



**NDIS Quality
and Safeguards
Commission**

Next steps – regulation for in- home and housing supports

Discussion paper

August 2024



Why are we consulting?

In August and September 2024, the NDIS Commission will engage with people with disability, their families, carers, and representatives, NDIS providers, and academics and experts to discuss three issues:

Issue 1	Issue 2	Issue 3
Review of the NDIS Practice Standards	New NDIS Practice Standards for NDIS providers delivering in-home supports in a group arrangement (definition below)	The separation of in-home supports and accommodation supports.

There are three key terms used in this paper. They are defined below:

In-home supports

In-home supports refer to assistance or supervision with daily and personal tasks during a person’s day-to-day life that enable a person to live as independently as possible. There are different types of in-home supports. This paper focuses on Supported Independent Living (SIL). The NDIA describes SIL as being ‘for people with higher support needs, who need some level of help at home all the time’, and who need ‘a significant amount of help throughout the day, seven days a week’. This includes overnight support.

In-home supports in a group arrangement (IHSGA)

The definition of, ‘in-home supports in a group arrangement,’ (IHSGA),’ in this paper is based on the one used for the Own Motion Inquiry into Aspects of Supported Accommodation (p 9-10). It includes ongoing in-home shared supports **for three or more participants** living in one dwelling. It does not include short- and medium-term accommodation, respite, Disability Support for Older Australians, or Residential Aged Care.

Specialist Disability Accommodation

Specialist disability accommodation (SDA) is a range of housing designed for people with extreme functional impairment or very high support needs. SDA dwellings have accessible features to help residents live more independently and allow other supports to be delivered better or more safely. In this paper we refer to SDA as used in the NDIS context.

Why now?

Responding to the Own Motion Inquiry into Aspects of Supported Accommodation (OMI)

In 2023 the NDIS Commission released an [Action Plan](#) to progress the recommendations made in the OMI into Aspects of Supported Accommodation.

The OMI found:

- There is a need for specific regulation of group home settings to enhance the quality and safety of these settings for people with disability.
- Greater engagement with people living in group homes is required to support their exercise of choice and control.
- The attitude and aptitude of the workforce drives a high number of the issues evident in group home settings.
- The interaction of supported independent living (SIL) and specialist disability accommodation (SDA) arrangements affects the ability of people with disability in supported accommodation to make changes to their living arrangements.
- We need to better understand the supported accommodation market and how people interact with it including by improving the collection, monitoring and analysis of relevant data.
- The interface between the health and supported accommodation systems is not effective for many people living in these settings.

These consultations will support development and implementation of commitments made with the aim of achieving these longer-term outcomes:

- Elevate the quality and safety of supported independent living services
- Amplify the voice of people with disability living in supported accommodation
- Improve the NDIS to maximise the choice, control and experience of participants living in supported accommodation.

Responding to Emerging Issues in the Market

The NDIS Commission has now been in operation for six years. Over that time, the NDIS market has grown and changed rapidly. As a contemporary regulator, the NDIS Commission continues to monitor changes in the market and consider what changes in our regulatory framework and practice will best support the delivery of quality and safe services to NDIS participants.

The *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* (the Standards) are a regulatory framework tool for NDIS Providers and to benchmark minimum service standards. The NDIS Commissioner considers an organisation's ongoing compliance with the Standards (among other things) in determining whether to register a provider. The Standards also inform the NDIS Commission's monitoring and compliance activities at a whole of market level.

Alongside the NDIS Code of Conduct, the NDIS Practice Standards aim to:

- build NDIS participant awareness of what quality services and supports look like
- give guidance to providers about quality factors in NDIS supports and services
- set a bar for ongoing quality improvement
- provide a tool for the NDIS Commission to assess compliance.

The expectations of NDIS participants and the NDIS market continue to evolve and the NDIS Commission must ensure its regulatory tools meet the needs of the contemporary market.

Consultation Outcomes

The NDIS Commission anticipates the consultation process will be well progressed by the end of 2024. The NDIS Commission intends to provide information publicly about consultation outcomes and next steps towards the end of 2024.

Consultation questions

1. Proposed new structure for the NDIS Practice Standards

We have heard in previous discussions with providers that guidance and practice examples would support NDIS providers and NDIS workers to understand how they can provide higher quality and safer supports. We have heard from people with disability that they want supports that are truly person centred and human rights focused.

We propose:

- a. The new NDIS Practice Standards will continue to have a strong participant human rights lens.
- b. There will be a shift from, 'service outcome,' to, 'participant outcome.' This is consistent with the standards of other similar regulators like the Care and Quality Commission in the United Kingdom and the Aged Care Quality and Safety Commission.
- c. There will continue to be a series of quality indicators that identify examples of elements which can be measured to demonstrate actions taken to achieve the participant statement.
- d. For higher risk support types like in-home supports in a group arrangement, the NDIS Commission will develop practice guidance giving workers, providers, and people with disability insight into what 'good' looks like from a practice perspective.

Questions for Discussion

Q 1. How can we best centre participants in future NDIS Practice Standards?

Q 2. What are your views on the proposed new structure for the NDIS Practice Standards?

Q.3 What might measurement of quality indicators look like?

Q.4 What is the best way to provide guidance to workers and providers about what good looks like?

2. Proposed approach to In Home Supports in a Group Arrangement and NDIS Practice Standards

The NDIS Review and the NDIS Provider and Worker Registration Taskforce both recommended registration for IHSGA.

The NDIS Commission recognises that providers, workers and participants are experiencing much change in the NDIS market. We know improving the quality of services often carries additional financial and time costs for registered providers. The OMI and the NDIS Provider Registration Taskforce Report have both shown regulatory frameworks must be strengthened to ensure NDIS participants living in IHSGA are able to fully exercise their human rights.

What people with disability have told us

In late 2023 the NDIS Commission spoke to 120 people with disability living in supported accommodation delivered by six of the seven providers who were subjects of the Own Motion Inquiry.

This is what NDIS participants wanted NDIS Practice Standards for IHSGA achieve:

- Supports should be **participant centred and tailored** to personal goals, needs, preferences and values rather than determined (or unduly influenced) by the service environment.
- Providers should focus their attention on an approach to service delivery that is **centred on the human rights of people with disability**. This includes actively integrating supported decision making into daily living.
- Active support should ensure participants who live in group settings are supported to experience a **harmonious house dynamic**. This would include placing a participant's right to choose where they live and who they want to live with at the centre of service delivery.
- The **privacy of participants**, including those living in group settings, is respected and considered.
- Providers engage workers that are **appropriately trained and assessed as suitable** to deliver services to participants in a home environment. Providers actively engage with participants to ensure their workers are a good fit.
- Providers' consideration of **participant and worker safety is paramount**. Providers understand safe and supportive home environments are central to capacity building and quality service delivery.

Questions for Discussion

Q 1. The core elements NDIS participants want Practice Standards for IHSGA to achieve align with some of the NDIS Practice Standards in the Core Module (for example, Person Centred Supports, Privacy and Dignity, Responsive Service Provision). What are the blockers to the practical application of these elements in IHSGA?

Q 2. How can the NDIS Commission best support the sector to drive high quality, safe, and responsive services to people with disability who live in dwellings with shared supports?

Q 3. What good practice practical steps or strategies has your organisation got in place to ensure the safety and wellbeing of people with disability living in dwellings where they share supports?

Q 4. How can Practice Standards in IHSGA best interact with the audit process to ensure quality supports and services?

3. Proposed approach to separation of housing and living supports

People with disability have the right to make decisions and exercise choice over their living arrangements including where, when and by whom housing and living supports are provided. There should be no conflicts of interest that limit or influence this choice.

Advocacy, discussion, review and recommendations have long spoken of the need to separate the provision of housing and living supports to ensure the rights of participants are upheld, choice and control is maintained, and provider conflicts of interest are addressed. The focus of this consultation discussion is on issues related to where a single provider delivers both SDA and living supports to the same NDIS participant.

An important focus of the separation is upholding the rights of participants. Article 19 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) recognises the right of people with disability to have freedom of choice regarding their living arrangements. Enabling people with disability to exercise choice and control over their supports is also a core principle of the *NDIS Act 2013* and a requirement under the NDIS Practice Standards.

The Disability Royal Commission, NDIS Review and other recent inquiries have raised concerns with the provision of housing and living supports by the same provider, particularly in cases where these supports are delivered to the same NDIS participant. A conflict of interest exists in these situations and a power imbalance arises which can negatively impact on participants' choice and control over supports. Conflicts of interest can also compromise support quality and may impact the quality or appropriateness of supports recommended or provided to participants. This can lead to poor participant outcomes, reduce tailored and individualised services, and heighten risks of violence, abuse and neglect.

The NDIS Practice Standards include the requirement for SDA providers to proactively manage and document perceived or actual conflicts of interest. The NDIS Code of Conduct also requires both registered and unregistered to action with integrity, honest and transparency, which includes declaring and avoiding any real or perceived conflicts of interest.

This current approach to managing conflicts of interest, rather than avoiding, has attracted widespread criticism amongst the disability community. Significant concern has been expressed in relation to having reduced choice in the way supports are delivered, being locked into a specific type of support and conflicts of interest issues.

Recommendations from the Disability Royal Commission and NDIS Review have focused on transitioning away from allowing the same provider to provide SDA and living supports. These reports have called for stronger standards and independence to increase quality, remove the conflict of interest, ensure participants are able to exercise genuine choice and control and receive quality supports.

The separation of housing and living supports promotes a rights-based approach and will empower participants to exercise genuine choice and control over their housing and living supports and ensure housing supports are not compromised due to changes in living supports. Separation also encourages specialisation and expertise in housing or living support provision which can lead to improved quality of supports.

There may be exceptional circumstances where separation of these supports may not be possible. The Disability Royal Commission and NDIS Review considered exceptional circumstances may include rural and remote areas where there is a shortage of providers, or where there may be cultural arrangements that make separation of housing and living supports inappropriate.

There may also be situations where a participant may want the same provider for multiple services, based on their needs and preferences. It is critical to ensure participants have access to clear information about their options and the implications of different arrangements, as well as access to appropriate supported decision-making supports and processes where relevant to support choice. The challenge is ensuring that the participant has truly made an informed choice and is able to exercise choice to their home and living arrangements.

We are considering options to achieve separation of housing and living supports. This consultation will be the first of many discussions on the approach required for the separation.

Option 1 – Provider level change

Recommendation	Option	Alignment with government policy intention
<p>Recommendation 7.41(a), DRC: Group home reform – transition away from same provider offering SIL and SDA</p> <p>Action 9.7, NDIS Review: Strengthen regulation of SDA and mandate separate of SIL and SDA</p> <p>Answers all recommendations</p>	<p>Provider level change:</p> <p>Changes to Rules which preclude providers being registered to provide both housing and living supports.</p>	<ul style="list-style-type: none"> • Would address conflict of interest. • Changes aim to ensure a participant centred approach. • Changes to registration can be monitored and enforced. • Does not capture participants receiving SIL and residing in a non-SDA homes rented or owned by the same SIL provider – the SIL homes issue will continue to grow.

Option 2 – Participant level change

Recommendation	Option	Alignment with government policy intention
<p>Rec 7.41(a), DRC: Group home reform – transition away from same provider offering SIL and SDA</p> <p>Action 9.7, NDIS Review: Strengthen regulation of SDA and mandate separate of SIL and SDA</p> <p>Answers some recommendations</p>	<p>Participant level change:</p> <p>Changes to Rules which preclude providers providing both housing and living support to the same participant.</p>	<ul style="list-style-type: none"> • Would address conflict of interest • Changes aim to ensure a participant centred approach. • Does not capture participants receiving SIL and residing in a non-SDA homes rented or owned by the same SIL provider – the SIL homes issue will continue to grow.

Option 3 – Changes to managing conflict of Interests

Recommendation	Option	Alignment with government policy intention
<p>Rec 7.41(a), DRC: Group home reform – transition away from same provider offering SIL and SDA</p> <p>Action 9.7, NDIS Review: Strengthen regulation of SDA and mandate separate of SIL and SDA</p> <p>Does not significantly answer recommendations</p>	<p>Changes to strengthen conflict of interest arrangements when providers deliver both housing and living support to the same participant.</p>	<ul style="list-style-type: none"> • Does not meet intention of the recommendations to separate SIL and SDA. • Does little to strengthen safeguarding for participants. • Does not capture participants receiving SIL and residing in a non-SDA homes rented or owned by the same SIL provider – the SIL homes issue will continue to grow.

Questions for Discussion

Q1. How would these options impact people's housing and living choices? Are there other ways to separate these supports?

Q2. Should there be exceptions in some cases? How can we protect people's rights and choices in these situations?

Q3. How can we make this change smoothly? What should we do to:

Give people and providers the information they need

Support everyone involved

Reduce risks

Respect what people and providers want?