and basic maintenance, are there any set frequency schedules for items such as painting/flooring i.e. each bedroom must be painted every x years?

A: No, there are no set maintenance schedules for SDA but the [SDA Price Arrangements 2021 – 22](#) include cost assumptions for property maintenance that are “*significantly higher than non-SDA industry benchmarks.*” Some SDA design categories such as Robust also account for the need to “*reduce the likelihood of reactive maintenance*” as a result of heavy use and the needs of tenants with complex behaviours.”

An SDA provider is responsible for keeping an SDA dwelling in a good state of repair. Good practice for SDA maintenance is to raise the bar and maintain the property to the highest possible standard including amending standard maintenance practices such as setting shorter maximum response times for maintenance and repair issues and broadening the definitions for ‘urgent repairs’ and ‘fair wear and tear’.

Terminating a tenancy

Q: Are there standard conditions for terminating an SDA service agreement?

A: The SDA Practice Standards for Service Agreements require a minimum of 90 days’ notice for a tenant to vacate a dwelling “*unless shorter notice is required to address risks of harm*”.

- State residential tenancy laws outline conditions and notice periods for either a landlord or a tenant to issue a notice to vacate or terminate a tenancy.
- The [SDA Price Arrangements 2021 – 22](#) outline conditions for claiming SDA payments when a tenant no longer resides in an SDA dwelling.

Q: If a tenant leaves their SDA, can they return?

A: Both the SDA tenant and the SDA provider have rights and responsibilities for terminating a tenancy. The SDA agreement should specify the notice periods and circumstances in which the SDA agreement can be terminated by either party. These terms and conditions must comply with applicable residential tenancy law and the minimum terms outlined in the SDA Practice Standards.

- The [SDA Price Arrangements 2021 – 22](#) outline additional requirements related to vacancies in shared housing and the SDA provider’s ability to continue claiming SDA payments for a set period once a tenant has left the dwelling.
- When a tenant leaves a dwelling, the SDA provider should report a vacancy to the NDIA. If the SDA provider wishes to change the maximum number of residents the dwelling is enrolled to house, they must also report this to the NDIA before re-enrolling the dwelling under new conditions.
- If a tenant is uncertain about whether they want to continue with their tenancy, they should discuss their options with the SDA provider and any nominated supporters. Any arrangements made as a result of these discussions should be consistent with the person’s rights and responsibilities as an SDA tenant and documented by the SDA provider.

Q: Have there been any incidences or tribunal rulings where an SDA provider has been found to have unreasonably rejected a participant for an SDA tenancy?

A: At the time of writing, there is no national resource or listing of tribunal rulings related to SDA although administrative tribunals do publish judgements online and some state NDIS Commissions have indicated they will publish relevant judgements in their state. Over time, it is hoped that tribunal judgements will set precedents that give SDA providers greater clarity and certainty about practice standards.

Good practices for making tenancy offers include:

- The SDA provider has information that clearly states their expectations for the use of an SDA dwelling by a tenant, including the rights and responsibilities of both parties related to the condition of the dwelling and the use of shared spaces.
- An SDA provider is also responsible for vacancy management in shared housing and ensuring the mix of tenants is appropriate for supporting all tenants' safety, security and welfare.
- An SDA provider should always get to know a prospective tenant before they make a tenancy offer and both parties should be confident they have compatible expectations for how an SDA dwelling should be accessed and used.