Legislation.ref

**Australian Dual Diagnosis Recovery Network Inc. ABN 838300123570 Prov. 4050005828 SDA # 4-3LLK-2321**

The Australian Dual Diagnosis Recovery Network Inc. is a registered provider of Specialist Disability Accommodation (SDA) (Reg. # 4-3LLK-2321) and as such has requested that the NDIA provides the appropriate payment (from 01/07/2016) for providing Vincenzo Filardo, NDIS participant, ref # 430127366, his request for residency at apartment # 1/35 Godber Road Diamond Creek, 3089

The Respondent, National Disability Insurance Agency (NDIA) has refused our payment requests.

**Vincenzo’s decided to continue on living in his DHHS supported disability accommodation (SDA) dwelling which concurred with the NDIS Act 2013 SDA Rules 2016 section 4.11**

**The ADDRNI’s request has been made according to the following: -**

**1. Ref. F2020L00769ES**

 **Part 5 – Transitional, savings and application provisions**

**Division 1 – National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020**

**2.Ref. Schedule 1 Amendments**

**3. NDIS Act 2013 SDA Rules 2016 Sect 4.11**

**4. OG SDA DOCS**

**4. NDIS Pricing Arrangements**

**5. NDIS Planner’s letter 28 August 2018**

**6. As well as other relevant Specialist Disability Accommodation (SDA) information.**

**ATTACH 1**

**Ref. F2020L00769ES**

**Part 5 – Transitional, savings and application provisions**

**Division 1 – National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020**

* **Section 40 applies where an action took place under the “SDA Rules 2016 as in force immediately before those rules were repealed” and the same action could take place under this instrument for the same purpose.**
* **Where this section applies, the CEO has discretionary power to accept the action as done for that purpose under this instrument, or to accept the action as done, subject to the completion of additional matters.**
* **For example, if under the SDA Rules 2016 the CEO had determined that the participant could reside in a dwelling that was not what they had been determined eligible for, the CEO may under this instrument determine that the participant may continue to reside in that dwelling.**
* **It is not intended that this provision will be exercised by the CEO to alter or amend a previous decision that was made under the SDA Rules 2016 including where an eligible participant is currently residing.**

**ATTACH 2**

**Explanation of the provisions.**

**Schedule 1 - Amendments**

**Item 12 – Section 4.11**

**Item 12 amends paragraph 4.11 to clarify that**

**the purpose of determining a participant’s current dwelling under paragraph 4.11 is to ensure that**

**they can be funded for SDA while residing in their current enrolled SDA property.**

**ATTACH 3**

**NATIONAL DISABILITY INSURANCE SCHEME ACT 2013**

**SPECIALIST DISABILITY ACCOMMODATION RULES 2016 SECTION 4.11**

Participants already residing in SDA who wish to stay there

Sect. 4.11 If a participant is:

currently residing in SDA (whether or not it is of the appropriate SDA type or in the appropriate location determined for the participant under paragraphs 4.3-4.9) because:

the participant was residing there before any determination was made under this Part in relation to the participant; or

the participant moved there in accordance with an earlier determination under this Part; and

the participant wishes to continue to reside there for a period of time; then

the dwelling in which the participant currently resides may be determined for the participant so that the participant can continue to reside there.

**ATTACH 4**

**NDIS Pricing arrangement for SDA 2021-2022**

## Relatives of participants who provide SDA

1. The Gifts, Benefits and Commissions requirements in the Terms of Business for Registered Providers do not apply to a Registered Provider of SDA who provides SDA to a participant who is also a family member.
2. **In these cases, registered providers of SDA may have a financial or other personal interest directly or indirectly related to the benefit they receive from providing SDA.**
3. Registered Providers of SDA who are providing SDA to a family member must not compromise the participant’s choice of SDA or other supports.

**ATTACH 5**

**Ref. OG SDA DOCS**

### **How do you get funding to keep living in SDA?**

If you already live in SDA, then you don’t need your eligibility tested again.

But if you currently live in Basic SDA, we’ll work out a design category, building type, and location in your plan that’s best for you.

We’ll ask you to confirm if you want to stay in your current home, or if you’re thinking about moving.

If you want to move into another home, we’ll make a decision on what is reasonable and necessary to fund. We look at your needs if you want to move into something more expensive or a place with different features.

Once SDA is in your plan, it won’t be removed unless you request this (or in some very rare circumstances). But the amount of money funded in each plan may change based on your needs.

 **ATTACH 6 Ref. Specialist Disability Accommodation pricing and Payment Framework**

**Part 3. For whom in what circumstances.**

**Participants for whom specialist disability accommodation is reasonable and necessary.**

60. The NDIS will support specialist disability accommodation, including for: - a) \*participants in existing supported accommodation, such as group homes, large residential centres, cluster or village-based accommodation. \*Including participants with psycho-social disability.

61. Funding to support participants who require specialist disability accommodation will be available, if it is reasonable and necessary, for: - a) participants who are currently in specialist supported accommodation and wish to stay there.

62. People residing in supported accommodation have already established, through State processes, a need for reasonable and necessary based supports, but this requires confirmation by the NDIA. It is envisaged that at a minimum, funding for specialist disability accommodation will fund current clients in the existing stock of supported accommodation.

**ATTACH 7**

**Ref. 97-109a098**

 498ZZZR Offence to persuade person not to exercise rights or take proceedings

**A person must not, in relation to an SDA residency agreement, a proposed SDA residency agreement or a right under this Part, by threat or intimidation persuade or attempt to persuade a party to the SDA residency agreement or proposed SDA residency agreement not to exercise their rights to take or continue proceedings under this Part.**

**Penalty: 300 penalty units in the case of a natural person;**

**750 penalty units in the case of a body corporate.**

**ATTACH 8**

Ref. 97-109a098

507 Onus of proof that the Act does not apply

**If, in any proceedings, a person claims that this Act, or a provision of this Act, does not apply in relation to the subject-matter of the proceedings, the onus of proving that this Act or that provision does not so apply lies on that person.**