



## National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020

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I, Stuart Robert, Minister for the National Disability Insurance Scheme, make the following rules.

Dated 17 JUNE 2020

Stuart Robert  
Minister for the National Disability Insurance Scheme

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## Part 1—Preliminary

### 1 Name

This instrument is the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *National Disability Insurance Scheme Act 2013*.

### 4 Schedules

Each instrument that is specified in Schedule 3 to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

### 5 Definitions

Note: A number of expressions used in this instrument are defined in section 9 of the Act, including the following:

- (a) Agency;
- (b) CEO;
- (c) National Disability Insurance Scheme;
- (d) NDIS provider;
- (e) parental responsibility;
- (f) participant;
- (g) participant's statement of goals and aspirations;
- (h) plan;
- (i) registered NDIS provider;



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- (j) registered provider of supports.

In this instrument:

**Act** means the *National Disability Insurance Scheme Act 2013*.

**Australian Statistical Geography Standard** means the geographical framework of that name published by the Australian Bureau of Statistics from time to time.

Note: The Australian Statistical Geography Standard could in 2020 be viewed on the Australian Bureau of Statistics' website (<http://www.abs.gov.au>).

**basic**, as a design category, has the meaning given by item 1 of the table in clause 1 of Schedule 2.

**Building Code of Australia** means the publication known as the *Building Code of Australia*, published by the Australian Building Codes Board, as in force from time to time.

Note: The Building Code of Australia could in 2020 be viewed on the National Construction Code website (<http://ncc.abcb.gov.au>). The Building Code of Australia is included in the National Construction Code.

**child**, of an individual, means:

- (a) a natural child of the individual; or
- (b) an adoptive child of the individual; or
- (c) a step-child of the individual; or
- (d) a foster child of the individual; or
- (e) a child in relation to whom the individual has parental responsibility; or
- (f) a person aged 18 or over that has at any time been a child of the kind mentioned in paragraph (a) to (e) of the individual.

**complex home modifications** means modifications to a dwelling that:

- (a) are designed to address multiple complex needs of an eligible participant; and
- (b) require structural alterations to the dwelling (whether or not approval is required to undertake those alterations).

**condition of enrolment** means a condition specified in section 28, 29 or 30.

**density restriction**: see section 31.

**eligible participant** means a participant who is eligible under Division 2 of Part 2 to receive support for specialist disability accommodation.

**enrolled**, in relation to a dwelling, means a dwelling enrolled under section 26 to provide specialist disability accommodation.

**existing stock**: see section 6.

**extreme functional impairment**: see section 12.

**in-kind support** has the meaning given by section 6.8 of the *National Disability Insurance Scheme (Plan Management) Rules 2013*.

**intentional community**: see subsection 31(3).

**Livable Housing Design Guidelines** means the publication known as the *Livable Housing Design Guidelines*, published by Livable Housing Australia, as in force from time to time.

Note: The Livable Housing Design Guidelines could in 2020 be viewed on the Livable Housing Australia website (<http://www.livablehousingaustralia.org.au>).

**long-term accommodation** means a dwelling that is used as a permanent home but does not include a dwelling that is used only for respite, emergency or temporary accommodation.

**minimum design requirements**, in relation to an SDA design category, means the minimum design requirements set out in the SDA Price Guide for the SDA design category.

**new build**: see section 8.

**parcel of land**: see subsection 31(4).

**permanent dwelling** means a dwelling that is fixed permanently to the ground.

**SDA building type** means a type of building set out in Schedule 1.

**SDA design category** means a design category set out in Schedule 2.

**SDA Price Guide** means the publication known as the *National Disability Insurance Scheme Price Guide for Specialist Disability Accommodation*, published by the CEO, as in force from time to time.

Note: The SDA Price Guide could in 2020 be viewed on the Agency's website (<http://www.ndis.gov.au>).

**SDA Pricing and Payments Framework** means the publication known as the *Specialist Disability Accommodation Pricing and Payments Framework*, as endorsed by the Disability Reform Council of the Council of Australian Governments, as in force from time to time.

Note: The SDA Pricing and Payments Framework could in 2020 be viewed on the Department's website (<http://www.dss.gov.au>).

**SDA provider** means:

- (a) a registered NDIS provider that is registered to provide specialist disability accommodation; or
- (b) a registered provider of supports that can provide specialist disability accommodation under its registration.

**specialist disability accommodation**:

- (a) means accommodation for a person who requires specialist housing solutions, including to assist with the delivery of supports that cater for the person's extreme functional impairment or very high support needs; but
- (b) does not include supports delivered to the person while the person is living in the accommodation.

**Statistical Area Level 4** means an area designated by the Australian Bureau of Statistics as a Statistical Area Level 4 as mentioned in the Australian Statistical Geography Standard.

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**Terms of Business for Registered Providers** means the publication known as the *Terms of Business for Registered Providers*, published by the Agency, as in force from time to time.

Note: The Terms of Business for Registered Providers could in 2020 be viewed on the Agency's website (<http://www.ndis.gov.au>).

**very high support needs**: see section 13.

**6 Meaning of *existing stock***

A dwelling is ***existing stock*** if:

- (a) the dwelling is not a new build; and
- (b) the dwelling is enrolled, or will be enrolled, to house:
  - (i) 5 or fewer longer-term residents (excluding support staff); or
  - (ii) more than 5 longer-term residents from the same family; and
- (c) if subparagraph (b)(ii) applies in relation to the dwelling and the dwelling is the home of an eligible participant who intends to provide SDA to themselves as an SDA provider—only the following persons reside at the dwelling:
  - (i) the eligible participant;
  - (ii) the eligible participant's spouse or de facto partner;
  - (iii) children of the eligible participant or the eligible participant's spouse or de facto partner; and
- (d) the shared areas of the dwelling satisfy the minimum design requirements specified for an SDA design category; and
- (e) at least one bedroom and one bathroom of the dwelling satisfy the minimum design requirements specified for an SDA design category; and
- (f) if the dwelling is not the home of an eligible participant who intends to provide SDA to themselves as an SDA provider—the dwelling has accommodated, at any time between 1 July 2013 and 1 December 2016:
  - (i) a resident that has an extreme functional impairment or very high support needs; and
  - (ii) a resident that has received disability related support accommodation payment (or equivalent) from the Commonwealth Government or the government of a State or Territory; and
- (g) if the dwelling is an aged care, healthcare or other facility—the dwelling is specifically intended for use as specialist disability accommodation.

**7 Meaning of *legacy stock***

A dwelling is ***legacy stock*** if:

- (a) the dwelling is not a new build; and
- (b) the dwelling is enrolled, or will be enrolled, to house more than 5 longer-term residents (excluding support staff); and
- (c) the shared areas of the dwelling satisfy, or substantially satisfy, the minimum design requirements specified for an SDA design category; and

- (d) at least one bedroom and one bathroom of the dwelling satisfy, or substantially satisfy, the minimum design requirements specified for an SDA design category; and
- (e) if the dwelling is an aged care, healthcare or other facility—the dwelling is specifically intended for use as specialist disability accommodation; and
- (f) the dwelling has accommodated a resident that:
  - (i) has an extreme functional impairment or very high support needs; and
  - (ii) has received disability related support accommodation payment (or equivalent) from the Commonwealth Government or the government of a State or Territory; and
- (g) the resident was accommodated at the dwelling:
  - (i) at any time between 1 July 2013 and 1 December 2016; or
  - (ii) if construction of the dwelling commenced after 1 July 2013 and was completed on or before 31 December 2018—at any time after the construction of the dwelling was completed.

### 8 Meaning of *new build*

A dwelling is a *new build* if:

- (a) a certificate of occupancy (or equivalent) was either:
  - (i) first issued in relation to the dwelling on or after 1 April 2016; or
  - (ii) issued in relation to the dwelling on or after 1 April 2016 following renovations or refurbishments that resulted in the dwelling satisfying the minimum design requirements specified for an SDA design category other than basic; and
- (b) the dwelling is enrolled, or will be enrolled, to house:
  - (i) 5 or fewer longer-term residents (excluding support staff); or
  - (ii) more than 5 longer-term residents from the same family; and
- (c) if subparagraph (b)(ii) applies in relation to the dwelling and the dwelling is the home of an eligible participant who intends to provide SDA to themselves as an SDA provider—only the following persons reside at the dwelling:
  - (i) the eligible participant;
  - (ii) the eligible participant's spouse or de facto partner;
  - (iii) children of the eligible participant or the eligible participant's spouse or de facto partner; and
- (d) the shared areas of the dwelling satisfy the minimum design requirements specified for an SDA design category other than basic; and
- (e) at least one bedroom and one bathroom of the dwelling satisfy the minimum design requirements specified for an SDA design category other than basic.

## **Part 2—Eligibility to receive support for specialist disability accommodation**

### **Division 1—Introduction**

#### **9 Simplified outline of this Part**

This Part applies to determine whether a participant is eligible to receive support for specialist disability accommodation under the National Disability Insurance Scheme.

If a participant is assessed as eligible to receive support for specialist disability accommodation, the CEO must determine the SDA building type, SDA design category and location of the specialist disability accommodation that is reasonable and necessary to support the participant.

The SDA building type, SDA design category and location are used to determine the maximum amount that a participant can be funded under the National Disability Insurance Scheme. The amount is determined under the SDA Price Guide.

#### **10 Purpose of this Part**

This Part is made for the purposes of subsections 33(7), 34(2), 35(1) and 209(2A) of the Act.

## **Division 2—Eligibility to receive support for specialist disability accommodation**

### **11 Eligibility to receive support for specialist disability accommodation**

A participant is eligible to receive support for specialist disability accommodation under the National Disability Insurance Scheme if the CEO is satisfied that:

- (a) the participant:
  - (i) has an extreme functional impairment (see section 12); or
  - (ii) has very high support needs (see section 13); and
- (b) the participant meets the SDA needs requirement (see section 14).

### **12 When a participant has an extreme functional impairment**

- (1) A participant has an *extreme functional impairment* if:
  - (a) the impairment results in extremely reduced functional capacity to undertake, or psychosocial functioning in undertaking, one or more of the following activities:
    - (i) mobility;
    - (ii) self-care;
    - (iii) self-management; and
  - (b) the participant has a very high need for person-to-person supports in undertaking the activity even with assistive technology, equipment or home modifications.
- (2) For the purposes of assessing whether a participant has an extreme functional impairment, the CEO may have regard to:
  - (a) any assessment or examination conducted in relation to the participant, including any assessment or examination requested by the CEO under paragraph 36(2)(b) or 50(2)(b) of the Act; and
  - (b) the daily support requirements of the participant; and
  - (c) any assessment tool specified by the CEO for the purposes of this paragraph; and
  - (d) any other matters that the CEO considers appropriate.

### **13 When a participant has very high support needs**

- (1) A participant has *very high support needs* if:
  - (a) the participant has lived in specialist disability accommodation for extended periods and living in that accommodation has impacted on the capacity of the participant to transition to alternative living arrangements and support; or
  - (b) the participant has a very high need for person-to-person supports, either immediately available or constant, for a significant part of the day and either:

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- (i) there are limitations in the availability, capacity or capability of the participant's informal support network or risks to its sustainability; or
  - (ii) the participant is at risk or poses a risk to others, and that risk could be mitigated by the provision of specialist disability accommodation, having regard to the participant's response to risk and the interaction of the participant with the environment.
- (2) For the purposes of assessing whether a participant has very high support needs, the CEO may have regard to:
  - (a) any assessment or examination conducted in relation to the participant, including any assessment or examination requested by the CEO under paragraph 36(2)(b) or 50(2)(b) of the Act; and
  - (b) the daily support requirements of the participant; and
  - (c) any assessment tool specified by the CEO for the purposes of this paragraph; and
  - (d) any other matters that the CEO considers appropriate.

**14 When a participant meets the SDA needs requirement**

- (1) A participant meets the *SDA needs requirement* if, when compared to other supports alone, combined specialist disability accommodation and other supports would:
  - (a) better assist the participant to pursue the goals, objectives and aspirations set out in the participant's statement of goals and aspirations; and
  - (b) be more effective and beneficial, where possible, in:
    - (i) mitigating or alleviating the impact of the participant's impairment upon the participant's functional capacity; and
    - (ii) preventing the deterioration of the participant's functional capacity; and
    - (iii) improving the participant's functional capacity; and
    - (iv) maintaining or promoting the participant's ability to build capacity, including in the medium or long term; and
    - (v) maintaining or promoting the participant's opportunities to develop skills; and
  - (c) if the participant has very high supports needs—be more effective and beneficial, where possible, in:
    - (i) reducing the participant's future needs for supports which might be required due to inappropriate accommodation; and
    - (ii) assisting the participant to pursue goals related to life opportunities and life transitions; and
  - (d) if the participant has an extreme functional impairment—be more effective in providing the participant with stability and continuity of support; and
  - (e) represent better value for money.
- (2) For the purposes of paragraph (1)(e), regard must be had to the following matters if the participant has very high support needs:

- (a) whether combined specialist disability accommodation support and other supports would be likely to substantially improve the life stage outcomes for, and be of long-term benefit to, the participant;
- (b) the cost of providing the participant with supports needed to live in accommodation other than specialist disability accommodation, taking into account:
  - (i) whether those supports may be shared with other participants; and
  - (ii) limitations of the participant's informal support network.



## **Division 3—Design, type and location of specialist disability accommodation**

### **15 Matters to be determined by CEO in respect of each eligible participant**

- (1) The CEO must determine the following matters for an eligible participant:
  - (a) the SDA building type that is appropriate to support the eligible participant (see section 16);
  - (b) the SDA design category that is appropriate to support the eligible participant (see section 17);
  - (c) the area in which the specialist disability accommodation is to be located (see section 18);
  - (d) whether the specialist disability accommodation is to be provided as an in-kind support.

Note: The CEO may determine more than one SDA building type, SDA design category or location in relation to an eligible participant. The SDA building type, SDA design category and location must be specified in the eligible participant's plan: see section 19.

- (2) If an eligible participant notifies the CEO, in writing, that the eligible participant wishes to reside at:
  - (a) a dwelling that the eligible participant occupied immediately before a determination under subsection (1) is made; or
  - (b) a dwelling that the eligible participant moved to in accordance with an earlier determination made under subsection (1); or
  - (c) a dwelling that does not meet the matters determined by the CEO under subsection (1) in relation to the eligible participant while the eligible participant finds and transitions to accommodation that satisfies those matters;

the CEO may determine, in addition to the matters mentioned in subsection (1), that the eligible participant is eligible to receive support for specialist disability accommodation in relation to the accommodation specified in the notice.

Note 1: An eligible participant may be eligible under subsection (2) to receive support for a dwelling that only satisfies the minimum design requirements specified for the SDA design category of basic.

Note 2: The matters determined by the CEO under this section affect the amount of support that can be paid to an eligible participant for specialist disability accommodation. The SDA Price Guide sets out the maximum amount of support that is available for specialist disability accommodation.

### **16 SDA building type**

For the purposes of determining under subsection 15(1) the SDA building type that is appropriate to support an eligible participant, the CEO must have regard to the following matters:

- (a) the eligible participant's preference, if the preference can be established and it aligns with the eligible participant's statement of goals and aspirations;

- (b) the features of the building type in relation to the eligible participant's needs;
- (c) the support model that is more appropriate for the eligible participant, having regard to the eligible participant's needs and whether immediately available or constant person-to-person support is required;
- (d) the eligible participant's support needs;
- (e) whether the building type represents value for money in that the costs would be reasonable, relative to both the benefits achieved and the cost of alternatives;
- (f) the extent to which the building type would facilitate social and economic participation, including how the building type may impact on:
  - (i) the eligible participant's ability to engage in the life of the household and community; and
  - (ii) the dynamics of the household, including the eligible participant's ability to share with others and build relationships;
- (g) the extent to which the building type facilitates past, established or planned connections or the continuation of established connections, in particular cultural and community connections;
- (h) the extent to which the building type increases, reduces or mitigates the risks to the eligible participant and others, having regard to the eligible participant's response to risk and the interaction of the eligible participant with the environment;
- (i) the extent to which the building type improves the life stage outcomes for, and be of long-term benefit to, the eligible participant;
- (j) the extent to which the building type impacts on the eligible participant's capacity or capabilities, including:
  - (i) whether it alleviates the impact of the eligible participant's impairment on the eligible participant's daily functioning; and
  - (ii) whether it enhances the eligible participant's skill development, in particular independent living skills; and
  - (iii) whether it increases the benefit and effectiveness of supports, other than specialist disability accommodation, for the eligible participant's skill development, in particular independent living skills; and
  - (iv) whether it enhances the opportunity for a move to accommodation other than specialist disability accommodation, or to lower cost specialist disability accommodation, in particular through a transition period with intensive capacity-building supports;
- (k) the extent to which the building type facilitates or sustains informal supports and the extent to which those supports reduce the cost of other supports;
- (l) the extent to which the building type facilitates or hinders the provision of other supports required by the eligible participant;
- (m) the extent to which the building type facilitates access to other support or specialist services required by the eligible participant and which are not funded or provided through the National Disability Insurance Scheme.

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**17 SDA design category**

- (1) For the purposes of determining under subsection 15(1) the SDA design category that is appropriate to support an eligible participant, the CEO must have regard to the specific needs of the eligible participant.
- (2) For the purposes of subsection 15(1), the CEO must not determine for an eligible participant the SDA design category of basic.

**18 Location of specialist disability accommodation**

- (1) For the purposes of determining under subsection 15(1) the area in which the specialist disability accommodation for an eligible participant is to be located, the CEO must have regard to the following matters:
  - (a) the eligible participant's preference, if the eligible participant's preference:
    - (i) can be established; and
    - (ii) aligns with the eligible participant's statement of goals and aspiration; and
    - (iii) is important to the eligible participant's support needs and for one or more of the matters mentioned in paragraph (e) or (f) or paragraph 16(h), (i), (k), (l) or (m);
  - (b) the extent to which the location would assist the eligible participant to pursue the goals, objectives and aspirations in the eligible participant's statement of goals and aspirations;
  - (c) features of the location, including the accessibility of community services;
  - (d) where the eligible participant currently lives and the history of where the eligible participant has lived, including any recent changes;
  - (e) the extent to which the location would facilitate past, established or planned connections or the continuation of existing connections, in particular cultural and community connections;
  - (f) the extent to which the location would be likely to facilitate social and economic participation, in particular how the location would impact on the eligible participant's ability to engage in the life of the household and community;
  - (g) whether the location represents value for money, having regard to the extent to which the location will:
    - (i) facilitate or sustain informal support, and the extent to which informal supports would reduce the cost of other supports; and
    - (ii) facilitate or hinder the provision of other supports required by the eligible participant; and
    - (iii) facilitate access to mainstream supports or specialist services required by the eligible participant.
- (2) The area determined by the CEO for the purposes of subsection 15(1) must be:
  - (a) an area designated by the Australian Bureau of Statistics as a Statistical Area Level 4 under the Australian Statistical Geography Standard; or
  - (b) a part of an area of the kind mentioned in paragraph (a); or
  - (c) 2 or more areas of the kind mentioned in paragraph (a).

## **Division 4—Other matters**

### **19 Eligibility to receive support for specialist disability accommodation to be included in plan**

- (1) The plan for an eligible participant must include:
  - (a) a statement that the eligible participant is eligible to receive support for specialist disability accommodation; and
  - (b) the matters determined for the eligible participant by the CEO under subsection 15(1), and the amount of support available to the eligible participant for specialist disability accommodation; and
  - (c) if the CEO makes a determination under subsection 15(2) in relation to the eligible participant—the following:
    - (i) the SDA building type, SDA design category and location of the dwelling specified in the notice given to the CEO under subsection 15(2);
    - (ii) the amount of support available to the eligible participant in relation to the dwelling specified in the notice.
- (2) The plan may specify the SDA provider that is to provide specialist disability accommodation to the eligible participant.

### **20 Support coordination**

- (1) The CEO may determine that support coordination and other capacity-building supports are required to assist an eligible participant in finding and moving into specialist disability accommodation.
- (2) The plan for an eligible participant must state the support (if any) determined by the CEO under subsection (1).

### **21 Rent contributions**

Despite the matters specified in an eligible participant's plan under section 19, an eligible participant may be required to contribute to rent for the specialist disability accommodation that the eligible participant resides at.

**Part 3** Funding of specialist disability accommodation

**Division 1** Introduction

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**Part 3—Funding of specialist disability accommodation**

**Division 1—Introduction**

**22 Simplified outline of this Part**

This Part sets out the requirements that must be satisfied in order for specialist disability accommodation to be funded under the National Disability Insurance Scheme.

**23 Purpose of this Part**

This Part is made for the purposes of subsections 34(2), 35(1) and 99(2) of the Act.

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## **Division 2—Requirements relating to the funding of specialist disability accommodation**

### **24 Requirements relating to the funding of specialist disability accommodation**

- (1) For specialist disability accommodation support specified in an eligible participant's plan to be funded under the National Disability Insurance Scheme, the following requirements must be satisfied:
  - (a) the specialist disability accommodation must be provided by an SDA provider;
  - (b) the accommodation must be provided at a dwelling (the *SDA dwelling*) that is enrolled to provide specialist disability accommodation (see Division 3 of this Part);
  - (c) the eligible participant must reside at the SDA dwelling (see section 32);
  - (d) the eligible participant must have a private bedroom at the SDA dwelling that:
    - (i) satisfies the minimum design requirements for an SDA design category specified in the eligible participant's plan; and
    - (ii) is occupied by only the eligible participant unless the eligible participant freely chooses to reside in the bedroom with one or more other persons;
  - (e) if the eligible participant has chosen to reside in a bedroom with one or more other persons and the eligible participant is not providing specialist disability accommodation to themselves (as an SDA provider)—both:
    - (i) the eligible participant has notified the CEO in writing of that choice; and
    - (ii) the CEO is satisfied, having regard to the matters mentioned in subsection (2), that the eligible participant's needs are not adversely impacted by having more than one person residing in the bedroom;
  - (f) the eligible participant must have access to a bathroom at the SDA dwelling that satisfies the minimum design requirements for an SDA design category specified in the eligible participant's plan.
- (2) For the purposes of subparagraph (1)(e)(ii), the CEO must have regard to the following matters:
  - (a) the intended household composition of the SDA dwelling;
  - (b) whether or not the eligible participant is in a relationship and the nature of that relationship;
  - (c) the commitment of the eligible participant to support themselves or any person that the eligible person has a duty to support;
  - (d) any hardship that would be caused to the eligible participant, or any person that the eligible participant has a duty to support, if the eligible participant were not sharing a bedroom;
  - (e) the distinctive needs and values of the eligible participant's socio-cultural group and the cultural norms and practices of that group;

**Part 3** Funding of specialist disability accommodation

**Division 2** Requirements relating to the funding of specialist disability accommodation

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- (f) whether sharing a bedroom presents, or has the potential to present, an unacceptable risk of harm to the eligible participant or other occupants of the SDA dwelling;
- (g) whether the SDA dwelling is of an adequate size and configuration to meet the needs of the eligible participant and other occupants, including any other person expected to reside at the dwelling in the future;
- (h) whether the accommodation is intended to be transitional in nature.

## **Division 3—SDA dwelling**

### **Subdivision A—Enrolment of dwelling**

#### **25 Application to enrol dwelling**

- (1) An SDA provider may apply to the CEO to enrol a dwelling as a dwelling at which specialist disability accommodation can be provided.
- (2) The application must:
  - (a) be in writing; and
  - (b) include the information specified in subsection (3); and
  - (c) be accompanied by a written statement that:
    - (i) is signed by the applicant; and
    - (ii) certifies the matters set out in subsection (4); and
    - (iii) is to the effect that the applicant has agreed to comply with the conditions of enrolment.
- (3) The application must include the following information:
  - (a) the SDA building type and location of the dwelling;
  - (b) whether the dwelling is a new build, existing stock or legacy stock;
  - (c) the SDA design category that applies to the dwelling;
  - (d) the number of bedrooms at the dwelling;
  - (e) the maximum number of residents for which the dwelling is to be enrolled;
  - (f) the maximum number of eligible participants for which the dwelling is to be enrolled;
  - (g) if the SDA provider does not own the dwelling—the name of the owner of the dwelling;
  - (h) if the applicant is an eligible participant—whether the applicant will reside at the dwelling;
  - (i) whether a density restriction applies to the parcel of land on which the dwelling is located and whether the density restriction would be exceeded if the dwelling is enrolled;
  - (j) whether the National Disability Insurance Scheme has funded or provided complex home modifications for the dwelling at any time:
    - (i) after 1 December 2016; and
    - (ii) within the period of 10 years beginning on the day the application is made;
  - (k) whether the National Disability Insurance Scheme has funded or provided home modifications, other than complex home modifications, for the dwelling at any time:
    - (i) after 1 December 2016; and
    - (ii) within the period of 5 years beginning on the day the application is made.
- (4) For the purposes of subparagraph (2)(c)(ii), the applicant must certify that:
  - (a) the dwelling is a permanent dwelling; and



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- (b) the dwelling is suitable to be used for specialist disability accommodation; and
  - (c) the dwelling is to provide long-term accommodation for at least one eligible participant; and
  - (d) the dwelling meets all relevant building codes, standards and laws that are applicable to the dwelling; and
  - (e) the National Disability Insurance Scheme has not funded or provided complex home modifications for the dwelling at any time during the period mentioned in paragraph (3)(j); and
  - (f) the National Disability Insurance Scheme has not funded or provided home modifications, other than complex home modifications, for the dwelling at any time during the period mentioned in paragraph (3)(k); and
  - (g) the Commonwealth, or a State or Territory, does not provide funding in respect of the dwelling under a scheme unrelated to disability accommodation; and
  - (h) the dwelling is suitable to house:
    - (i) the maximum number of residents specified in the application; and
    - (ii) the maximum number of eligible participants specified in the application; and
  - (i) the applicant has suitable capacity and experience to provide specialist disability accommodation at the dwelling; and
  - (j) if the dwelling is owned by a person other than the applicant—the owner of the dwelling has agreed in writing that:
    - (i) the applicant can enrol the dwelling; and
    - (ii) the owner will not separately enrol the dwelling; and
  - (k) a density restriction that applies in relation to the parcel of land on which the dwelling is located would not be exceeded if the dwelling is enrolled.
- (5) The CEO may, by written notice, require an applicant to give the CEO such further information or documents in relation to the application as the CEO reasonably requires.

**26 Enrolment of dwelling**

- (1) If an SDA provider makes an application under section 25, the CEO must decide whether to enrol the dwelling as a dwelling at which specialist disability accommodation can be provided.
- (2) The CEO must not enrol the dwelling unless the CEO is satisfied that:
  - (a) the applicant has certified the matters required by subsection 25(4); and
  - (b) the applicant has given any further information or documents required by the CEO under subsection 25(5); and
  - (c) the applicant is registered to provide specialist disability accommodation; and
  - (d) the dwelling is suitable to house:
    - (i) the maximum number of residents specified in the application; and
    - (ii) the maximum number of eligible participants specified in the application; and

- (e) if the dwelling is legacy stock and construction of the dwelling was completed between 1 December 2016 and 31 December 2018—both:
  - (i) there is considerable financial cost to the SDA provider if the dwelling is not enrolled; and
  - (ii) there is limited availability of alternative specialist disability accommodation in the same area as the dwelling.
- (3) A decision by the CEO not to enrol a dwelling is a reviewable decision, and the decision-maker in respect of the decision is the CEO.

### **Subdivision B—Conditions of enrolment**

#### **27 Failure to comply with conditions of enrolment**

- (1) The CEO may cancel the enrolment of an enrolled dwelling if:
  - (a) the CEO believes, on reasonable grounds, that an SDA provider is not complying with a condition of enrolment in relation to the dwelling; and
  - (b) the CEO has given the SDA provider notice in accordance with subsection (2); and
  - (c) the period specified in the notice has expired.
- (2) The notice must state that, unless the provider satisfies the CEO, within the period specified in the notice or such longer period as the CEO allows, that the provider is complying with the conditions of enrolment in relation to the dwelling, the CEO may cancel the enrolment.
- (3) The period specified in the notice must not be shorter than 14 days after the notice is given.
- (4) A decision by the CEO to cancel the enrolment of an enrolled dwelling is a reviewable decision, and the decision-maker in respect of the decision is the CEO.

#### **28 Condition—keeping enrolled dwelling in good state of repair**

An SDA provider must ensure that each dwelling enrolled by the provider is in a good state of repair and is being appropriately maintained.

#### **29 Condition—notifying the CEO of changes relating to an enrolled dwelling**

- (1) An SDA provider must notify the CEO, in writing, if any of the following events occur in relation to an enrolled dwelling of the provider:
  - (a) there is a change in the SDA design category or SDA building type of the dwelling;
  - (b) the dwelling is no longer suitable to be used for specialist disability accommodation;
  - (c) circumstances arise that are likely to change the SDA design category, SDA building type or the suitability of the dwelling for providing specialist disability accommodation;
  - (d) the provider intends to cancel the dwelling's enrolment;

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- (e) an eligible participant residing at the dwelling has:
    - (i) given notice to terminate the eligible participant's occupancy; or
    - (ii) been given notice to vacate the dwelling;
  - (f) a vacancy arises that is available to be filled by an eligible participant;
  - (g) the provider proposes to charge an eligible participant rent that exceeds the amount worked out by adding:
    - (i) the amount that the eligible participant is entitled to receive under the National Disability Insurance Scheme for specialist disability accommodation; and
    - (ii) the reasonable rent contributions (as worked out under the SDA Pricing and Payments Framework) payable by the eligible participant.
- (2) The provider must notify the CEO of the matters mentioned in subsection (1) within 5 business days of the event occurring.
- (3) If the provider is notifying the CEO for the purposes of paragraph (1)(g), the provider must include with the notice a certificate from a qualified property valuer stating that the rent to be charged is fair and reasonable.

**30 Condition—certification of enrolled dwellings**

- (1) An SDA provider must, if requested by the CEO, arrange for another person to certify that the information and matters provided at the time of enrolment for a dwelling continue to apply to the dwelling.
- (2) The CEO may make the request by giving notice to the provider in writing.
- (3) The notice must specify:
  - (a) requirements relating to the qualifications and independence of the person that is to undertake the certification; and
  - (b) the period within which the certification must be given to the CEO.

**Subdivision C—Density restriction**

**31 Density restriction**

- (1) The density restriction applies in relation to a parcel of land if:
  - (a) the parcel of land has 2 or more dwellings; and
  - (b) at least one of those dwellings is either:
    - (i) a new build; or
    - (ii) existing stock.
- (2) If the density restriction applies in relation to a parcel of land, the total number of eligible participants that can receive funding for specialist disability accommodation in relation to all dwellings located on the parcel of land must not exceed:
  - (a) if one of the dwellings on the parcel of land is enrolled to house 3 or more residents—the greater of the following:
    - (i) 10 eligible participants;

- (ii) 10% of the total number of residents capable of residing on the parcel of land, assuming one resident per bedroom; or
  - (b) if all of the enrolled dwellings on the parcel of land are enrolled to house no more than 2 residents and the dwellings are part of an intentional community—the greater of the following:
    - (i) 15 eligible participants;
    - (ii) 25% of the total number of residents capable of residing on the parcel of land, assuming one resident per bedroom; or
  - (c) if all of the enrolled dwellings on the parcel of land are enrolled to house no more than 2 residents and the dwellings are not part of an intentional community—the greater of the following:
    - (i) 15 eligible participants;
    - (ii) 15% of the total number of residents capable of residing on the parcel of land, assuming one resident per bedroom.
- (3) An **intentional community** is a residential community with the following features:
  - (a) the community is designed to have a high degree of social cohesion, achieved through teamwork and agreed shared values;
  - (b) the members of the community have chosen to live together based on common social values and have committed to the principle of mutual support;
  - (c) the community has a defined and explicit agreement under which residents have agreed to live in accordance with shared common values, including the principle of mutual support;
  - (d) the community is controlled by the members or residents and is not governed by a single entity such as a support provider;
  - (e) the community includes general market housing, and is not solely designed to provide supported accommodation services.
- (4) A **parcel of land** is:
  - (a) for land in New South Wales:
    - (i) the land that forms a parcel for the purposes of the *Strata Schemes Development Act 2015* (NSW); or
    - (ii) the land that forms a community parcel, neighbourhood parcel or precinct parcel for the purposes of the *Community Land Development Act 1989* (NSW); or
    - (iii) for land not covered by subparagraph (i) or (ii)—the land covered by a folio of the Register for the purposes of the *Real Property Act 1900* (NSW); or
  - (b) for land in Victoria:
    - (i) the land covered by a registered plan for the purposes of the *Subdivision Act 1988* (Vic.); or
    - (ii) for land not covered by subparagraph (i)—the land covered by a folio of the Register for the purposes of the *Transfer of Land Act 1958* (Vic.); or
  - (c) for land in Queensland:

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- (i) the land covered by a mixed use scheme for the purposes of the *Mixed Use Development Act 1993* (Qld); or
  - (ii) the land covered by a building units plan or a group titles plan for the purposes of the *Building Units and Group Titles Act 1980* (Qld); or
  - (iii) the land covered by a community titles scheme for the purposes of the *Body Corporate and Community Management Act 1997* (Qld); or
  - (iv) for land not covered by subparagraphs (i) to (iii)—the land that comprises a lot for the purposes of the *Land Title Act 1994* (Qld); or
  - (d) for land in Western Australia:
    - (i) the land covered by a registered strata/survey-strata plan for the purposes of the *Strata Titles Act 1985* (WA); or
    - (ii) for land not covered by subparagraph (i)—the land covered by a certificate of title for the purposes of the *Transfer of Land Act 1893* (WA); or
  - (e) for land in South Australia:
    - (i) the land comprised within an allotment (as defined in paragraph 223LA(1)(a) of the *Real Property Act 1986* (SA)); or
    - (ii) the land covered by a strata plan for the purposes of the *Strata Titles Act 1988* (SA); or
    - (iii) the land covered by a plan of community division for the purposes of the *Community Titles Act 1996* (SA); or
  - (f) for land in Tasmania:
    - (i) the land that forms part of a scheme for the purposes of the *Strata Titles Act 1998* (Tas.); or
    - (ii) for land not covered by subparagraph (i)—the land covered by a folio of the Register for the purposes of the *Land Titles Act 1980* (Tas.); or
  - (g) for land in the Australian Capital Territory:
    - (i) the land that forms a parcel for the purposes of the *Unit Titles Act 2001* (ACT); or
    - (ii) the land covered by a community title scheme under the *Community Title Act 2001* (ACT); or
    - (iii) for land not covered by subparagraph (i) or (ii)—the land covered by a certificate of title for the purposes of the *Land Titles Act 1925* (ACT); or
  - (h) for land in the Northern Territory:
    - (i) the land covered by a unit title scheme for the purposes of the *Unit Title Schemes Act 2009* (NT); or
    - (ii) for land not covered by subparagraph (i)—the land that comprises a lot for the purposes of the *Land Title Act 2000* (NT).
- (5) To avoid doubt, a reference to a law of a State or Territory in subsection (4) is a reference to that law as in force from time to time.

## **Division 4—Eligible participant to reside at dwelling**

### **32 When eligible participant resides at dwelling**

- (1) An eligible participant resides at a dwelling if:
  - (a) the eligible participant ordinarily resides at the dwelling; or
  - (b) the eligible participant is taken to reside at the dwelling under subsection (2).
  
- (2) For the purposes of paragraph (1)(b), if:
  - (a) the dwelling is enrolled to house 2 to 5 residents; and
  - (b) the eligible participant:
    - (i) dies; or
    - (ii) gives notice that the eligible participant will vacate the dwelling; or
    - (iii) is given a notice to vacate the dwelling because of behaviour that might represent a risk to other residents, staff or the eligible participant; and
  - (c) the vacancy is available for another person; and
  - (d) the CEO has been notified of the vacancy;the eligible participant is taken to reside at the dwelling until the earlier of the following events:
  - (e) the vacancy is filled;
  - (f) if the dwelling is enrolled to house 2 or 3 residents—60 days have passed since the occurrence of the event mentioned in paragraph (b);
  - (g) if the dwelling is enrolled to house 4 or 5 residents—90 days have passed since the occurrence of the event mentioned in paragraph (b).

## **Part 4—Criteria, requirements and circumstances that apply to registered providers of supports**

### **Division 1—Introduction**

#### **33 Simplified outline of this Part**

This Part applies to registered providers of supports that provide specialist disability accommodation. This Part sets out additional registration criteria, ongoing requirements and revocation circumstances that apply to such providers.

The criteria, requirements and circumstances in this Part are in addition to other criteria, requirements and circumstances that may apply to registered providers of supports. Such other criteria, requirements and circumstances are set out in the Act, imposed as part of the registration process or contained in other National Disability Insurance Scheme rules and instruments (such as the *National Disability Insurance Scheme (Registered Providers of Supports) Rules 2013*).

## **Division 2—Additional criteria for approval of registered providers of supports**

### **34 Additional criteria for approval of registered providers of supports**

- (1) For the purposes of paragraph 70(1)(d) of the Act, the criteria mentioned in subsection (2) must be met by an applicant that has applied to be a registered provider of supports if that applicant is to provide specialist disability accommodation to one or more eligible participants.
- (2) The applicant has declared, in writing, that:
  - (a) it will comply with, and has mechanisms in place to ensure compliance with, all applicable laws that relate to disability accommodation (including laws relating to building standards and tenancy arrangements); and
  - (b) it has mechanisms in place to ensure that all employees, contractors or other persons engaged by the applicant will comply with all applicable laws that relate to specialist disability accommodation.



## **Division 3—Requirements that apply specifically to registered providers of supports**

### **35 Purpose of this Division**

This Division is made for the purposes of section 73 of the Act.

### **36 Service agreement**

- (1) A registered provider of supports must not provide specialist disability accommodation to an eligible participant unless:
  - (a) a written service agreement has been entered into between the registered provider of supports and the eligible participant in relation to the provision of specialist disability accommodation; or
  - (b) the registered provider of supports:
    - (i) has worked with the eligible participant to established a written service agreement in relation to the provision of specialist disability accommodation; and
    - (ii) has provided a copy of the proposed agreement to the eligible participant; and
    - (iii) provides specialist disability accommodation to the eligible participant in accordance with the terms of the proposed agreement.
- (2) The service agreement must include:
  - (a) terms that set out the rights and responsibility for the registered provider of supports and the eligible participant; and
  - (b) the terms that must be included in a specialist disability accommodation service agreement as set out in the addendum to the Terms of Business for Registered Providers.
- (3) This section does not apply to an eligible participant who (as a registered provider of supports) is providing specialist disability accommodation to themselves.

### **37 Access to providers of support**

A registered provider of supports must not restrict other NDIS providers from accessing an enrolled dwelling for the purposes of that NDIS provider delivering support to an eligible participant residing at the dwelling.

### **38 Number and kind of residents**

A registered provider of supports must ensure that the number of residents at a dwelling enrolled by the provider does not exceed the number of residents for which the dwelling is enrolled.

## **Division 4—Revocation of approval as a registered provider of supports**

### **39 Revocation of approval as a registered provider of supports—prescribed circumstances**

For the purposes of paragraph 72(1)(c) of the Act, a circumstance for the revocation of approval as a registered provider of supports is that the provider contravenes a requirement of Division 3 of this Part.

## **Part 5—Application, saving and transitional provisions**

### **Division 1—National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020**

#### **40 Things done under the old rules**

- (1) This section applies if:
  - (a) a thing was done for a particular purpose under the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* as in force immediately before those rules were repealed; and
  - (b) the thing could be done for that purpose under this instrument.
- (2) The CEO may, but is not required to:
  - (a) accept the thing as done for that purpose under this instrument; or
  - (b) accept the thing, along with additional things required by the CEO, as done for that purpose under this instrument.

#### **41 Transitional—dwellings enrolled by the Commissioner**

If a dwelling was, immediately before the commencement of this section, enrolled under section 6 of the *National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rule 2018* as an SDA dwelling then:

- (a) the dwelling is taken to be enrolled by the CEO under section 26 of this instrument; and
- (b) this instrument applies in respect of that dwelling.

## Schedule 1—SDA building types

Note: See the definition of *SDA building type* in section 5.

### 1 SDA building types

The following table sets out the building types that are SDA building types and the features and Building Code of Australia classification for each building type.

SDA building types			
Item	Building type	Features	Building Code of Australia classification
1	Apartment	<p>The features of an apartment are:</p> <ul style="list-style-type: none"> <li>(a) it is self-contained occupying only part of a larger residential building; and</li> <li>(b) it is typically built above or below another dwelling.</li> </ul> <p>A self-contained dwelling that is separated from other dwellings by walls alone is not an apartment but is likely to be a villa, duplex or townhouse.</p>	Class 2
2	Villa, duplex and townhouse	<p>The features of a villa, duplex or townhouse are as follows:</p> <ul style="list-style-type: none"> <li>(a) it has 3 or less residents;</li> <li>(b) it is a semi-attached property within a single land title or strata titled area;</li> <li>(c) it is separated from other villas, duplexes or townhouses by a fire-resistant wall (not required for existing stock);</li> <li>(d) it has a separate and reasonably accessible entry;</li> <li>(e) the residents are not able to internally travel between dwellings (restricted internal access between dwellings may exist for support staff only);</li> <li>(f) it may be an ancillary dwelling that is located on the same parcel of land as another dwelling (e.g. a fully self-contained granny flat).</li> </ul>	Class 1a or 3
3	House	<p>The features of a house are as follows:</p> <ul style="list-style-type: none"> <li>(a) it is a low-rise dwelling with gardens or a courtyard;</li> <li>(b) it is located on a clearly separate land area (separated by, for example, a fence, hedge or other form of delineation);</li> <li>(c) it has no shared wall, roof, entry area, driveway, carpark or outdoor area with any other dwelling other than an ancillary villa, townhouse or duplex that has no more than one resident;</li> <li>(d) the parcel of land on which the house is located is</li> </ul>	Class 1 or 3

Schedule 1 SDA building types

Clause 1

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**SDA building types**

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<b>Item</b>	<b>Building type</b>	<b>Features</b>	<b>Building Code of Australia classification</b>
		proportional to the number of residents and is consistent with similar properties in the neighbourhood in which the house is located; (e) the parcel of land on which the house is located has no more than 2 ancillary villas, duplexes or townhouses	
4	Group home	A group home is distinguished from other houses by having 4 or 5 long-term residents.	Class 1b or 3

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## Schedule 2—SDA design categories

Note: See the definition of *SDA design category* in section 5.

### 1 SDA design categories

The following table sets out the SDA design categories and the features for each category.

SDA design category		
Item	SDA design category	Features
1	Basic	Housing without specialist design features but with a location or other features that cater for the needs of people with disability and assist with the delivery of support services.
2	Improved livability	Housing that has been designed to improve 'livability' by incorporating a reasonable level of physical access and enhanced provision for people with sensory, intellectual or cognitive impairment.
3	Fully accessible	Housing that has been designed to incorporate a high level of physical access provision for people with significant physical impairment.
4	Robust	Housing that has been designed to incorporate a high level of physical access provision and be very resilient, while reducing the likelihood of reactive maintenance and reducing the risk to residents and the community.
5	High physical support	Housing that has been designed to incorporate a high level of physical access provision for people with significant physical impairment and requiring very high levels of support.

## **Schedule 3—Repeals**

### *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016*

#### **1 The whole of the instrument**

Repeal the instrument.