

National Disability  
Services (NDS)  
Submission to the  
Victorian  
Government

# **Submission in response to the Victorian Government Specialist Disability Accommodation Policies**

**3 November 2021**

## **About National Disability Services (NDS)**

NDS is the peak body for non-government disability service providers, with more than 250 members in Victoria and over 1,080 members nationally.

NDS provides information and networking opportunities to its members and policy advice to State, Territory and Commonwealth governments. NDS's diverse and vibrant membership of small, medium, and larger organisations directly and indirectly support thousands of people with disabilities in Victoria.

NDS members collectively deliver the full range of disability services; from supported independent living assistance, specialist disability accommodation services, respite, therapy, community access and employment.

NDS joins other representative organisations including the Australian Federation of Disability Organisations, People with Disability Australia, the Australian Association of Gerontology, among many others, in advocating for the inclusion of mandatory accessibility standards within Australia's National Building Code.

## Background

The Victorian Government, through the Department of Families, Fairness and Housing (DFFH), owns a substantial proportion of the Specialist Disability Accommodation (SDA) in Victoria. The department is reviewing its policies about how it manages its SDA.

Following the release of the draft [DFFH collaboration agreements with Victorian SIL providers](#) and extensive consultation with Victorian service providers, NDS welcomes the opportunity to provide further feedback on the following draft DFFH SDA policies and procedures:

- Business practice manual
- Offering residency in SDA manual
- Residency management manual
- Maintenance and property management manual

NDS is keen to support Victorian service providers to thrive within the complex SDA quality and safeguarding regulatory environment. We support people with disabilities being able to experience choice and control in regard to their housing, as much as possible, in line with the key principle of the *NDIS Act 2013*.

## NDS Comments

NDS urges the Victorian Government to consider the following comments in regard to each of four policy documents:

### **Business Practice Manual**

NDS welcomes the reference to the Victorian Human Rights Charter within the Business Practice Manual. We also welcome the requirement for all staff to complete the Charter of Human Rights and responsibilities eLearning module.

We do note, however, that the manual does not specify whether the term ‘staff’ refers only to employees of the department, or whether this requirement extends to staff of the SIL provider organisation.

NDS notes that the ‘Information Privacy’ section of the manual also lacks clarity around the persons subject to the responsibilities. While we strongly support the implementation of the robust privacy protections outlined in the manual, we note that further clarity is needed around whether this requirement extends to staff in the support provider organisation.

The same issue arises later in the document, particularly around the role of staff in handling complaints. It is unclear what role SIL providers have in handling complaints related to SDA supports under the current manual.

NDS welcomes the department’s commitment to ensuring that SDA residents and the people who support them have access to information about SDA in the language, mode of communication and terms that each resident is most likely to understand, including through the provision of Easy English information on the DFFH website and access to interpreting and translating services.

We would note, however, that there is no reference within the manual about who is required to pay for these services. NDS encourages the department to include a clause in the manual noting that the department (the SDA Provider) will pay for interpreting and translation services for SDA-related communications.

NDS strongly supports the department’s [Client Services Charter](#) standards of service to SDA residents, which provides clear protections of an SDA resident's right to privacy and respect, as well as their rights to contact the SDA provider, to access information, to be involved in decision making, and to make a complaint. NDS notes the importance of ensuring that the personal information of residents is kept confidential, that SDA residents are able to access clear information about their services and rights, and that SDA residents are able to freely make complaints.

SIL providers often play a key role in supporting participants to access information about their rights as SDA residents. NDS understands that at times, participants and

families may become concerned when they receive SDA information directly from government and often seek advice and assistance from the SIL provider. NDS encourages the department to inform SIL providers in advance of distributing any communications, and to provide SIL providers with adequate resources to enable them to support participants to understand any information distributed by the department.

NDS encourages the department to continue to work closely with SIL providers in the development and circulation of information to SDA residents in an ongoing capacity, and arrange for timely distribution of SDA documents to SIL providers and SDA residents.

It would be beneficial for the department to adopt an ongoing review and consultative approach with SIL providers, with perhaps a review in 6 to 12 months after SDA policy implementation. Often it is through policy implementation that issues are identified for further policy refinement.

### **Offering Residency in SDA Manual**

NDS welcomes the department's acknowledgement in the Offering Residency in SDA Manual that filling a vacancy in an SDA 'is a collaborative process between SDA residents, SIL providers and department staff'. We welcome the spelling out of the roles for each of these parties in the policy.

NDS also welcomes the spelling out of policy principles for Offering Residency in departmental-owned SDA:

- **'collaboration'**: people most impacted by decisions – including current residents and the SIL provider – are included in decision making
- **equity**: eligible participants are considered for SDA in a fair and transparent manner
- **consistency**: decision making is undertaken in a reliable manner and enough information is provided to make sound decisions

- **sustainability:** SDA offers are part of a long-term and proactive plan that takes into consideration the sustainable operations of the SDA and SIL providers
- **compatibility:** the physical, emotional, social and support needs of the current residents are taken into consideration when identifying a participant to offer SDA to
- **safety:** support needs of the current and prospective residents are addressed.'

We support the Offering Residency Panel and the involvement of people with lived experience of disability in the decision-making processes about who will be offered residency in an SDA.

However, NDS notes that a lot of extra work has been imposed on the SIL providers, whom have been assigned additional responsibilities to:

- 'inform the department when a vacancy arises
- work with the department to prepare the advertisement
- coordinate completion of the SDA dwelling profile, including obtaining input from residents and their support networks
- coordinate open inspections and respond to queries from applicants about the vacancy
- nominate representatives to be on the Offering Residency Panel
- work with the department to identify and manage any issues related to the vacancy
- coordinate and support a participant's transition into SDA once the participant has accepted an offer.'

Whilst NDS welcomes the involvement of SIL providers in the decision-making process, the SIL providers should be offered a payment in support of the departmental roles in coordinating the process to offer residency in department-owned SDA.

The Offering Residency issue touches on the broader framework which restricts the choice of people with disabilities regarding co-residents. One key concern relating to this is about the limited tenancy options currently available under the *Residential Tenancies Act (RTA) 1997*. The *RTA* dictates that the SDA Residency Agreement cannot be used alongside a standard Residential Rental Agreement in the one dwelling. This means that people with SDA funding who are on an SDA Residency Agreement cannot live with people who do not have SDA funding (and therefore cannot be on an SDA Residency Agreement). This prevents people living in SDA from living with a partner, their family, friends, or other NDIS participants who do not have SDA funding. This situation is at odds with contemporary expectations around the rights of people with disabilities to choose how and with whom they wish to live. The limited tenancy options do not reflect the key principle of the *NDIS Act 2013*, for people with disability to exercise choice and control in regard to their supports.

To consider and ensure the needs and preferences of current residents are considered, NDS recommends that the Victorian Government permanently migrates the SDA tenancy rules from the *Disability Act* to the *RTA* under Part 12A, and introduces a step-change approach to provide more tenancy options that reflect the principle of choice and control and ensure that SDA residents can choose to live with non-SDA residents while still receiving the highest level of tenancy protections.

The Manual also addresses the on-hold process, and notes 'On occasion, a vacancy may need to be placed on hold for a period of time' and the 'SIL provider and the department will not be responsible to each other for costs incurred when a vacancy is placed on hold through this process'. NDS is concerned that lengthy delays in filling vacancies can have a significant financial impact on SIL providers. It is recommended that when vacancies are put on-hold the department consults with the SIL providers taking into account their views prior to finalising a decision on this process.

## **Residency Management Manual**

NDS welcomes the department's requirement that providers must be registered in order to deliver SIL supports within DFFH-owned SDA properties. We also support the notion that residents have choice and control over their SIL provider, provided that they are a registered provider and meet the department's eligibility requirements.

NDS also welcomes the commitment to monitor the effectiveness of collaboration agreements. We strongly support the department's commitment to a review of the operation of an agreement within three months from the start of the agreement. We also strongly support the requirement for regular reviews, at least annually, to ensure that parties are meeting their mutual objectives. NDS supports the participation of residents within these meetings if suitable.

One concern that NDS holds in relation to the Residency Management Manual is the apparent requirement that SIL providers in DFFH properties are obliged to report incidents and issues to both the department's Client Incident Management System (CIMS) and to the NDIS Commission. There are concerns that the double reporting requirements are duplicative, costly, time consuming, and unnecessary. To resolve this double reporting issue, NDS encourages the department to recognise the NDIS Quality and Safeguarding Framework, audits and incident reporting system, which provide a nationally consistent approach to quality and safeguarding and establish expectations for providers and their staff to deliver high quality supports.

NDS welcomes the introduction of an Emergency Management section within the Residency Management Manual which clearly establishes the responsibilities of the department during natural disasters, including extreme weather events and pandemics. Under the Emergency Management section, NDS suggests that the department acknowledge provider obligations under the [SDA Design Standard](#), including, but not limited to the following:

- 'All fire safety features shall be provided as required by the NCC based on the dwelling classification as determined by the Building Certifier.

- Smoke alarms that are in keeping with a home environment shall be provided in bedrooms and living spaces.
- Emergency evacuation plan shall be provided to the occupier or their supports, which may include a path of travel to a safe place.
- Fire compartmentation may be required by the NCC.
- It is desirable for fire sprinklers to be provided.
- Note that emergency lighting to assist evacuation may also be required to be installed under the NCC.
- Fire resisting walls between attached SDA Dwellings to be designed as per the requirements of the NCC.'

### **Maintenance and Property Management Manual**

While the [NDIS Practice Standards](#) establish some clear expectations for SIL and SDA providers, they do not provide an exhaustive list which clearly delineates how all roles and responsibilities within the dwelling are shared between the SIL provider, the SDA provider and the resident.

NDS is concerned that the department, within its Maintenance and Property Management Manual, has made a number of assumptions about the roles that the SIL provider and residents should be reasonably expected to perform. These include:

#### **The provision of whitegoods and furniture**

The DFFH Maintenance and Property Management Manual states that 'repairs and replacement of whitegoods (such as fridges, washing machine, and dryers) are not the responsibility of the department.' NDS understands that historically, the department has provided these types of items in recognition of the high cost of these items and the comparatively low incomes of many residents. Section 2.3.5 of the [Disability Services Shared Supported Accommodation Disability Leasing Model \(DLM\) Operational Framework: A Best Practice Guide](#) states that, 'to minimise the impact on residents for larger cost white good replacement items, the department has factored a cost for replacement into the recommended level of the maintenance

funds provisioned per house. The department recommends that, in addition to standard property maintenance items, the cost of repair or replacement of the following white good items should also be met from the maintenance fund:

- fridge/freezer
- washing machine/clothes dryer
- dishwasher
- air conditioning (where air conditioning is ducted, it is a landlord/owner requirement to regularly inspect, maintain and/or replace under essential services legislation).’

NDS is aware that the DLM specifically includes white goods repair and replacement in recognition of the low income of tenants. NDS is concerned that without support to purchase and maintain larger items such as fridges and washing machines, many residents who rely on government welfare payments will be unable to meet the costs of these items. For example, many SDA residents, as a result of their disability, require an industrial washing machine. NDS is concerned that many SDA residents would struggle to meet the costs of repair and replacement of an industrial washing machine if relying on the Disability Support Pension. NDS encourages the department to continue funding purchase and maintenance of such large items.

### Utilities

The RTA notes that the SDA Provider is responsible for ensuring access to utilities, however, it does not outline who is responsible for taking out the agreement with the utility provider, and arranging for ongoing payment of these services. The NDIS Practice Standards also fail to provide clarity around who is responsible for taking out agreements and managing the ongoing payment of utilities. NDS understands that utility arrangements in SDA dwellings differ significantly, with some houses opting for the SIL provider to take out the utility agreements, other opting for the SDA provider to take on this responsibility, and some placing this responsibility on the tenant. Each arrangement has its own complexities. For example, if the SIL provider takes out the agreement with the utility provider, what happens if the residents decide to change SIL provider? If one resident takes out the agreement, what

happens if that individual moves out? NDS would like to see greater clarity within the department's SDA policy documents around how these arrangements should be managed.

### Home Modifications and Assistive Technology

NDS understands that under the NDIS Practice Standards, the SDA provider is obliged to supply base level home modifications. While this is the case, there is a lack of clarity within the department's SDA policy documentation and the NDIS Practice Standards around how far this obligation extends. It is also unclear who covers the cost if the participant who needed the home modification moves out and the property has to be reinstated to its original condition. NDS recommends greater clarification around the responsibilities of the SDA provider and resident around the costs of home modifications and returning the property to its original condition if a tenant vacates the property.

NDS understands the ceiling hoist tracking infrastructure is the responsibility of the SDA provider for designated categories in the SDA Design Standards. We also note that hoist maintenance and replacement was part of the DLM. We recommend that the department continues to provide and maintain ceiling hoist tracking infrastructure, and spell out the limits of this responsibility clearly within this manual.

## **Conclusion**

NDS acknowledges that the SDA policies remain an important element in the protection of the rights of Victorians with disabilities, and will support the smooth operation of the ongoing interaction of the government, SIL providers and residents. This review of the SDA policies and procedures provides an opportunity to bring the policies in line with the contemporary disability landscape.

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