

EXPLANATORY STATEMENT

Issued by the authority of the Commissioner of the NDIS Quality and Safeguards Commission

National Disability Insurance Scheme Act 2013

National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rule 2018

Purpose

The *National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rule 2018* (instrument) are made under section 73H and section 209 of the *National Disability Insurance Scheme Act 2013* (the Act).

The *National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rules 2018* are made for the purposes of prescribing the obligations imposed on registered NDIS providers who provide specialist disability accommodation in participating jurisdictions.

Section 209 of the *National Disability Insurance Scheme Act 2013* (the Act) provides that the Minister may, by legislative instrument, prescribe matters required or permitted by this Act to be prescribed or which are necessary or convenient to be prescribed in order to carry out or give effect to this Act.

Section 73H of the Act provides that the National Disability Insurance Scheme rules may determine that each registration, or each registration included in a specified class of registration, is taken to include one or more specified conditions.

Background

The National Disability Insurance Scheme (NDIS) is designed to provide people with disability with the reasonable and necessary supports that they need to live their lives and achieve their goals. Ensuring that supports are safe and of high quality is important to the everyday quality of life of people with disability receiving supports or services under the NDIS.

Specialist disability accommodation (SDA) is a support that may be funded for some participants who have an extreme functional impairment or very high support needs. It refers to accommodation for people who require specialist housing solutions, including to assist with the delivery of supports that cater for their extreme functional impairment or very high support needs. Provision of SDA refers to the provision of the dwelling itself, and not the supports or services (such as Supported Independent Living), which may be delivered in the dwelling. Such supports and services are assessed and funded separately by the National Disability Insurance Agency.

Each SDA dwelling must be enrolled in accordance with this instrument. In order to be eligible for enrollment, a dwelling must be defined as a 'New Build', 'Existing

Stock' or 'Legacy Stock'. New Builds and Existing Stock are subject to density restrictions and these restrictions prevent the dwellings from accommodating more than five residents in each dwelling. SDA dwellings which are enrolled to accommodate more than five residents may only be enrolled as Legacy Stock.

The *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* (Existing SDA Rules) prescribe the obligations imposed on registered providers of supports who provide specialist disability accommodation in host jurisdictions that are not participating jurisdictions. This instrument does not modify the obligations imposed on registered providers of supports. Rather, it applies those conditions to a registered NDIS provider who is providing specialist disability accommodation supports in a participating jurisdiction.

A person or entity who is registered in a participating jurisdiction is registered by the Commissioner of the NDIS Quality and Safeguards Commission (the Commissioner) under section 73E of the Act and is known as a registered NDIS provider. A person or entity who is registered in a host jurisdiction that is not a participating jurisdiction is registered by the CEO of the National Disability Insurance Agency under section 70 of the Act and is known as a registered provider of supports.

The Existing SDA Rules also deal with a number of matters relating to the funding of specialist disability accommodation for participants in host jurisdictions and participating jurisdictions, including who may receive specialist disability accommodation and how it will be provided.

The Commissioner (as the Minister's delegate), in making this instrument, has had regard to the financial sustainability of the NDIS as required by subsection 209(3) of the Act.

Section 4 of the *Acts Interpretation Act 1901* (AI Act), concerns the exercise of power between the passing and commencement of an Act. It applies if, at a time (the start time), an Act will confer a power to make an appointment or to make an instrument of legislative or administrative character, and either (a) the Act will commence at the start time, or (b) the Act will be amended by another Act that commences at the start time: subsection 4(1). Subsection 4(2) of the AI Act permits, in limited circumstances, the power to be exercised before the commencement of the Act. These circumstances include, bringing the appointment or instrument into effect, bringing the Act concerned into operation, making the Act concerned or the other Act as amended fully effective at or after the start time of the Act concerned. Subsection 4(3), of the AI Act authorises anything to be done before the start time for the purpose of enabling the exercise of the power, or of bringing the appointment or instrument into effect, as if the relevant commencement had occurred. Paragraph 13(1)(a) of the *Legislation Act 2013* provides that the AI Act applies to any instrument so made as if it were an Act and as if each provision of the instrument were a section of an Act. The instrument of appointment of the Commissioner of the NDIS Quality and Safeguards Commission and the Minister's delegation instrument operate subject to section 4 of the AI Act.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003* and is an NDIS rule for the purposes of the Act.

Commencement

The instrument commences on 1 July 2018 (immediately after the instrument of appointment of the Commissioner of the NDIS Quality and Safeguards Commission and the delegation instrument to the Commissioner commence).

Consultation

Subsection 209(8) of the Act prescribes certain NDIS rules to be 'category D' rules. Subsection 209(7) requires the Minister to consult with each host jurisdiction in relation to the making of all category D rules. In compliance with this requirement, the Commonwealth has undertaken consultation in relation to this instrument with the States and Territories, including the relevant government departments and agencies. Each host jurisdiction has had the opportunity to review this instrument and provide comments and feedback. The Commonwealth has also undertaken a targeted consultation process with peak bodies representing people with disability and carers, providers of services for people with disability and workers providing supports or services to people with disability.

This instrument replicates the obligations placed on registered providers of supports contained in the Existing SDA Rules so that those obligations also apply to registered NDIS providers. While consultation with stakeholders was undertaken, the instrument does not change existing requirements, except as necessary for an NDIS rule subject to the jurisdiction of the NDIS Quality and Safeguards Commission.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (OBPR) has been consulted and has advised that a RIS is not required (OBPR ID 18793).

Explanation of the provisions

Part 1 – Preliminary

Section 1 – Name

Section 1 provides how this instrument is to be cited, that is, as *National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rule 2018*.

Section 2 – Commencement

Section 2 provides that this instrument commences on 1 July 2018.

Section 3 – Authority

Section 3 provides that this instrument is made under the *National Disability Insurance Scheme Act 2013*.

Section 4 – Definitions

The legislative note indicates that in this instrument, a reference to ‘Act’ means the *National Disability Insurance Scheme Act 2013* and a number of expressions used in this instrument are defined in section 9 of the Act.

Section 4 also defines certain terms that are used in this instrument.

Section 4 provides a definition of a specialist disability accommodation provider. This definition creates a specified class of registration, namely a registered NDIS provider whose registration includes the provision of specialist disability accommodation supports.

In this Explanatory Statement, the defined terms will be addressed in the context in which they appear.

Part 2 – Conditions of registration

Division 1 - Introduction

Section 5 – Purpose of this Part

Section 5 provides that Part 2 of this instrument is made for the purposes of section 73H of the Act.

Part 2 of this instrument sets out the conditions that apply to specialist disability accommodation providers. Section 4 of this instrument provides that a specialist disability accommodation provider is a registered NDIS provider whose registration includes the provision of specialist disability accommodation supports.

Legislative note 1 sets out a cross reference to section 73J of the Act, which provides that a registered NDIS provider may be liable to civil penalty if the provider breaches a condition to which the provider’s registration is subject.

Legislative note 2 indicates that the conditions in Part 2 are in addition to those set out in the Act (see subsection 73F(2) of the Act), those imposed by the Commissioner under subsection 73G(1) of the Act and those imposed under the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

In particular, the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* require a person who provides specialist disability accommodation under a participant’s plan to be a registered NDIS provider.

Legislative note 3 sets out that the Commissioner may vary the registration of a specialist disability accommodation provider to extend, modify or reduce the supports or services the provider is registered to provide under section 73L of the Act.

Division 2 – Conditions of registration

Section 6 – Delivery of SDA only in enrolled dwellings

Section 6 imposes a condition of registration on specialist disability accommodation providers. Specifically, that the provider must not provide SDA in a dwelling, unless that dwelling has been enrolled in accordance with this section.

The Commissioner may enrol a dwelling to house a specified number of residents. A specialist disability accommodation provider is not able to house more than the specified number of residents in the dwelling. The Commissioner will only enrol a dwelling if he or she considers that the dwelling is suitable having regard to this instrument and any other matter that the Commissioner considers relevant.

A specialist disability accommodation provider may apply to the Commissioner to enrol a dwelling as an SDA dwelling. The Commissioner may approve a form for the purposes of such an application. Subject to the transitional arrangements set out in Part 5, a dwelling cannot be enrolled as an SDA dwelling unless the provider has made an application to the Commissioner.

In considering an application to enrol a dwelling as an SDA dwelling, the Commissioner may require specialist disability accommodation providers to provide certain information, including information set out in subsection (5). This includes whether and how the dwelling meets the eligibility criteria set out in subsection 7(2).

The Commissioner may require a specialist disability accommodation provider to provide evidence of any of the information specified in subsection (5). The information must be provided in the manner, form and timeframe prescribed by the Commissioner. The Commissioner may also require a specialist disability accommodation provider to provide evidence from any person or entity prescribed by the Commissioner.

For example, the Commissioner may require a specialist disability accommodation provider to provide evidence of how the dwelling meets the eligibility criteria set out in subsection 7(2).

Section 7 – Eligibility for enrolment

Section 7 imposes conditions of registration on specialist disability accommodation providers. Specifically, that the provider:

- must not apply to enrol a dwelling unless it is eligible for enrolment in accordance with this section; and
- must not apply enrol a dwelling to house more residents than the number of bedrooms, or similar sized private rooms, in the dwelling; and
- ensures that all dwellings that the provider enrolls continue to meet the eligibility requirements for the enrolment of those dwellings after enrolment.

In order for a dwelling to be eligible for enrolment, the dwelling must meet a number of requirements.

Paragraph (2)(a) provides that in order for a dwelling to be eligible for enrolment, it must be a permanent dwelling. Section 4 of this instrument defines a permanent dwelling as a dwelling that is fixed to the land and would not include a mobile home.

Paragraph (2)(b) provides that in order for a dwelling to be eligible for enrolment, it must be intended that the dwelling will provide long-term accommodation for at least one participant. Section 4 of this instrument defines long-term accommodation as a dwelling that is to be used as a permanent home and it is not to be used only for respite, emergency or temporary accommodation.

Paragraph (2)(c) provides that in order for a dwelling to be eligible for enrolment, the Commonwealth and participating jurisdictions must not (as at the date of application for enrolment) be providing funding for accommodation in respect of the dwelling under a scheme unrelated to disability, for example, aged care funding. This is to ensure that providers do not receive duplicate funding for the same dwelling.

Paragraph (2)(d) provides that in order for a dwelling to be eligible for enrolment, it must meet all relevant building codes, standards and laws, including those imposed by a State, Territory or local government area in which the dwelling is located.

Paragraph (2)(e) applies if a density restriction applies to the dwelling. This paragraph provides that in order for a dwelling to be eligible for enrolment, the density restriction for the relevant parcel of land must be satisfied immediately before the enrolment. Density restrictions are explained in Part 3 of this instrument and apply where:

- a single parcel of land has multiple dwellings (whether or not they all provide SDA); and
- at least one of those dwellings is either a New Build or Existing Stock of the sort described in subsection 22(2).

The meaning of a single parcel of land is provided by section 19 of this instrument. The meaning of New Build and Existing Stock are provided by sections 21 and 22 of this instrument.

Paragraph (2)(f) provides that in order for a dwelling to be eligible for enrolment, either:

- the specialist disability accommodation provider owns the dwelling to be enrolled; or
- the owner of the dwelling has acknowledged in writing that the dwelling is to be enrolled as an SDA dwelling; and has not separately enrolled the dwelling as SDA.

Paragraph (2)(g) provides that in order for a dwelling to be eligible for enrolment, it must be one of the following:

- A New Build;
- Existing Stock; or
- Legacy Stock.

Definitions of the above are set out in Part 4 of this instrument.

Section 8 – Compliance with Laws

Section 8 imposes conditions of registration on specialist disability accommodation providers. Specifically, that the provider must ensure that any dwellings that are enrolled and any persons employed or otherwise engaged by the provider comply at all times with the following:

- the landlord, tenancy, building, and health and safety laws of the State or Territory and local government area in which the SDA dwelling is located; and
- applicable building standards; and
- any other applicable laws or standards of the Commonwealth, State or Territory and local government area in which the SDA dwelling is located.

A specialist disability accommodation provider should have mechanisms in place to ensure ongoing compliance with the above.

Section 9 – Service Agreements

Section 9 imposes a condition of registration on specialist disability accommodation providers. Section 9 does not apply if the specialist disability accommodation provider is also the participant, receiving SDA from himself or herself.

It is a condition of registration that a specialist disability accommodation provider must not provide SDA unless a written service agreement has been entered into between the provider and the participant in relation to the provision of the SDA or, in the circumstances where the an agreement cannot be reached, the provider has worked with the participant to establish a written service agreement, provides a copy of the proposed agreement to the participant and acts in accordance with the terms of the proposed agreement.

The service agreement must include terms that set out the rights and responsibilities for the specialist disability accommodation provider and the participant.

The *National Disability Insurance Scheme (Quality Indicators) Guidelines 2018* set out in detail the matters that should generally be contained in a written service agreement.

Section 10 – Access for providers of other supports

Section 10 imposes conditions of registration on specialist disability accommodation providers. Section 10 applies where a specialist disability accommodation provider provides specialist disability accommodation to a participant who also requires supports from other NDIS providers.

For some participants who need significant supports, their NDIS Plan will also include provision for supported independent living supports, often in group living arrangements.

Paragraph 2(a) makes it a condition of registration that, where possible, documented arrangements are in place with each participant and each participant's other NDIS Providers that deliver supported independent living supports within the dwelling. If such arrangements are put in place, the arrangements must:

- establish parameters that facilitate a collaborative working arrangement between the participant and all of the participants' NDIS providers to ensure smooth delivery of services; and
- set out the rights and responsibilities of the specialist disability accommodation provider, the participant's other NDIS providers and the participant.

The *National Disability Insurance Scheme (Quality Indicators) Guidelines 2018* set out in detail the matters that should generally be contained in such an arrangement.

Paragraph 2(b) provides that it is a condition of registration that a specialist disability accommodation provider ensures that each other provider has access to the SDA dwelling and participants residing there (with the consent of participants). This ensures that providers who are providing supports or services to a participant are not prevented from accessing an SDA dwelling.

Section 11 – Number of residents

Section 11 imposes conditions of registration on specialist disability accommodation providers.

It is a condition of the registration of a specialist disability accommodation provider that it must ensure that no more residents are housed in an SDA dwelling than the number for which the dwelling is enrolled.

In the case of dwellings that are enrolled to house more than five long-term residents on the basis that the provider is a participant providing SDA to themselves, it is a condition of registration that the specialist disability accommodation provider must not house any resident in the dwelling other than the participant's spouse or de facto partner and children. This includes children that are over the age of 18 years.

Section 12 – Notifying the Commissioner

Section 12 imposes a condition of registration on specialist disability accommodation providers. Specifically, that the provider must notify the Commissioner if any of the following circumstances arise in relation to an SDA dwelling that is currently enrolled:

- there is a change in the SDA design category or SDA building type of an SDA dwelling; and
- the SDA dwelling is no longer suitable to be used for SDA; and
- there are circumstances that are likely to change the SDA design category, SDA building type or the suitability of a dwelling they have enrolled for providing SDA.

The above information must be provided in writing as soon as possible, or within 5 working days of any of the events set out above occurring.

The Commissioner may approve a form for the purposes of notifying the Commissioner of any of the above information.

Section 13 – Good state of repair

Section 13 imposes conditions of registration on specialist disability accommodation providers. Specifically, that the provider must ensure that dwellings enrolled by the specialist disability accommodation provider are in a good state of repair and are being appropriately maintained, having regard to the safety, security and privacy of the residents.

It is a further condition of registration that the provider must provide an annual declaration that the SDA dwellings meet the above condition. This declaration must be given in the manner and form (if any) specified by the Commissioner.

Part 3 – Density Restrictions

Division 1 – Application of density restrictions

Section 14 – Application of density restrictions

Section 14 provides that a density restriction applies where a single parcel of land has multiple dwellings (whether or not they all provide SDA) and at least one of those dwellings is either a New Build or Existing Stock of the sort described in subsection 22(2). A single parcel of land is defined in section 19.

Density restrictions apply to stop the enrolment and funding of unacceptable concentrations of specialist disability accommodation. The restrictions relate to the maximum number of participants with specialist disability accommodation in their plan who can reside on a single parcel of land when there are multiple dwellings on that single parcel of land. For example, a number of participants with specialist disability accommodation in their plan in a single apartment block or live in one of a number of stand-alone dwellings on a single site. A single parcel of land is defined in section 19. These restrictions are in place to ensure SDA provides for inclusive communities and that people with disability who have SDA in their plan are included in general market areas and are not segregated from the community.

In the case of intentional communities, higher concentrations of specialist disability accommodation is acceptable. A feature of intentional communities is that members of the community make a commitment to provide support and assistance to other members of the community, including those with disability. Intentional communities is defined in section 20.

Section 15 – Density Restrictions – three or more residents

Section 15 applies if:

- there is one or more SDA dwellings on a single parcel of land; and

- at least one of those dwellings is enrolled to house three or more residents.

The density restriction is satisfied if the number of participants with SDA in their plan who reside in an SDA dwelling on the single parcel of land, and receive SDA funding, is no more than the greater of:

- 10 participants; and
- 10% of the total number of residents capable of residing on the single parcel of land, assuming one resident per bedroom.

Section 16 – Density Restrictions – one or two residents

Section 16 applies if:

- there is one or more SDA dwelling on a single parcel of land; and
- none of the SDA dwellings on that single parcel or land are enrolled to house more than two residents.

The density restriction is satisfied if the number of participants with SDA in their plan who reside in an SDA dwelling on the parcel and receive SDA funding is no more than the greater of:

- 15 participants; and
- 15% of the total number of residents capable of residing on the parcel, assuming one resident per bedroom.

Section 17 – Intentional communities – three or more residents

Section 17 applies if:

- there is one or more SDA dwellings on a single parcel of land; and
- at least one of those dwellings is enrolled to house three or more residents; and
- the single parcel of land forms part of an intentional community.

The density restriction is satisfied if the number of participants with SDA in their plan who reside in an SDA dwelling on the parcel and receive SDA funding is no more than the greater of:

- 10 participants; and
- 10% of the total number of residents capable of residing on the parcel, assuming one resident per bedroom.

Section 18 – Intentional communities – one or two residents

Section 18 applies if:

- there is one or more SDA dwellings on a single parcel of land; and
- none of the SDA dwellings on that single parcel or land are enrolled to house more than two residents; and

- the single parcel of land forms part of an intentional community.

The density restriction is satisfied if the number of participants with SDA in their plan who reside in an SDA dwelling on the parcel and receive funding is no more than the greater of:

- 15 participants; and
- 25% of the total number of residents capable of residing on the parcel, assuming one resident per bedroom

Division 2 - Definitions

Section 19 – Meaning of Single Parcel of Land

Section 19 provides a definition of ‘Single Parcel of Land’. The definition is different in each state and territory and depends on the relevant state or territory legislation.

Section 20 – Meaning of intentional communities

Section 20 provides a definition of ‘intentional communities’. Given the nature of intentional communities, higher concentrations of SDA are appropriate.

An intentional community is a residential community designed to have a high degree of social cohesion, achieved through teamwork and agreed shared values. The members of an intentional community have chosen to live together based on common social values and have committed to the principle of mutual support.

An intentional community has a number of specific characteristics. In particular, an intentional 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; and
- is controlled by the members or residents and is not governed by a single entity such as a support provider; and
- includes general market housing, and is not solely designed to provide supported accommodation services.

Part 4 - Dictionary

Section 21 – New builds

Section 21 provides a definition of a ‘new build’.

In order for a dwelling to be considered a ‘new build’ it must meet three requirements.

Paragraph 21(a) provides that in order for a dwelling to be a new build, a certificate of occupancy (or equivalent) was either first issued in relation to it on or after 1 April 2016 or was issued in relation to it on or after 1 April 2016 following renovations or refurbishments resulting in the dwelling meeting the minimum requirements in the

SDA Design Category Requirements Guidelines for one or more of the design categories other than basic design.

Paragraph 21(b) provides that in order for a dwelling to be a new build, it is enrolled, or will be enrolled, to house five or fewer long-term residents (excluding support staff). There is a limited exception to the requirement for five or fewer long-term residents and it applies to large families. More than five long-term residents can reside in the dwelling only when it is the home of a participant who intends to provide SDA to themselves (as a registered provider) and to reside there with their spouse or de facto partner and children, including after the children turn 18 years of age. The limit to five or fewer long-term residents is not intended to stop the children or young adults of a participant residing with the participant. For example, six residents when a participant who provides SDA to themselves resides in the dwelling with a partner and four children, one of whom is 19 years of age.

Paragraph 21(c) provides that in order for a dwelling to be a new build, all its shared areas and the majority of its bedrooms and similar sized private rooms comply with the Minimum Requirements in the in the SDA Design Category Requirements Guidelines for a design category other than Basic design.

The SDA Design Category Requirements Guidelines may be found on the Commission's website (www.ndiscommission.gov.au).

Section 22 – Existing stock

Section 22 provides a definition of 'existing stock'. A dwelling can only be existing stock if it is not a new build and either subsection (2) or subsection (3) applies.

Subsection 22(2) provides that a dwelling is existing stock if it is not a new build and all of the following apply:

- the dwelling does not have a certificate of occupancy issued as described in paragraph 21(a) above;
- the dwelling is enrolled or will be enrolled to house five or fewer long term residents (excluding support staff);
- the dwelling has been, at some time between 1 July 2013 and 1 December 2016, primarily used as accommodation for people with disability who have an extreme functional impairment or very high support needs;
- the dwelling is not an aged care, health care or other facility that is not specifically intended for use as disability accommodation;
- the dwelling housed at least one resident who received disability related supported accommodation (or equivalent) payments from a State, Territory or Commonwealth Government at some time between 1 July 2013 and 1 December 2016; and
- all of the dwelling's shared areas and the majority of its bedrooms and similar sized private rooms comply or substantially comply with the relevant minimum requirements in the SDA Design Category Requirements Guidelines for a design category other than basic design.

Subsection 22(3) provides that a dwelling is existing stock if it is not a new build, and all of the following apply:

- the dwelling does not have a certificate of occupancy issued as described in paragraph 21(a);
- one of the following applies:
 - it is enrolled or will be enrolled to house five or fewer long-term residents (excluding support staff); or
 - it is the home of a participant who intends to provide SDA to themselves (as a specialist disability accommodation provider) and to reside there with, and only with, the participant's spouse or de facto partner and children; and
- all of the dwelling's shared areas and the majority of its bedrooms and similar sized private rooms comply with the relevant minimum requirements in the SDA Design Category Requirements Guidelines for a design category other than basic design.

The SDA Design Category Requirements Guidelines may be found on the Commission's website (www.ndiscommission.gov.au). Those guidelines may be updated from time to time and are informed by the National Disability Insurance Agency's (NDIA) pricing policy.

These re-purposed dwellings do not have to meet any of the requirements about the past use of the dwelling set out in subsection (2). These dwellings are treated as Existing Stock because they meet the critical standards for a New Build (maximum number of residents and Minimum Requirements) and therefore they do not have to meet some of the requirements for Existing Stock. These dwellings also have to meet the density restrictions that apply to New Builds.

Section 23 – Legacy Stock

Section 23 provides a definition of 'legacy stock'. A dwelling may only be legacy stock if it is not a new build.

A dwelling is legacy stock if the dwelling:

- does not have a certificate of occupancy issued as described in paragraph 21(a);
- is enrolled or will be enrolled to house more than five long-term residents (excluding support staff);
- has been, at some time between 1 July 2013 and 1 December 2016, primarily used as accommodation for people with disability who have an extreme functional impairment or very high support needs;
- has housed at least one resident who received disability related supported accommodation (or equivalent) payments from a State, Territory or Commonwealth Government at some time between 1 July 2013 and 1 December 2016;
- is not an aged care, health care or other facility that is not specifically intended for use as disability accommodation; and

- all its shared areas and the majority of its bedrooms and similar sized private rooms comply or substantially comply with the relevant minimum requirements in the SDA Design Category Requirements Guidelines.

The SDA Design Category Requirements Guidelines may be found on the Commission's website (www.ndiscommission.gov.au). Those guidelines may be updated from time to time and are informed by the NDIA's pricing policy.

Section 24 – SDA design category

Section 24 provides a definition of SDA design category. The five Design Categories are Basic, Improved Liveability, Fully Accessible, Robust, and High Physical Support.

Dwellings are enrolled according to the Design Category specified by the specialist disability accommodation provider when enrolling the dwelling. Providers must ensure that a dwelling is correctly enrolled. If a dwelling does not meet the requirements of the Design Category for which the dwelling is enrolled the enrolment will be cancelled.

The legislative note indicates that further information regarding the minimum requirements for each SDA design category is set out in the SDA Design Category Requirements Guidelines, which may be found on the Commission's website (www.ndiscommission.gov.au). Those guidelines may be updated from time to time and are informed by the NDIA's pricing policy.

Section 25 – SDA building type

Section 25 provides a definition of SDA building type. There are five categories of building type:

- apartments;
- duplexes, villas and townhouses;
- houses;
- group homes; and
- larger dwellings.

Dwellings are enrolled according to the Building Type specified by the specialist disability accommodation provider. Providers must ensure that a dwelling is correctly enrolled. If an SDA dwelling does not meet the requirements of the Building Type for which the dwelling is enrolled the enrolment will be cancelled.

Part 5 – Transitional arrangements relating to enrolled dwellings

Section 26 – Purpose of this part

Section 26 states that Part 5 of this instrument is made for the purpose of section 73H of the Act which provides that the National Disability Insurance Scheme Rules may determine that each registration included in a specified class of registration, is taken to include one or more specified conditions.

Section 27 – Dwellings previously enrolled

Section 27 sets out transitional provisions that provide for dwellings that are enrolled as SDA dwellings in host jurisdictions under the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* to become enrolled SDA dwellings at the transition time.

The transition time is the time at which a host jurisdiction becomes a participating jurisdiction.

Section 27 applies to a specialist disability accommodation provider if:

- at the transition time:
 - a person or entity is approved as a registered provider of supports to provide specialist disability accommodation; and
 - that registered provider of supports has one or more dwellings enrolled as SDA dwellings under the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016*;
- at the transition time, the host jurisdiction in which the SDA dwelling is located becomes a participating jurisdiction.

The legislative note sets out a cross-reference to the Act where the terms **host jurisdiction** and **participating jurisdiction** are defined at sections 10 and 10A.

Immediately after the transition time the Commissioner is taken to have decided to enrol any dwellings that the person or entity has enrolled as specialist disability accommodation under the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* at the transition time.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rule 2018

The *National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rules 2018* (the instrument) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The instrument are made for the purposes of prescribing the obligations imposed on registered NDIS providers who provide specialist disability accommodation in participating jurisdictions. They reflect the obligations imposed on registered providers operating in host jurisdictions under the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* (Existing SDA Rules).

Specialist disability accommodation (SDA) is a support that may be funded for some participants who have an extreme functional impairment or very high support needs. It refers to accommodation for people who require specialist housing solutions, including to assist with the delivery of supports that cater for their extreme functional impairment or very high support needs. Provision of SDA refers to the provision of the dwelling itself, and not the supports or services (such as Supported Independent Living), which may be delivered in the dwelling. Such supports and services are assessed and funded separately by the National Disability Insurance Agency.

The Existing SDA Rules prescribe the obligations imposed on registered providers of supports who provide specialist disability accommodation in host jurisdictions that are not participating jurisdictions. This instrument does not modify the obligations imposed on registered providers of supports. Rather, it applies those conditions to a registered NDIS provider of SDA operating in a participating jurisdiction.

“Participating jurisdiction” is defined as a host jurisdiction that the Minister has specified, by legislative instrument, as a participating jurisdiction: section 10A of the *National Disability Insurance Scheme Act 2013* (NDIS Act). Under the *National Disability Insurance Scheme (Participating Jurisdiction) Specification 2018* the Minister has specified that New South Wales and South Australia are participating jurisdictions with effect from 1 July 2018.

A person or entity who is registered in a participating jurisdiction is registered by the Commissioner of the NDIS Quality and Safeguards Commission (the Commissioner) under section 73E of the NDIS Act and is known as a registered NDIS provider. A person or entity who is registered in a host jurisdiction that is not a participating jurisdiction is registered by the CEO of the National Disability Insurance Agency under section 70 of the NDIS Act and is known as a registered provider of supports.

Human rights implications

This instrument engages the following human rights:

- The rights of persons with disabilities in the *Convention on the Rights of Persons with Disabilities* (CRPD), especially articles 3, 9, 19, 20, 22, 25 and 28;
- The rights of children in the *Convention on the Rights of the Child* (CRC), especially articles 16, 23 and 24;
- Articles 11 and 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR);
- Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR).

Adequate standard of living

When people with disability have extreme functional impairment or very high support needs, specialist disability accommodation supports are important in securing their right to an adequate standard of living. By facilitating the provision of specialist disability accommodation, the instrument engages the right to an adequate standard of living, including housing, and to the continuous improvement of living conditions, as contained in article 28 of the CRPD and article 11 of the ICESCR.

In particular, this instrument assists people with disability to access accommodation that is well-suited to their needs and stimulates increased supply of specialist housing that responds to the needs and preferences of people with disability, as well as innovation in supported disability housing solutions.

Independent living, inclusion in the community and accessibility

By facilitating the provision of specialist disability accommodation supports to people with disability, this instrument engages the right of people with disability to live independently, to be included in the community and to participate in all aspects of life, in accordance with articles 9 and 19 of the CRPD.

The provision of specialist disability accommodation allows people with disability to live with a higher degree of independence and autonomy and facilitates their participation in all aspects of life on an equal basis with others. It also provides a better opportunity for people with disability to choose their place of residence and prevents people with disability from being isolated or segregated from the community.

Highest attainable standard of health

This instrument engages with the right to the highest attainable standard of physical and mental health, as contained in article 25 of the CRPD and article 12 of the ICESCR. Specialist disability accommodation supports the physical and mental health and wellbeing of people with disability by providing them with housing

appropriate to their needs and a dwelling where other necessary supports and services can be delivered.

Conclusion

This instrument is compatible with human rights because it promotes the human rights to an adequate standard of living and health and the rights to independent living, inclusion and accessibility.

Graeme Head, Commissioner of the NDIS Quality and Safeguards Commission