



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

I, Graeme Head, as delegate of the Minister for Social Services, make the following Rules.

Dated 17 May 2018

Graeme Head
Commissioner of the NDIS Quality and Safeguards Commission

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Part 1 - Preliminary

1 Name

This instrument is the *National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rule 2018*.

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	1 July 2018.	1 July 2018

Note: This table relates only to the provisions of this instrument as originally made.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 Definitions

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

- (a) Commissioner;
- (b) NDIS
- (b) participant.
- (c) plan
- (c) registered NDIS provider

In this instrument:

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

applicant means a person or entity who has made an application for registration under section 73C of the Act.

building authority means a body or entity established by a State or Territory to administer or regulate the design, construction, renovation, alteration or extension of buildings, including plumbing and other service installations.

complex home modification means modifications to a dwelling that are designed to address multiple complex needs of a participant that:

- (a) require structural alteration to the building; and
- (b) may require permits.

existing stock has the meaning provided by section 22.

intentional community has the meaning provided by section 20.

legacy stock has the meaning provided by section 23.

long-term accommodation means 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.

new build has the meaning provided by section 21.

permanent dwellings means a dwelling that is fixed to the land and would not include a mobile home.

SDA means specialist disability accommodation.

SDA building type has the meaning provided by section 25.

SDA design category has the meaning provided by section 24.

SDA type means the SDA design category and SDA building type.

single parcel of land has the meaning provided by section 19.

specialist disability accommodation means 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.

specialist disability accommodation provider means a registered NDIS provider whose registration includes the provision of specialist disability accommodation supports.

supported independent living means assistance with and/or supervising tasks of daily life to develop the skills of individuals to live as autonomously as possible.

Part 2 – Conditions of registration

Division 1 – Introduction

5 Purpose of this Part

- (1) This Part is made for the purpose of section 73H of the Act.
- (2) It sets out the conditions that apply to specialist disability accommodation providers.

Note 1: A registered NDIS provider may be liable to a civil penalty if the provider breaches a condition to which the provider's registration is subject (see section 73J of the Act).

Note 2: The conditions in this Part 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*.

Note 3: 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

6 Delivery of SDA only in enrolled dwellings

- (1) The registration of a specialist disability accommodation provider is subject to the condition that the provider must not provide SDA in a dwelling, unless that dwelling has been enrolled in accordance with this section.
- (2) The Commissioner may enrol a dwelling to house a specified number of residents, if the Commissioner considers the dwelling is suitable having regard to this Rule and any other matter the Commissioner considers relevant.
- (3) A specialist disability accommodation provider may apply to the Commissioner to enrol a dwelling as an SDA dwelling.
- (4) The Commissioner may approve a form for the purposes of an application under subsection (3).
- (5) The Commissioner may require specialist disability accommodation providers applying to enrol a dwelling to provide information, including:
 - (a) whether and how the dwelling meets eligibility criteria under section 7;
 - (b) the SDA type of the dwelling and its location;
 - (c) that the dwelling meets the minimum requirements for the SDA design category of the dwelling;
 - (d) if the dwelling is a New Build, or Existing Stock, whether a density restriction applies;
 - (e) the number of bedrooms or similar sized private rooms suitable for residents;
 - (f) the number of residents for which the dwelling is being enrolled;
 - (g) the number of participants with SDA in their plan intended to reside in the dwelling (which may be lower than the number of residents for which the dwelling is being enrolled);
 - (h) details of other features, allowances or factors (such as on-site overnight assistance rooms or fire sprinklers);
 - (i) whether the provider is a participant who intends to provide SDA to themselves;
 - (j) any other information required by the Commissioner.
- (6) The Commissioner may require a specialist disability accommodation provider to provide evidence of any of the information specified in subsection (5):
 - (a) in the manner, form and timeframe prescribed by the Commissioner; and
 - (b) from any person or entity prescribed by the Commissioner.

7 Eligibility for enrolment

- (1) The registration of a specialist disability accommodation provider is subject to the condition that provider:

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- (a) must not apply to enrol a dwelling unless it is eligible for enrolment in accordance with this section; and
 - (b) must not apply enrol a dwelling to house more residents than the number of bedrooms, or similar sized private rooms, in the dwelling; and
 - (c) ensures that all dwellings that the provider enrolls continue to meet the eligibility requirements for the enrolment of those dwellings after enrolment.
- (2) In order for a dwelling to be eligible for enrolment, the dwelling must meet each of the following requirements:
- (a) the dwelling is a permanent dwelling;
 - (b) the dwelling will provide long-term accommodation for at least one participant;
 - (c) the Commonwealth and participating jurisdictions do not (as at the date of application for enrolment) provide funding for accommodation in respect of the dwelling under a scheme unrelated to disability;
Note: Such funding may still be provided to residents of the dwelling.
 - (d) the dwelling meets all relevant building codes, standards and laws;
 - (e) if a density restriction applies to the dwelling, the density restriction for the relevant parcel of land must be satisfied immediately before the enrolment;
Note: For an explanation of density restrictions, see Part 3.
 - (f) either:
 - (i) the specialist disability accommodation provider owns the dwelling to be enrolled; or
 - (ii) the owner of the dwelling:
 - (A) has acknowledged in writing that the dwelling is to be enrolled as an SDA dwelling; and
 - (B) has not separately enrolled the dwelling as SDA;
 - (g) the dwelling is one of the following:
 - (i) a New Build;
 - (ii) Existing Stock; or
 - (iii) Legacy Stock.
- (3) Despite subsection (2), a dwelling is not eligible for enrolment if:
- (a) the NDIS has funded, as complex home modifications, home modifications for the dwelling at any time after 1 December 2016 and less than 10 years before the day of the enrolment of the dwelling; or
 - (b) the NDIS has funded home modifications, other than complex home modifications, for the dwelling at any time after 1 December 2016 and less than 5 years before the date of the enrolment of the dwelling.

8 Compliance with Laws

The registration of a specialist disability accommodation provider is subject to the following conditions:

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- (a) the specialist disability accommodation provider must ensure that each SDA dwelling provided, and the management of it, complies at all times with:
 - (i) 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
 - (ii) applicable building standards; and
 - (iii) any other applicable laws or standards of the Commonwealth, State or Territory and local government area in which the SDA dwelling is located; and
 - (b) the specialist disability accommodation provider must ensure that any persons employed or otherwise engaged by the provider comply at all times with:
 - (i) 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
 - (ii) applicable building standards and codes; and
 - (iii) any other applicable laws or standards of the Commonwealth, State or Territory and local government area in which the SDA dwelling is located.

9 Service agreements

- (1) Subject to subsection (3), the registration of a specialist disability accommodation provider is subject to a condition that the specialist disability accommodation provider must not provide SDA for a participant unless either:
 - (a) a written service agreement has been entered into between the specialist disability accommodation provider and the participant in relation to the provision of the SDA; or
 - (b) the specialist disability accommodation provider:
 - (i) has worked with the participant to establish a written service agreement in relation to the provision of SDA;
 - (ii) has provided a copy of the proposed agreement to the participant; and
 - (iii) provides SDA to the participant in accordance with the terms of the proposed agreement.
- (2) The service agreement must include terms that set out the rights and responsibilities for the specialist disability accommodation provider and the participant.
- (3) This section does not apply, if the specialist disability accommodation provider is also the participant, receiving SDA from himself or herself.

10 Access for providers of other supports

- (1) The section applies where a specialist disability accommodation provider, provides this support to a participant that also requires supports from other NDIS providers.

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- (2) The registration of a specialist disability accommodation provider is subject to the following conditions:
 - (a) where possible, that provider must have documented arrangements with each participant, and each participant's other NDIS providers who deliver supported independent living in an SDA dwelling; and
 - (b) that the specialist disability accommodation provider ensures that access to an SDA dwelling is provided to providers of other supports to participants residing in each SDA dwelling that they provide.
 - (3) If documented arrangements are put in place into pursuant to paragraph (2)(a), the arrangements must:
 - (a) 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
 - (b) set out the rights and responsibilities of the specialist disability accommodation provider, the participant's other NDIS providers and the participant.

11 Number of residents

The registration of a specialist disability accommodation provider is subject to the following conditions:

- (a) a specialist disability accommodation provider must ensure that no more residents are housed in an SDA dwelling than the number for which the dwelling is enrolled; and
- (b) 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, 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.

12 Notifying the Commissioner

- (1) The registration of a specialist disability accommodation provider is subject to a condition that the specialist disability accommodation provider must notify the Commissioner if any of the following circumstances arise in relation to an SDA dwelling that is currently enrolled:
 - (a) there is a change in the SDA design category or SDA building type of an SDA dwelling; and
 - (b) the SDA dwelling is no longer suitable to be used for SDA; and
 - (c) 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.
- (2) The above information must:
 - (a) be given in writing; and
 - (b) be given as soon as possible, or within 5 working days, of any of the events set out in subsection (1) occurring.

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- (3) The Commissioner may approve a form for the purposes of giving a notification under subsection (1).

13 Good state of repair

- (1) The registration of a specialist disability accommodation provider is subject to the following conditions:
- (a) 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; and
 - (b) the provider must provide an annual declaration that they meet the condition set out in paragraph (1)(a).
- (2) A declaration made for the purposes of paragraph (1)(b) must be given in the manner and form (if any) specified by the Commissioner.

Part 3 – Density Restrictions

Division 1 – Application of density restrictions

14 Application of density restrictions

- (1) A density restriction applies where:
 - (a) a single parcel of land has multiple dwellings (whether or not they all provide SDA); and
 - (b) at least one of those dwellings is either:
 - (i) a New Build; or
 - (ii) Existing Stock of the sort described in subsection 22(3).

15 Density Restrictions – three or more residents

- (1) This section applies if:
 - (a) there is one or more SDA dwellings on a single parcel of land; and
 - (b) at least one of those dwellings is enrolled to house three or more residents.
- (2) 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:
 - (a) 10 participants; and
 - (b) 10% of the total number of residents capable of residing on the single parcel of land, assuming one resident per bedroom.

16 Density Restrictions – one or two residents

- (1) This section applies if:
 - (a) there is one or more SDA dwelling on a single parcel of land; and
 - (b) none of the SDA dwellings on that single parcel or land are enrolled to house more than two residents.
- (2) 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:
 - (a) 15 participants; and
 - (b) 15% of the total number of residents capable of residing on the parcel, assuming one resident per bedroom

17 Intentional communities – three or more residents

- (1) This section applies if:
 - (a) there is one or more SDA dwellings on a single parcel of land; and
 - (b) at least one of those dwellings is enrolled to house three or more residents;
and

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- (c) the single parcel of land forms part of an intentional community.
 - (2) 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:
 - (a) 10 participants; and
 - (b) 10% of the total number of residents capable of residing on the parcel, assuming one resident per bedroom.

18 Intentional communities – one or two residents

- (1) This section applies if:
 - (a) there is one or more SDA dwellings on a single parcel of land; and
 - (b) none of the SDA dwellings on that single parcel or land are enrolled to house more than two residents; and
 - (c) the single parcel of land forms part of an intentional community.
- (3) 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:
 - (a) 15 participants; and
 - (b) 25% of the total number of residents capable of residing on the parcel, assuming one resident per bedroom.

Division 2 - Definitions

19 Meaning of Single Parcel of Land

- (1) For land located in the Australian Capital Territory, all the land comprised within a parcel of land for which a certificate of title has been issued under the *Land Titles Act 1925* (ACT) unless the land forms part of:
- (a) a 'parcel' within the meaning of section 5 of the *Unit Titles Act 2001* (ACT); or
 - (b) a 'community title scheme' as that term is defined for the *Community Title Act 2001* (ACT);

in which case 'parcel of land' means all of the land comprised within that arrangement.

- (2) for land located in New South Wales, all the land comprised in a 'folio of the Register' within the meaning of the *Real Property Act 1900* (NSW) unless the land forms part of:
- (a) a 'parcel' within the meaning of section 5 of the *Strata Schemes (Freehold Development) Act 1973* (NSW);
 - (b) a 'parcel' within the meaning of section 4 of the *Strata Scheme (Leasehold Development) Act 1986* (NSW);
 - (c) a 'parcel' within the meaning of section 4 of the *Strata Schemes Development Act 2015* (NSW); or
 - (d) a 'community parcel', 'neighbourhood parcel' or 'precinct parcel' within the meaning of section 3 of the *Community Land Development Act 1989* (NSW);

in which case 'parcel of land' means all the land comprised within that arrangement;

- (3) for land located in the Northern Territory, all of the land comprised within a 'lot' within the meaning of section 4 of the *Land Title Act* (NT), unless the land forms part of a 'unit titles scheme' within the meaning of section 10(1) of the *Unit Title Schemes Act* (NT), in which case 'parcel of land' means all of the land comprised within that arrangement;
- (4) for land located in Queensland, all the land comprised within a 'lot' within the meaning of the *Land Title Act 1994* (Qld) unless the land forms part of:
- (a) a 'mixed use scheme' within the meaning of section 3 of the *Mixed Use Development Act 1993* (Qld);
 - (b) a 'building units plan' or a 'group titles plan' within the meaning of section 7 of the *Building Units and Group Titles Act 1980* (Qld); or
 - (c) a 'community titles scheme' within the meaning of section 10 of the *Body Corporate and Community Management Act 1997* (Qld);

in which case 'parcel of land' means all of the land comprised in that arrangement.

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- (5) for land located in Tasmania, all of the land comprised within a ‘folio of the Register’ as that term is used in the *Land Titles Act 1980* (Tas) unless the land forms part of a ‘scheme’ within the meaning of section 3 of the *Strata Titles Act 1998* (Tas), in which case ‘parcel of land’ means all of the land comprised within that arrangement;
 - (6) for land located in South Australia, all of the land comprised within an ‘allotment’ within the meaning of section 223LA(1)(a) of the *Real Property Act 1886* (SA) unless the land forms part of:
 - (a) a ‘strata plan’ within the meaning of section 5 of the *Strata Titles Act 1988* (SA); or
 - (b) a ‘plan of community division’ (also known as a ‘community plan’) including ‘strata plans’, within the meaning of Part 2 of the *Community Titles Act 1996* (SA)

in which case ‘parcel of land’ means all of the land comprised within that arrangement;

- (7) for land located in Victoria, all of the land comprised within a ‘folio of the Register’ within the meaning of the *Transfer of Land Act 1958* (Vic) unless it forms part of a ‘registered plan’ within the meaning of section 3(1) of the *Subdivision Act 1988* (Vic), in which case ‘parcel of land’ means all of the land comprised within that arrangement; and
- (8) for land located in Western Australia, all of the land comprised within a certificate of title registered under the *Transfer of Land Act 1892* (WA), unless the land forms part of a registered ‘strata/survey-strata plan’ within the meaning of section 3 of the *Strata Titles Act 1985* (WA), in which case ‘parcel of land’ means all of the land comprised within that arrangement.

20 Meaning of intentional communities

- (1) An intentional community is a residential community designed to have a high degree of social cohesion, achieved through teamwork and agreed shared values.
- (2) 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.
- (3) An intentional community:
 - (a) 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
 - (b) is controlled by the members or residents and is not governed by a single entity such as a support provider; and
 - (c) includes general market housing, and is not solely designed to provide supported accommodation services.

Part 4 – Dictionary

21 New builds

A dwelling is a new build if all of the following apply:

- (a) a certificate of occupancy (or equivalent) was either:
 - (i) first issued in relation to it on or after 1 April 2016; or
 - (ii) issued in relation to it on or after 1 April 2016 following renovations or refurbishments resulting in the dwelling meeting the relevant minimum requirements in the SDA Design Category Requirements Guidelines for one or more of the design categories other than basic design; and
- (b) one of the following applies:
 - (i) it is enrolled or will be enrolled to house five or fewer long-term residents (excluding support staff); or
 - (ii) 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
- (c) all of the dwellings 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.

Note: The SDA Design Category Requirements Guidelines may be found on the Commission's website.

22 Existing stock

- (1) A dwelling can only be existing stock if it is not a new build and either subsection (2) or (3) apply.
- (2) A dwelling is existing stock if it is not a new build, and all of the following apply:
 - (a) the dwelling does not have a certificate of occupancy issued as described in paragraph 21(a) above;
 - (b) the dwelling is enrolled or will be enrolled to house five or fewer long term residents (excluding support staff);
 - (c) 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;
 - (d) the dwelling is not an aged care, health care or other facility that is not specifically intended for use as disability accommodation;
 - (e) 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

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- (f) 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.

Note: The SDA Design Category Requirements Guidelines may be found on the Commission's website.

- (3) A dwelling is existing stock if it is not a new build, and all of the following apply:
 - (a) the dwelling does not have a certificate of occupancy issued as described in paragraph 21(a);
 - (b) one of the following applies:
 - (i) it is enrolled or will be enrolled to house five or fewer long-term residents (excluding support staff); or
 - (ii) 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
 - (c) 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.

Note: The SDA Design Category Requirements Guidelines may be found on the Commission's website.

23 Legacy Stock

- (1) A dwelling may only be legacy stock if it is not a new build.
- (2) A dwelling is legacy stock if the dwelling:
 - (a) does not have a certificate of occupancy issued as described in paragraph 21(a);
 - (b) is enrolled or will be enrolled to house more than five long-term residents (excluding support staff);
 - (c) 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;
 - (d) 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;
 - (e) is not an aged care, health care or other facility that is not specifically intended for use as disability accommodation; and
 - (f) 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.

Note: The SDA Design Category Requirements Guidelines may be found on the Commission's website.

24 SDA design category

SDA design category means one of the following design types:

- (a) **basic** design, which refers to 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;
- (b) **improved liveability** design, which refers to housing that has been designed to improve ‘liveability’ by incorporating a reasonable level of physical access and enhanced provision for people with sensory, intellectual or cognitive impairment;
- (c) **fully accessible** design, which refers to housing that has been designed to incorporate a high level of physical access provision for people with significant physical impairment;
- (d) **robust** design, which refers to housing that has been designed to incorporate a high level of physical access provision and to be very resilient, reducing the likelihood of reactive maintenance and reducing the risk to the participant and the community;
- (e) **high physical support** design, which refers to 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.

Note: Further details 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.

25 SDA building type

SDA building type means one of the following:

- (a) **apartments**, which are self-contained units occupying only part of a larger residential building. Apartments are typically classified as Building Class 2 under the Building Code of Australia;
- (b) **duplexes, villas and townhouses**, which are separate but semi-attached properties within a single land title or strata titled area. The dwellings will be separated from one or more adjoining dwellings by a fire-resisting wall (although fire resistance is not required for Existing Stock). These may also include ancillary dwellings that are located on the same parcel of land as another dwelling (such as standalone villas or ‘granny flats’). These types of buildings are typically classified as Building Class 1(a)(i), 1(a)(ii) or 3 under the Building Code of Australia;
- (c) **houses**, which are detached low-rise dwellings with garden or courtyard areas. Houses are typically classified as Building Class 1(a)(i), 1(b)(i) or 3 under the Building Code of Australia;
- (d) **group homes**, which are houses that are enrolled (or will be enrolled) to house four or five long-term residents. Group homes are typically classified as Building Class 1(b)(i) or 3 under the Building Code of Australia;
- (e) **larger dwellings**, which are enrolled (or will be enrolled) to house more than five long-term residents.

Part 5 – Transitional arrangements relating to enrolled dwellings

26 Purpose of this part

- (1) This part is made for the purpose of section 73H of the Act.

27 Dwellings previously enrolled

- (1) This section applies to a specialist disability accommodation provider if:
 - (a) at a particular time (the *transition time*):
 - (i) a person or entity is approved as a registered provider of supports to provide specialist disability accommodation; and
 - (ii) 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*;
 - (b) at the transition time, the host jurisdiction in which the SDA dwelling is located becomes a participating jurisdiction.

Note: For the meaning of *host jurisdiction* and *participating jurisdiction*, see sections 10 and 10A of the Act.

- (2) Immediately after the transition time the Commissioner is taken to have decided to enrol any dwellings that the person or entity has enrolled as SDA at the transition time.