



## **How to guide: Reporting SDA Scams and Misleading Advertisements**

The SDA market is a private investment market. Whilst regulated, there have been instances of scams and misleading, deceptive and inappropriate advertising of financial products that relate to SDA. The purpose of this document is to outline why this is a problem, who is responsible for regulating SDA and financial products, and what you can do to report the inappropriate advertisements.

### **Why is this a problem?**

The SDA market is a regulated private investment market, the success of which is built on innovation, quality, trust, and transparency. Scams and misleading advertising are a significant problem for the SDA market for two main reasons:

- 1. Reputation of the SDA market** – A strong, positive reputation is paramount for the ongoing success of the SDA market. Inappropriate and misleading advertising inevitably leads to negative outcomes for investors, Participants, SDA Providers and other stakeholders. This ultimately diminishes the true value of SDA.
- 2. Diminished availability of high-quality SDA** - As a developing niche market, investors, at all levels including retail, wholesale and institutional, will rely on publicly available information to drive their decision making. As more scams are uncovered, it is likely that this will attract negative media attention. This will likely detract overall SDA investor appetite, resulting in a reduced pool of private capital to help develop new SDA stock.

Without the appropriate safeguards, the market will fail to deliver on its purpose of delivering high quality SDA for NDIS Participants.

### **Who regulates the financial products such as SDA investments?**

Australian Securities and Investments Commission (ASIC) is Australia's integrated corporate, markets, financial services and consumer credit regulator.

Following the COVID-19 pandemic, there was a noticeable increase in inappropriate financial products being advertised online. As such, ASIC setup a cross-team advertising working group focused on two areas:

1. Looking for advertisements that are misleading or deceptive; and
2. Looking for organisations that help identify products or services which are unsuitable or inappropriate and may be seeking to exploit people in the current environment.

ASIC is monitoring advertising of a wide range of products and services across a broad range of media, including social media, using a mix of traditional and innovative Regulatory Technology monitoring tools.

In November 2012, ASIC released a guidance note, which outlines good practice guidance to help promoters comply with their legal obligations not to make false or misleading statements or engage in misleading or deceptive conduct.<sup>1</sup>

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<sup>1</sup> [ASIC \(2012\) - Advertising financial products and services](#) (including credit): Good practice guidance




This document also outlines the legislative provisions on misleading or deceptive advertising. Whilst not an exhaustive list, two legislative provisions relevant to the SDA market are outlined in the table below.

Table 1 – Sample of legislative provisions on misleading or deceptive advertising

Description of conduct	Reference	Penalties and other remedies
Making statements that are materially false or materially misleading and are likely to induce consumers to apply for financial products in circumstances where the promoter does not care whether the statement is true or false, or knows, or ought reasonably to have known, that the statement is false. Contravention of this provision is an offence.	s1041E, Corporations Act	<ul style="list-style-type: none"> <li>• Imprisonment (maximum 10 years)</li> <li>• Fine</li> <li>• Compensation (s1041I)</li> <li>• Injunction (s1324)</li> <li>• Other orders</li> </ul>
Inducing a person to deal in financial products by publishing a statement that is misleading, false or deceptive or by dishonestly concealing facts.	s1041F, Corporations Act	<ul style="list-style-type: none"> <li>• Imprisonment (maximum 10 years)</li> <li>• Fine</li> <li>• Compensation (s1041I)</li> <li>• Injunction (s1324)</li> <li>• Other orders</li> </ul>

**Inappropriate advertising example**

The below figure outlines a fictional example of a potential scam or misleading advertisement for an SDA investment product. The figure highlights some of the common phrases seen in these types of advertisements.




**XYZ Investors Aus**

XYZ Investors are pleased to present a once in a life investment opportunity. This investment will not only produce amazing, guaranteed investment returns, but also support disabled Australians.

**What is SDA?**  
SDA is a government backed income stream that allows investors to earn a return through an investment in disability housing.

**Who is XYZ Investors?**  
XYZ investors partners with approved NDIA developers and care providers to help build the next generation of SDA homes. These partnerships help us guarantee your investment returns.

**More information?**  
Contact John Smith  
0412 345 678  
john.smith@xyzinvestors.com.au



Guaranteed 10% returns per annum, paid monthly

Guaranteed availability of full capital redemption after 3 years

Coupon payments throughout construction

10 year lease already identified with optional extensions

⊗ Key phrases to look for in a misleading advertisement

There is no such thing as NDIA approved developers

There are no risk-free returns in SDA

There is no guarantee of asset returns or appreciation

Participant agreements are not signed until a dwelling has been enrolled



### **Who should it be reported to?**

No matter how big or small, any form of scam or misleading advertisement should be reported. If you see a misleading advertisement or scam relating to SDA, you should report this as per the below:

- Scams should be reported to ASIC: <https://asic.gov.au/about-asic/contact-us/complaints-about-companies-organisations-or-people/scams/>
- Misleading advertisements should be reported to the Australian Competition and Consumer Commission (ACCC): <https://www.accc.gov.au/about-us/contact-us/report-a-consumer-issue>
- Scams or misleading advertising that you believe may result in a breach of NDIS Quality & Safeguarding requirements. For example, report to the NDIS Commission (<https://www.ndiscommission.gov.au/contact-us/makeacomplaint>) if you are concerned that a scam or misleading advertisement may:
  - Breach provider registration requirements
  - Breach the Code of Conduct
  - Present any risk to participant safety, privacy, rights, etc.

Once you have formally reported the scam or misleading advertising, please forward a copy of your report/s to the SDA Alliance ([info@sdaalliance.org.au](mailto:info@sdaalliance.org.au)). Please note the SDA Alliance generally uses this information purely for market monitoring and broader systemic advocacy purposes. The SDA Alliance may not take specific action in response to your individual report of a scam or misleading advertising. Therefore, it is essential that you also report this to the relevant regulator identified above.

### **What should you include in your report?**

In your report to the relevant regulator of the scam or misleading advertisement, be specific, providing:

- A link to the relevant scam or misleading advertisement, or screenshot or attachment of collateral.
- An explanation outlining in lay terms why you believe it is a scam and/or highlighting misleading statements specifically and explaining why they are false/misleading.
- If you are not making the report anonymously, contact details of the relevant person in your organisation that the regulator can contact for further clarification if they choose to take action in response to your report.
- After you have completed your report to the regulator, please forward your report to the SDA Alliance also.