**SDA Related Documentation 1 May 2020**

NDIS Participants living in shared accommodation in an enrolled SDA property will typically have SIL funding paid to their SIL Provider under their individual SIL Provider Agreement. The Participants will also have individual SDA Service Agreements with their SDA Provider as well as a Lease Agreement with the SDA Provider.

The Participants will also have individual SDA Service Agreements with their SDA Provider as well as a Lease Agreement with their SDA Provider.

The Participants will be tenants in common in the Lease Agreement. Terms of the Lease Agreement will typically be similar to those in a standard lease agreement. However, rent must be capped at Reasonable Rent Contribution (RRC) and the term of the lease is likely to be substantially longer than for a typical lease. The Lease Agreement should provide comfort to Participants that they will be able to live at the SDA property for an extended period.



Lease Agreement

In general, a lease is an agreement between the landlord and the tenants. Standard tenancy agreements name the landlord and tenant and specify the periodic (usually weekly, fortnightly or monthly) rent payable for the nominated term of the lease (often 12 months) with options to extend at a varied amount of rent per period. The landlord gives the tenant the right to occupy the property under nominated conditions.

The tenancy agreement for an SDA property is likely to be a standard tenancy agreement varied as follows:

1. Maximum rent payable for SDA Participants is the Reasonable Rent Contribution (RRC). RRC = 25% of Participant’s DSP (plus other personal income if any) plus Commonwealth Rental Assistance (if applicable). For Participants aged 21 years or over, this is $358.18 per Participant per fortnight or $9,312.55 per annum. RRC is expected to increase annually with CPI.

RRC is per Resident rather than per Residence. Market rent for the residence will vary with location and size and quality of the property. RRC is typically less than market rent. The shortfall will be greater with less residents.

1. In addition to RRC under the Lease Agreement, SDA Participants agree to direct NDIS to pay SDA payments to the SDA Provider.
2. The tenure of the agreement is likely to be long term (e.g. 20 years or more) and conditions and notice periods to terminate the lease are likely to be substantially longer than for a standard lease agreement.
3. The Participants must have entered into Service Agreements with their SIL Provider.
4. Ownership of nominated furniture, fixtures and fittings and obligation to purchase and maintain may differ from a standard lease agreement.
5. Under a standard lease agreement, the tenants lodge a bond with Rental Bond Board. This is likely to be varied for an SDA lease.

Service Agreements

NDIA has provided a Model Service Agreement showing what needs to be included in Service Agreements.

Under the SIL Service Agreement, the SIL Provider provides supports for the Participants in exchange for receiving SIL funding.

Under the SDA Service Agreement, the SDA Provider provides accommodation in an enrolled SDA property in exchange for receiving SDA funding as well as RRC.

To be enrolled the property must be certified as complying with SDA Design Standards.

Each Participant has **choice and control** to change Service Providers.

The SDA Provider is responsible for the following financial risks:

* + - 1. cost of acquiring the land
      2. cost of building the dwelling and getting it enrolled including cost overrun
      3. loss in market value of the property
      4. financing costs
      5. taxes, and
      6. Council rates and fees.

The SDA Provider may agree for Participants or other parties to have Shared Equity in the SDA Home or to provide finance or credit support to the SDA Provider. If so, the arrangements and any changes to those arrangements should be clearly documented and made available to the Participants or Participant Representatives as well as the SIL Provider and NDIA.

Theoretically, the Participants sharing the same SDA property could have different SIL Providers but in practice they have to have the same SIL Provider.

Both the SIL Provider and the SDA Provider are required to comply with NDIS Quality and Safeguards Practice Standards.

SIL and SDA cannot be in the family home.

Participants are required to have **choice and control** over with whom they live. Consideration is being given to what financial arrangements will apply if, for example, a Participant wishes to live with one or more family members or friends with different types of disability or no disability at all. Such financial arrangements need to be satisfactory from the SDA Provider’s perspective. Such arrangements and how they might change should be clearly explained in the SDA Service Provider Agreement and the SIL Provider Service Agreement.

Before NDIS, the Accommodation Provider and Service Provider were usually the same organisation. Often, this was a government agency. The separation of SDA Provider from SIL Provider, means there needs to be an agreement between the SIL Provider and the SDA Provider, that sets out their roles and responsibilities and any related terms.

One of the objectives of the SDA scheme is to lead to savings in operating costs:

* Better designed buildings should require less staffing;
* Installing power saving devices such as solar cells, will reduce electricity bills;
* Using robust materials, will reduce reactive maintenance costs, etc.

SIL Providers will enjoy lower costs if SDA Providers spend more money on the buildings.

SIL Providers will also pay less rent to SDA Providers than they would pay on the open market because RRC will be materially less than market rent.

Arguably, SIL Providers should be willing to compensate SDA Providers for spending money on the build costs that will produce economies for SIL Providers.

NDIS Quality and Safeguarding Commission requires both SIL Providers and SDA Providers to adopt and adhere to various Policies and Procedures including but not limited to:

* Restrictive Practices
* Workplace Health & Safety
* Risk Management

Hopefully, the SIL Provider and SDA Provider will co-operate in assuring compliance with such policies and procedures. SDA Providers should be allowed to outsource responsibility for this to the SIL provider without abdicating responsibility. Arguably, SDA Providers should be willing to compensate SIL Providers for this.

The agreement between the SIL Provider and SDA Provider should address the following issues:

1. Occupation Risk

SDA payments commence from the time the Participant moves into the SDA property.

There is likely to be time between the date on which the SDA property is enrolled as certified and the tenants take up residence. It is possible that Participants will transition into the SDA property at different times.

The SIL Provider will manage the transition of Participants into the SDA property. The SDA Provider carries the “occupancy” risk. The SIL Provider and the SDA Provider should agree on a transition plan.

1. Vacancy Risk

The SIL Provider and the SDA Provider both carry vacancy risk between when a Participant moves out of the SDA property and another Participant moves in. The SIL Provider carries vacancy risk for the Participant’s SIL funding. The SDA Provider carries vacancy risk for the Participant’s RRC and SDA funding.

Depending on staffing ratios and support needs of the Participant, SIL funding is likely to be in the order of $200,000+ per annum. Depending on the design category, number of residents and location, SDA funding is likely to be in the order of $30,000 per annum. RRC is likely to be in the order of $9,000 per annum.

1. Furniture, Equipment, Fixtures and Fittings

Under a standard lease agreement, the landlord owns and is responsible for repair of fixtures and fittings and the tenants own and are responsible for furniture and personal items. The SDA property may include special furniture, fixtures and fittings to meet the needs of Participants or to comply with SDA Design Guidelines.

Special fixtures and fittings includes items such as ramps, lifts, grab rails, adjustable bench heights, strengthened materials, hoists, built in cupboards, strengthened glass and protective covering of windows and electrical appliances, locking and closing devices for doors and drawers, handles, taps, fixed shudders etc. The SDA Provider will be responsible for installation and maintenance of special fixtures.

Special furniture and equipment includes items such as beds, wheelchairs, tables, desks and chairs, sofas, computers, televisions, printers, refrigerators, heaters, fans, washing and drying machines, blinds and curtains etc. The Participants will be responsible for purchase and replacement of special furniture and equipment.

There should be a register included in the relevant agreements listing all furniture, equipment, fixtures and fittings that shows who owns and is responsible for which items.

1. Reactive Maintenance

Routine maintenance means cost of repairs and maintenance that would normally be covered by the landlord in a standard lease agreement. The SDA Provider will be responsible for routine maintenance.

Reactive Maintenance means cost to repair damage caused by tenants.

The various agreements should assign responsibility for reactive maintenance.

Should a bond be held by Rental Bond Board?

1. Modifications

Modifications may be made to the SDA property after it has been enrolled.

If they are made so that the property complies with changing Design Standards or changing needs of the residents (including new Participants), the SDA Provider will carry the cost of modifications. Modifications that are outside of SDA Design Standards (e.g. installing a spa) will be for the cost of the Participant.

1. Keys

The SDA Provider will be responsible for installing locks that are keyed alike (probably electronically) and providing two sets of keys and keeping one. The SIL Provider will be responsible for getting extra keys cut so that as many participants, employees and family members as desired can have keys. The SIL Provider will not have locks changed without agreement from the SDA Provider.

1. Cleaning

The SIL Provider will be responsible for keeping the property (building and grounds) clean.

This includes cleaning carpets. However, the SDA Provider will be responsible for replacing

carpets etc. when required through reasonable wear and tear.

1. Pest Control

The SIL Provider will be responsible for the cost of pest control.

1. Swimming Pool

If there is a swimming pool, this will be the responsibility of the SIL Provider.

1. Heating, Air Conditioning, Solar Panels

The SDA Provider will be responsible for the installation and maintenance of heating, air conditioning and solar panels.

1. Utilities

The SDA Provider will be responsible for arranging connection of electricity, gas, water etc. to the building. The SIL Provider will be responsible for payment for use of such services.

1. Television and Internet

The SIL Provider will be responsible for installation and payments for services and maintenance of telephone, internet, WiFi, cable television and streaming services.

1. Fire Safety and Emergency Evacuation Procedures

The SDA Provider will be responsible for installation of fire sprinklers, fire hydrants, and display of a Plan for Evacuation in emergencies.

The SIL Provider will be responsible for replacing fire hydrants when past expiry date and for training and conducting safety drills so staff and Participants know what to do in the event of an emergency.

1. Restrictive Practices

When Restrictive Practices (RP) are used within the House, both SIL Provider and SDA Provider are required to:

(1) obtain consent from the Participant’s Representative,

(2) convene a meeting of a RP Panel to approve the practice and

(3) report to FACS.

If the design of the dwelling includes installing locks to which Participants will not have access, that constitutes a RP. The agreement between SIL Provider and SDA Provider should cover the responsibility. It is suggested that the SIL Provider would carry responsibility but should advice the SDA Provider that the duties to comply with RP have been carried out or reported.

1. Workplace Health & Safety

Both SIL Provider and SDA Provider are required to have policies and procedures regarding WH&S and to ensure that those policies and procedures are implemented.

It is suggested that the SIL Provider would carry responsibility but should advice the SDA Provider that/when WH&S procedures are followed (or not followed).

1. Insurance

Public Liability insurance is the responsibility of the SDA Provider.

Personal Indemnity insurance is the responsibility of the SIL Provider.

Insurance of the Building is the responsibility of the SDA Provider.

Workers Compensation insurance is the responsibility of the employer.

Insurance of Home Contents and/or Directors and Officers insurance will be taken out (or not) at the discretion of the SIL Provider.

CTP insurance is the responsibility of the SIL Provider.

1. Rates and Taxes

The SDA Provider will be responsible for rates and fees payable to Council or State authorities unless agreed otherwise with the SIL Provider.

1. Financial Support

In some cases, the SIL Provider may provide financial support to the SDA Provider. This could be in the form of a loan to help the SDA Provider manage its cash flows. If so, financial terms should be clearly set out in the SIL/SDA agreement.

1. Termination

Each Participant has **choice and control** to change Service Providers.

The SIL Service Agreement should specify the period of notice that Participants are required to give the SIL Provider if one or more Participants wish to change SIL Providers.

The SIL Service Agreement should also specify the period of notice that the Provider is required to give the Participants if it wishes to terminate the Service Provider Agreement.

The SDA Service Agreement should specify the period of notice that Participants are required to give the SDA Provider if one or more Participants wish to change residences or SDA Providers.

The SDA Service Agreement should also specify the period of notice that the Provider is required to give the Participants if it wishes to relocate Participants to a different property or terminate the Service Provider Agreement. It is recommended that the minimum notice period should be at least 12 months and that reallocation will be conditional on agreement by Participants or their Participant Representatives.

The SIL Provider and the SDA Provider should agree on a transition plan when a Participant is moving out from the SDA home.

(ii) rent if resident Participants have been approved as eligible for different SDA Design categories.

SDA Framework implicitly assumes that all residents have SDA for same Design Category.

It is possible for NDIS Participants cohabitating an SDA residence have different SDA eligibility. For example, there may be three resident Participants – one deemed eligible for High Physical Support, one for Robust and the other not eligible for SDA. The SDA payments will differ for each Participant but all three will pay rent equal to the RRC. Total SDA payments for the property may be insufficient to cover the costs of the SDA Provider with a reasonable return. If so, additional arrangements will need to be put in place between the non-SDA Participants and the SDA Provider.

If one or more Participants is under 21 years of age or has other personal income, their RRCs may differ.

(iii) rent if one or more residents are not NDIS Participants. NDIS Participants may choose to live with people (family or friends) that are not NDIS Participants. In this case, the residents that are not NDIS Participants will not receive SDA payments or DSP. If so, additional arrangements will need to be put in place between the non-SDA Participants and the SDA Provider. Parties to the lease agreement may agree to pay total rent equal to market rent by the resident non-NDIS Participants, paying the difference between market rent and RRC for the resident NDIS Participants.

Under SILC’s model, there is a House Operator. Under the House Specific attachment to the House Operator Agreement, the House Operator must accept responsibility for:

* Vacancy risk
* Furniture, fixtures and fittings
* Reactive maintenance
* Keys
* Cleaning
* Pest control
* Swimming pool
* Utilities
* Television and internet
* Replacing fire hydrants and conducting safety drills
* Financial support in addition to SDA + RRC (if any)

Steve Anthony

pro bono CEO SILC