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| SDA – Residential arrangements under the Residential Tenancies Act |
| Factsheet for disability service providers and SDA providers  April 2021 |
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## SDA in Victoria

#### Registered NDIS providers must meet NDIS Standards

Following transition to the National Disability Insurance Scheme (NDIS), states and territories remain responsible for the residential rights of people living in Specialist Disability Accommodation (SDA).

The NDIS Practice Standards for Specialist Disability Accommodation (SDA) specify that registered NDIS providers must meet the requirements of the National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rules 2020, and any applicable state or territory residential renting legislation. This particularly applies to service agreements and notices under state and territory renting law.

SDA providers must ensure appropriate Victorian residential rights protections are in place for all residents of their SDA. Refusal to provide appropriate safeguards should be reported to the NDIS Quality and Safeguards Commission.

#### Residential protections for SDA residents under the *Residential Tenancies Act 1997*

To enable strengthened protections for SDA residents, the Victorian Government updated the ***Residential Tenancies Act 1997* (RTA**) by creating tailored SDA provisions under the new Part 12A.

These provisions continue the existing safeguards provided under the *Disability Act 2006* for residents of disability residential services and strengthen those protections while aligning with mainstream renting rights and protections for the rest of the community.

Part 12A has been designed to mirror many of the mainstream rights and duties of rental providers and renters under Part 2 of the RTA, with a range of additional protections for residents against eviction and exploitation. Compared to a standard rental agreement, an SDA residency agreement offers additional protections, including safeguards against eviction and rent increases.

#### Interim arrangements during transition to SDA

Prior to Victoria’s transition to the NDIS from 1 July 2019, residential rights of people living in disability residential services were protected under the Disability Act.

Delays have occurred for people in accessing SDA funding in their NDIS plans, and in providers enrolling properties as SDA enrolled dwellings. This has meant that not all existing residents of disability group homes or new residents entering the service system have been able to transition to and establish SDA residency agreements under Part 12A of the RTA.

To ensure that the rights of people living in SDA continue to be protected and not diminished while they wait to transition to the new SDA arrangements, the Government has maintained residential rights under the Disability Act through the gazettal of group homes under Part 5, Division 2 where disability service providers are currently registered under the Disability Act.

This is a short-term arrangement and providers of SDA must take necessary action to ensure residents of SDA properties have appropriate residential rights and protections under the RTA.

#### Registration

As their Disability Act registration lapses, providers can be re-registered if the residents of houses they manage cannot yet move to SDA arrangements under the RTA. This enables providers to continue to issue residents with residential statements and the protections provided under Part 5 of the Disability Act.

Only existing disability service providers can seek re-registration if residents are not ready to transition to SDA residency agreements. New providers cannot seek Disability Act registration unless they are providing other state funded services.

Some providers will need to maintain registration if a resident is subject to a Supervised Treatment Order (STO) and they have not transitioned to Part 12A agreement under the RTA. This is because a registered NDIS provider cannot implement an STO in a gazetted property. These properties should be identified as a priority for transition to the RTA.

As residents and households transition to SDA, Disability Act registration will be revoked unless service providers are providing other state funded services under the Disability Act.

#### Residential agreements available under current arrangements:

* A residential statement under Part 5 of the Disability Act for currently gazetted group homes or other state funded disability residential services, such as Specialist Forensic Disability Services.
* An SDA residency agreement under Part 12A of the RTA – provides mainstream and strengthened protections for residents of SDA – individual agreements for each resident in a household.
* A residential rental agreement under Part 2 of the RTA – suitable for mainstream rental arrangements provided in SDA where residents have chosen to live with friends or relatives – one agreement for one household. This includes short-term rental agreements (5 years or less) and long-term rental agreements (more than 5 years).

Only one form of agreement can apply to a household at any given time.

#### Role of Consumer Affairs Victoria

Consumer Affairs Victoria (CAV) within the Department of Justice and Community Safety regulates the provision of SDA under the RTA including:

* ensuring SDA is provided in accordance with the requirements of the RTA
* informing SDA residents and providers of their rights and obligations under the RTA
* providing forms and notices for SDA, including the SDA residency agreement and Information Statement
* providing information in an accessible format that SDA residents can understand
* investigating and conciliating complaints and disputes
* maintaining a list of SDA residency agreements to identify properties that are visitable by Community Visitors- *Note:* Community Visitors have the right to visit an SDA enrolled dwelling provided under an SDA residency agreement at any time and without notice, and to exercise powers of inspection.

### **Complaints about compliance with SDA residency agreements, rental agreements and Victorian** **rental laws**

Where there is evidence of non-compliance with Victorian renting laws, or where SDA providers and residents have attempted to resolve the problem and it remains unresolved, CAV may be able to assist conciliate the dispute.

Telephone: 1300 55 81 81, Monday to Friday (except public holidays) 9am to 5pm.

Website: [consumer.vic.gov.au](https://www.consumer.vic.gov.au/) <consumer.vic.gov.au>.

For more information visit the [Residential accommodation complaint page on Consumer Affairs Victoria website](https://www.consumer.vic.gov.au/contact-us/resolve-your-problem-or-complaint/when-we-get-involved-with-a-problem-or-complaint/residential-accommodation-complaint) <consumer.vic.gov.au/contact-us/resolve-your-problem-or-complaint/when-we-get-involved-with-a-problem-or-complaint/residential-accommodation-complaint>.

### **Notifying CAV about SDA residency agreements and other notices**

NDIS registered SDA providers **must** notify CAV as regulator under the RTA of all SDA residency agreements:

* entered into – where a resident can sign the SDA residency agreement independently with the provider or
* established – where a resident needs support to understand the SDA residency agreement (i.e. the resident does not sign the agreement).

An SDA provider must also notify CAV if they give a resident certain notices, and if a resident gives certain notices under the RTA.

For more information visit the [CAV website](https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/for-providers/notifying-us-of-sda-agreements-and-notices) <https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/for-providers/notifying-us-of-sda-agreements-and-notices>.

The following Table provides a snapshot of available options for residential rights protections.

Current provider registration status and residential agreement options

| Registration status | Residential statement under the Disability Act | SDA residency agreement under Part 12A of the RTA | Residential rental agreement under Part 2 of the RTA |
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| Dual registered –  Under the Disability Act and NDIS Act | Where not all residents in an SDA enrolled dwelling/group home have SDA in their plans and are therefore unable to transition to Part 12A of the RTA. | Where all residents in an SDA enrolled dwelling have SDA in their plans and can transition to Part 12A of the RTA.  Providers are required to register all SDA residency agreements entered into, or established, with CAV via the CAV website (details on page 6).  CAV provides this information to OPA for the purposes of the Community Visitors Program. | Not appropriate to offer residents in an SDA enrolled dwelling a standard rental agreement if they are not ready to transition to Part 12A of the RTA.  The department’s position is that Disability Act registration and gazettal (or re-gazettal) of group homes should be maintained to keep residential protections in place. |
| NDIS registered | N/A | Where dwellings are enrolled and all residents in a household have SDA in their plans and can therefore transition to Part 12A of the RTA.  As above, all SDA residency agreements to be registered with CAV. | Where a resident chooses to live in an SDA property with a friend or relative, or on their own.  Generally, not an appropriate agreement for a group setting as one standard rental agreement covers the whole household and provides exclusive occupancy to each of the co‑renters listed on the agreement.  Compared to a standard rental agreement, an SDA residency agreement offers additional protections for residents, including safeguards against eviction and rent increases. |
| NDIS registered – dwellings not SDA enrolled | N/A | N/A | As above, generally not appropriate.  Given the current limitations of the RTA definition requirements & the department policy position that new providers will not be registered, this option is the only option for people who are not covered by the Disability Act, Part 5 or RTA, Part 12A.  The rental agreement must be entered into and signed in the full understanding of:   * each of the co-renters listed on the rental agreement, or * the head renter, who is sub-letting the property to other renters with the written consent of the rental provider.   If the dwelling is not SDA enrolled, Community Visitors are able to attend the dwelling at the request of the renter or the renter’s representative. |
| No agreement in place in a dwelling | N/A | N/A | The default position under these circumstances is a Part 2 rental agreement.  The RTA requires that the agreement must be in the standard form prescribed under the RTA.  The rental agreement must be entered into and signed in the full understanding of:   * each of the co-renters listed on the rental agreement, or * the head renter, who is sub-letting the property to other renters with the written consent of the rental provider.   A renter can apply to VCAT for an order that the rental provider prepare and enter into a written rental agreement if:   * the rental provider and renter are subject to an existing rental agreement that is not in writing or that is only partly in writing, and * the renter is continuing in occupation of the rented premises after a previous fixed term rental agreement has ended. |

#### Useful links

**The NDIS website:**

[The NDIS Practice Standards](https://www.ndiscommission.gov.au/providers/ndis-practice-standards) for Specialist Disability Accommodation (SDA)

<www.ndiscommission.gov.au/providers/ndis-practice-standards>

[National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rules 2018](https://www.ndis.gov.au/providers/housing-and-living-supports-and-services/housing/specialist-disability-accommodation/sda-registration-and-dwelling-enrolment#sda-rules)

<www.ndis.gov.au/providers/housing-and-living-supports-and-services/housing/specialist-disability-accommodation/sda-registration-and-dwelling-enrolment#sda-rules>

**The Legislation Victoria website:**

[*Residential Tenancies Act 1997*](https://www.legislation.vic.gov.au/in-force/acts/residential-tenancies-act-1997/098)

<www.legislation.vic.gov.au/in-force/acts/residential-tenancies-act-1997/098>

[*Disability Act 2006*](https://www.legislation.vic.gov.au/in-force/acts/disability-act-2006/043)

<www.legislation.vic.gov.au/in-force/acts/disability-act-2006/043>

**The Consumer Affairs Victoria website:**

[Consumer Affairs Victoria](https://www.consumer.vic.gov.au/)

<www.consumer.vic.gov.au>

[Information for providers - SDA](https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/for-providers)

<www.consumer.vic.gov.au/housing/specialist-disability-accommodation/for-providers>

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