

A person in a wheelchair is shown from a low angle, pushing the wheelchair on a sandy beach. The person is wearing a white shirt and dark shorts. The background is a bright, hazy beach scene with waves in the distance. The text is overlaid on the left side of the image.

NDIS Housing supports and appeals- the basics

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Acknowledgement of Country

I begin today by acknowledging the Jagera and Turrbul people, Traditional Custodians of the land from which I come to you today, and pay my respects to their Elders past and present. I extend that respect to all Traditional Custodians of the lands which our attendees are on, and any Aboriginal and Torres Strait Islander peoples here today.

We acknowledge the stories, traditions and living cultures of Aboriginal and Torres Strait Islander peoples on this land and commit to building a brighter future together.





**Tell us about
you?**

Overview for today

By the end of this session, you'll know:

1. The different types of NDIS home and living supports
2. General criteria for accessing home and living supports
3. Specialist Disability Accommodation (SDA) - eligibility, design categories, building types and applicable additional criteria
4. Preserving review rights and how to navigate if not happy with a home and living decision
5. Where to refer a client who needs more help than you're able to provide

Types of home and living supports

- Different types of supports can be included in a plan where a participant needs home and living supports.
- Support types focused on today:
 1. Specialist Disability Accommodation (SDA)
 2. Supports to remain living in the participant's home
 - Home modifications
 - Support worker time
 3. Medium Term accommodation
 4. Short Term accommodation (respite)

The Law – NDIS Act

General criteria

- National Disability Insurance Scheme Act 2013 (NDIS Act)
- Reasonable and necessary criteria (listed in s 34 of the of the NDIS Act)
- Six requirements must be met:
 - Must be goal oriented (34(1)(a))
 - Must facilitate the participants social and economic participation(34(1)(a))
 - Represent value for money(34(1)(b))
 - Must be or likely to be effective and beneficial(34(1)(c))
 - Is not the reasonable expectation of families, carers, informal networks and community to provide (34(1)(d))
 - Most appropriately funded through the NDIS (34(1)(e))

The Law – NDIS Rules

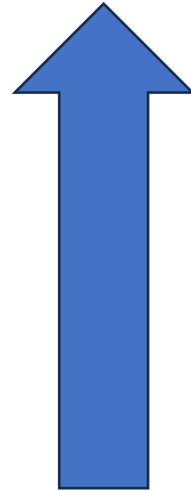
- Rules established under the NDIS Act include:
 - [National Disability Insurance Scheme \(Supports for Participants\) Rules 2013](#) (common rules about what the NDIA will fund and will not fund)
 - [NDIS \(Specialist Disability Accommodation\) Rules 2020](#)
- [NDIS Operational Guidelines](#) – not as important as the law! Policy is to be followed but only if not inconsistent with the law.
- Administrative Appeals Tribunal Act 1975 (AAT Act)

What is specialist disability housing (SDA)?

- SDA is a range of housing designed for people with **extreme functional impairment** or **very high needs**
- Most NDIS participants don't need to live in SDA
- People who live in SDA have extremely high needs and need to live in specialised homes, usually with high levels of person-to-person support
- At 30 June 2023, 23,092 active participants had SDA supports in their NDIS plans (3.8% of all active participants) (at least 1305 of those were not in an SDA dwelling but were looking. There were 7,925 registered SDA homes)

4 categories of SDA design

Increased
physical
needs



- **high physical support-** housing for people who need very high levels of support
- **fully accessible-** housing with a high level of physical access
- **improved liveability-** housing with better physical access

and

- **Robust-** very strong and durable housing

SDA Eligibility

The key qualification requirements for SDA are in the **SDA Rules**.

To be eligible the NDIA need to be satisfied that the participant:

- has an **extreme functional impairment** (see section 12)
- or
- has very **high support needs** (see section 13)
- and
- the participant meets the **SDA needs requirement** (see section 14).

SDA eligibility- extreme functional impairment



- Section 12 of the SDA rules: The impairment needs to result in **‘extremely reduced functional capacity’** associated with:
 - mobility
 - self-care
 - self-management

SDA eligibility- very high support needs

If a participant does not meet the extreme functional impairment requirement it is necessary to meet the requirement for **very high support needs** under section 13 of the SDA Rules.



Eligibility- needs requirement

Rule 14 of the SDA rules- needs requirement.

Requires consideration of how the SDA will assist the participant, be effective and beneficial for the participant as well as being value for money compared to other supports alone.

A participant can only meet the needs requirement if they meet all the criteria in rule 14 of the SDA Rules

Eligibility Case Example

Charrington and NDIS [2022] AATA 1160 (13 May 2022):

- The word “extreme” is to be given its ordinary meaning, being “of the highest degree”.
- The Tribunal is to have regard to.. the alternative cost of providing necessary supports outside of SDA. This necessarily invites a cost comparison between life with and without SDA.
- Tribunal held Charrington did not meet the eligibility criteria for SDA and the decision under review was affirmed.

Type of SDA dwelling

Types of dwelling

- Apartment- up to 2 bedrooms
- Villa/Duplex/Townhouse- up to 3 bedrooms
- House- up to 4 bedrooms

Sole occupancy vs living with other participants

- NDIA may fund sole occupancy for a participant or may fund participant living in property with other NDIS participants.

Sharing with non-SDA eligible persons

- Family can live with participant- reasonable rent contribution applies to adult family members.



Building type determination

Rule 16 of the SDA Rules is concerned with SDA building type

For the purpose of determining the SDA building type a number of matters must be considered under rule 16 including:

- preference
- needs
- value for money
- facilitation of social and economic participation
- facilitates supports (informal and other supports)



Disputing an SDA decision- building type

Common disputes

- Agency's decision to not provide the SDA resident with sole occupancy.
- Agency's decision not to provide the SDA resident with the number of bedrooms sought (sometimes an additional bedroom is sought for a carer or to store disability related equipment).

[Kennedy and National Disability Insurance Agency \[2022\] AATA 265 \(18 February 2022\)](#)

Decision set aside and substituted. Kennedy provided with a 2-bedroom, one resident apartment.

Considered: participant preference, increased social and community participation, maintaining the family unit, enabling participant to reach their goals, supporting independence.

Supports to remain living at home – Support worker hours

- The NDIS can provide support worker assistance for people to be supported at home and in the community
- The quantity and types of support worker assistance the Agency will provide is assessed against the section 34(1) criteria of the NDIS Act
- To help people demonstrate a need for support worker assistance the following can assist:
 - (a) Functional capacity assessment by a qualified occupational therapist
 - (b) Statement of lived experience and/or carers statement
 - (c) Timetable of support provided to the NDIS participant (both informal (unpaid) and formal (paid))

Supports to remain living at home – Home modifications

Home modifications must meet section 34(1) criteria to get approved.

- Must be an element of reasonableness regarding newly purchased homes
- Minor home modifications vs complex home modifications
- Home modifications include:
 - Bathroom home modifications
 - Kitchen home modifications
 - Internal and external chair lifts (compared to elevators) (Case: [LZMX](#))
 - Exterior ramps and pathways
 - Widening internal doorway openings
 - Air-conditioning (Case: [Mckenzie](#))



Different home environments and the NDIS

- Department of housing
- Renting
- Private home ownership
- Aged care



Short Term Accommodation (Respite)

- Funding for support and accommodation for a short time away from your usual home.
- Covers the cost of a participant's care in another place for up to 14 days at a time to have a short stay with other people, or alone
- Often funded when usual carers aren't available, or for the participant to try new things or to give a break to regular carers
- Case example



Medium Term accommodation (MTA)

- Can be included where a participant has a confirmed long-term housing solution but can't move into their long-term home because the disability supports aren't ready.
- To be eligible, the participant must have a home to move into and needs somewhere else to live in the medium term.
- Usually funded for up to 90 days.
- QAI Case example- Medium term accommodation while modifications on a bathroom and bedroom were being carried out.

Not satisfied with a decision?

Review Pathway

- Internal review (s 100)
- External review (AAT)



Internal Review

- Must apply for internal review within 3 months from date of receiving notice of the decision (s 100 (2) NDIS Act)
- Can be commenced by phone, in person or via email.

Tips:

- Apply in writing using the approved form
- If lodging in person, ask for a receipt
- In the cover email or online form clearly list the participant number and that it is internal review
- Clearly state the outcome being sought
- Include all reports obtained since the original decision
- Point to specific paragraphs / statements / recommendations in reports which supports the decision sought

External Review

- A person has 28 days from receipt of the internal review decision to appeal to the AAT (s 29(2) AAT Act):
 - TIP:** get history (dates and events) to confirm the AAT will have jurisdiction to review the decision
- The AAT [Appeal application](#) is should be filed with a copy of the internal review decision.
- If there is particular urgency due to risk to the person, a letter/ statement should be filed with the application setting out the reasons for that urgency.
- Section 43(1) of the AAT Act empowers the Tribunal to exercise all the powers and discretions conferred upon the original decision maker: [Negi and National Disability Insurance Agency \[2022\] AATA 1453 \(2 June 2022\)](#).

What happens after an application to the AAT is lodged?

- A case number is assigned
- A bundle of Tribunal documents called “T Documents” are sent by the NDIA to the applicant
- A date for a case conference is set down
- NDIA lawyer is assigned to the case

Points to remember



- Matters in the Tribunal can take about 12 months
- A person can withdraw at anytime
- The process usually involves a series of case conferences where the issues are narrowed down to a point where:
 - an agreement is made as to the preferred decision
 - a conciliation is held to try and resolve any final issues
 - a hearing is conducted by the Tribunal and a decision made
- Our experience is that most matters are resolved before going to hearing



Queensland **A**dvocacy for **I**nclusion





Questions?

Contact us

QAI provides advocacy for people with disability in Queensland.

Please contact us on:



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