

Disability and Social Services Regulation Amendment Act 2023: Residential Tenancy and Community Visitors

Information Session 2

12 June 2024

Prepared in conjunction with the Department of Families, Fairness and Housing

This summary is provided as general information only and is not legal advice. Refer directly to the latest version of the Disability Act (and other Acts as relevant) and seek independent legal advice if required.



Aim of the session

- To inform you about the *Disability and Social Services Regulation Amendment Act 2023* (the **Amendment Act**) changes to:
 - Tenancy rights and protections in Victorian disability accommodation settings
 - The Community Visitors program
- Discuss the actions providers must take to comply with the new laws

Amendment Act changes to residential tenancy rights and protections in Victorian disability accommodation settings

Summary: Key changes

The **Amendment Act** changes to the **Residential Tenancies Act**:

- Inserts new definitions of 'SDA dwelling', 'SDA provider' and 'SDA resident'
- Expands the range of providers that have obligations under the **Residential Tenancies Act**
- Supports more people with disability to access enhanced residential rights and protections
- Introduces some new provider obligations and offences

Key terms: Types of disability accommodation

Term	Legislated meaning
Group home	A residential service gazette as a 'group home' under the Disability Act . This term will be removed from the Disability Act on 1 July 2024.
SDA	Under the Commonwealth National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020 , SDA is defined as: a. accommodation for a person who requires specialist housing solutions, including to assist with the delivery of supports that cater for the person's extreme functional impairment or very high support needs; but b. does not include supports delivered to the person while the person is living in the accommodation.
SDA enrolled dwelling	An SDA enrolled dwelling is SDA that is enrolled as SDA with the NDIS. It has a specific meaning under the Residential Tenancies Act .
SDA dwelling	SDA dwelling will be a new term in the Residential Tenancies Act . It will incorporate the existing definition of 'SDA enrolled dwelling', and other types of permanent accommodation with similar features and funded by other bodies, such as the TAC.

What is an SDA dwelling?

- From 1 July 2024, under the **Residential Tenancies Act**, an SDA dwelling will be:
 - an SDA enrolled dwelling; or
 - other accommodation that is **permanent** and **long-term**; and
 - where **daily independent living support** is provided to one or more residents; and
 - where the **daily independent living support provided at the accommodation is funded by the:**
 - Department of Families, Fairness and Housing
 - Transport Accident Commission; or
 - Victorian WorkCover Authority; or
 - NDIS; or
 - Commonwealth Disability Support for Older Australians program.
- The accommodation must be occupied under an **SDA residency agreement** or a **residential rental agreement** with the SDA provider under the Residential Tenancies Act.

What is NOT an SDA dwelling?

The following types of accommodation are not an SDA dwelling:

- Accommodation that is **not occupied under an SDA residency agreement** or a **residential rental agreement**.
- **A health or residential service**
- **Temporary crisis accommodation**
- **Short-term accommodation**
- Accommodation occupied under a residential rental agreement, where the residential rental provider and, if appropriate, the head renter of the accommodation:
 - **does not receive funding** from a specified entity or program to provide disability support at the accommodation; and
 - **has not entered into an agreement** with a specified entity or program **to provide disability support at the accommodation**.

Key terms: Providers and residents

Term	Legislated meaning	Other parties' terms
SDA resident	<p>A person with disability who:</p> <ul style="list-style-type: none"> • receives, or is eligible to receive, funded daily independent living support; and • is living in, or proposes to live in an SDA dwelling (including an SDA enrolled dwelling) under a: <ul style="list-style-type: none"> • SDA residency agreement, or, • residential rental agreement. 	<ul style="list-style-type: none"> • NDIS: SDA participant • TAC: Client • DFFH: SDA resident for people living in SDA and the term person with disability for people living in other types of disability accommodation settings • DSOA: Client
SDA provider	<p>A provider that:</p> <ul style="list-style-type: none"> • owns or is the leaseholder of a property that meets the definition of SDA dwelling; and, • rents or proposes to rent a property to an SDA resident under a: <ul style="list-style-type: none"> • residential rental agreement or, • SDA residency agreement. 	<ul style="list-style-type: none"> • NDIS: SDA providers for registered SDA providers and SIL providers is a term they use for registered and unregistered SIL providers • TAC: Shared supported accommodation providers • DFFH: Disability service provider (if providing services under the <i>Disability Act 2006</i>); registered NDIS provider • DSOA: No term for accommodation owner, uses DSOA service coordinator, ISP provider, SIL provider for the services provided

Key terms: Support

Term	Legislated meaning	Other parties' terms
Daily independent living supports	Not defined in the Residential Tenancies Act	<p>NDIS:</p> <ul style="list-style-type: none"> • Assistance with Daily Life Tasks – Supported Independent Living (abbreviated to SIL) • Independent Living Options • Assistance with daily personal care <p>This support can be provided by registered or unregistered NDIS providers</p>
		TAC: Attendant care
		DFFH: Supported independent living or daily independent living supports
		DSOA: Assistance with supported living (SIL), Assistance with self-care

Tenancy – 'SDA dwelling'

From 1 July 2024:

- Expands the tenancy rights and protections for people living in an 'SDA dwelling'
- 'SDA residents' are to have a choice of residency agreements:
 - SDA residency agreement under Part 12A of the **Residential Tenancies Act**
 - Residential rental agreement under Part 2 of the **Residential Tenancies Act**

What are the key differences?

SDA Residency Agreement

- Each SDA resident has their own SDA residency agreement
- Additional protections against evictions, rent increases and bond payments
- Allows access to private bedroom and shared areas
- Is more appropriate in shared settings with multiple SDA residents
- Allows for unannounced visits by Community Visitors

Residential Rental Agreement

- Requires all residents to be on the one shared agreement
- Bonds can be included and there are less protections against evictions
- Allows full access to the dwelling
- Allows people to live with mix of SDA and non-SDA residents (e.g., family, friends)
- From 1 July 2024, SDA residents can request a visit by Community Visitors

See: [Consumer Affairs Victoria Starting an agreement with an SDA resident webpage.](#)

Tenancy – SDA dwelling: 'Group homes'

- From 1 July 2024 'group homes' gazetted under the **Disability Act** will transition to the residential tenancy protections under the **Residential Tenancies Act**.
- If they had a residential statement at 30 June 2024, this will be deemed to be an SDA residency agreement.
- **Within six months from 1 July 2024**, the provider must give each resident an information statement in the approved form.
- **Prior to the end of the deemed SDA residency agreement, and as soon as practical after providing the information statement**, make all reasonable efforts to:
 - enter into or establish an SDA residency agreement with the SDA resident, or
 - enter into a residential rental agreement with the SDA resident.

'SDA provider' obligations

'SDA providers' need to:

- Inform SDA residents who have not previously been offered an SDA residency agreement that they have a choice of the two residential tenancy agreements and provide them with the information sheets/agreements available from Consumer Affairs
- Lodge all SDA residency agreements with Consumer Affairs Victoria within 14 days of them being signed.
- Provide a copy of SDA residency agreement to the SDA resident, and their guardian or administrator (as applicable)
- Notify the Director of Consumer Affairs Victoria and others (e.g. NDIS, guardians) about residential notices issued by SDA providers under the **Residential Tenancies Act**.
- [Notices to end an SDA residency - Consumer Affairs Victoria](#)

New offences: SDA providers

Offences: Tenancy obligations

- Failure to comply with provider obligations may be an offence and attract significant penalties.
- Under the **Residential Tenancies Act**, it is an offence, among other things, for an SDA provider to:
 - prepare an SDA residency agreement or residential rental agreement that is not in the standard form
 - misrepresent how the **Residential Tenancies Act** applies to an SDA resident
 - misrepresent any of the terms of an agreement
 - misrepresent a resident's rights and duties under an agreement
 - threaten, intimidate or persuade a person not to exercise their rights.

Changes to Community Visitors Program

The current role of Community Visitors

- Appointed by the Governor-in-Council
- Managed by the Office of the Public Advocate
- Community Visitors have an important safeguarding role
- Visit and inspect certain types of disability accommodation (including enrolled SDA), mental health facilities and supported residential services

Current types of disability accommodation visited by Community Visitors

- Residential services (incl. gazetted group homes)
- Residential treatment services
- Short term accommodation
- SDA enrolled dwelling - with SDA residency agreement
- SDA enrolled dwelling - with residential rental agreement (only by request)

Community visitor changes

The **Amendment Act** changes the **Disability Act** to:

- Allow for the Minister for Disability to approve disability accommodation provided by a disability service provider or registered NDIS provider as visitable by community visitors.
- Allow for community visitors to visit accommodation approved by the Victorian Senior Practitioner as suitable for providing supervised treatment.

Community Visitors' functions

Inquiring into:

- The appropriateness and standard of the accommodation
- Opportunities for residents' inclusion and participation in the community
- Whether the services and information provided to residents are in accordance with the Disability Act and the *National Disability Insurance Scheme Act 2013* (Cth) (**NDIS Act**)
- Suspected abuse or neglect of a resident
- Use of restrictive practices and compulsory treatment
- Any failure to comply with the **Disability Act** and the **NDIS Act**
- Any complaint made to a community visitor by a resident.

Requests to see a Community Visitor

- ‘SDA residents’, or residents living in Minister approved accommodation or VSP approved accommodation can request a visit from a Community Visitor by calling 1300 309 337.
- Anyone can make a request for a visit on a resident’s behalf.
- If the disability service provider or registered NDIS provider is present during the visit, the provider must keep a record of the visit.

New offences: Community Visitors

New offences

1. It is an offence for a disability service provider or registered NDIS provider of a Minister approved accommodation not to notify the Community Visitors' Board within 72 hours of a request for a Community Visitor visit being received.
2. It is an offence for a disability service provider or registered NDIS provider who is present when a Community Visitor visits accommodation approved by the Minister, not to keep a record of the visit.

Each offence is punishable by a maximum penalty of 5 penalty units.

So what do you need to do?

What do you need to do and by when?

If you:	Actions	By when?
Own or lease an existing enrolled SDA where all residents have an SDA agreement.	<ul style="list-style-type: none"> No action required. However, note that some changes have been made to residential notice provisions (information available on the CAV website). 	1 July 2024
<p>Own or lease an existing enrolled SDA dwelling where all residents are on a residential rental agreement</p> <p>or</p> <p>Own or lease an SDA dwelling that is not enrolled as an SDA with the NDIS (e.g., SIL house or a similar permanent living and support arrangement) that meets the definition of SDA dwelling and where SDA residency agreements are not in place.</p>	<ul style="list-style-type: none"> Familiarise yourself with your obligations under the Residential Tenancies Act (information available on the CAV website) Give each SDA resident an information statement in the approved form Offer each SDA resident the choice to enter into or establish an SDA residency agreement with the SDA provider. If an SDA residency agreement is entered into or established: <ul style="list-style-type: none"> notify CAV in writing within 14 days; and give a copy of the SDA residency agreement to the SDA resident and their guardian or administrator (as applicable). Ensure that information given to SDA residents is explained in a way they can understand and arrange independent support if needed. Ensure staff and residents are informed about the Community Visitors program. Note that it is an offence not to comply with relevant provisions under the Residential Tenancies Act. 	1 July 2024 – 31 December 2024

What do you need to do and by when?

If you:	Actions	By when?
<p>Own separate units/apartments (that meet definition of 'SDA dwellings') in a cluster where residents rent their units and have access to onsite overnight support from the same provider and they use a range of other providers for their other daily independent living supports</p>	<ul style="list-style-type: none"> • Familiarise yourself with your obligations under the Residential Tenancies Act (information available on the CAV website) • Give SDA resident(s) of each separate dwelling an information statement in the approved form • Offer each SDA resident the choice to enter into or establish an SDA residency agreement with the SDA provider. • If an SDA residency agreement is entered into or established: <ul style="list-style-type: none"> • notify CAV in writing within 14 days; and • give a copy of the SDA residency agreement to the SDA resident and their guardian or administrator (as applicable). • Ensure that information given to SDA residents is explained in a way they can understand and arrange independent support if needed. • Ensure staff and residents are informed about the Community Visitors program. • Note that it is an offence not to comply with relevant provisions under the Residential Tenancies Act. 	<p>31 December 2024</p>

What do you need to do and by when?

If you:	Actions	By when?
Operate an SDA Dwelling with a mix of SDA residents and their family or friends/housemates (non-SDA residents) occupied under a Residential Rental Agreement.	<ul style="list-style-type: none"> • No action required. • Note that only 1 type of agreement can be in place and the residents without disability who do not receive funding. • If it was to revert to having only being occupied by SDA residents, then you are required to inform residents about the 2 types of tenancy agreements and offer residents a choice of agreement (using CAV information sheets and templates). • Ensure staff and residents are informed about the Community Visitors program. 	1 July 2024
Operate a Residential Aged Care facility and provide SIL to one or more people receiving disability support at that accommodation	<ul style="list-style-type: none"> • No action required. • The definition of SDA dwelling excludes residential and health services, including residential aged care. 	N/A
Operate a STA or MTA dwelling	<ul style="list-style-type: none"> • No action required. • The definition of SDA dwelling excludes short-term accommodation or accommodation that is used to provide respite or transitional accommodation (such as MTA). • Ensure staff and residents are informed about the Community Visitors program. 	1 July 2024

What do you need to do and by when?

If you:	Actions	By when?
Own or lease accommodation which offers a mix of (long-term) SIL and MTA or STA	<ul style="list-style-type: none"> • Seek legal advice about how the Residential Tenancies Act applies to your tenancy arrangements to ensure the residents' rights and protections are upheld, and that you comply with your legal obligations. • Ensure staff and residents are informed about the Community Visitors program. 	31 December 2024
Operate a residential service or forensic disability service under the <i>Disability Act 2006</i>	<ul style="list-style-type: none"> • No action required. • The definition of SDA dwelling excludes residential services, including forensic disability services and residential treatment facilities. • These services will continue to be covered under the Disability Act. • Attend the NDSV session on 26 June. 	N/A
Operate a Homeshare or CoTenancy arrangement which offers ongoing accommodation to a person receiving funded disability support	<ul style="list-style-type: none"> • If this a private home (owned or leased), this accommodation would be excluded from the definition of SDA dwelling. • Seek legal advice if you are unsure of how the changes to the Residential Tenancies Act may apply to your accommodation arrangements. 	31 December 2024
Operate a Supported Residential Service	<ul style="list-style-type: none"> • No actions required. • These tenancy arrangements are covered by the <i>Supported Residential Services (Private Proprietors) Act 2010</i>. 	N/A

Resources – Amendment Act

- For more information about the rights and obligations of SDA providers and SDA residents, forms, guidance and other materials, visit the [Consumer Affairs Victoria website](#) (updated materials will be available from 1 July 2024)
- To read more information about the changes to the Residential Tenancies Act visit the [DFFH Changes to the Residential Tenancies Act 1997 webpage](#)
- To view this presentation: <https://www.nds.org.au/index.php/resources/all-resources/disability-and-social-services-regulation-amendment-act-2023>
- To read the **Amendment Act**: <https://www.legislation.vic.gov.au/as-made/acts/disability-and-social-services-regulation-amendment-act-2023>
- The [DFFH Amendment Act webpage](#) contains detailed summaries about key changes made by the **Amendment Act**, relating to:
 - Restrictive practices
 - Community Visitors
 - Residential services
 - Tenancy arrangements in disability accommodation settings
 - Compulsory treatment
 - Information sharing
 - Forensic disability services

Questions

Questions

Any questions about these changes?

What support (if any) do you need from NDS or others to understand and comply with these changes to laws in Victoria?

Next information session

Part A: 9.30-10.45am, 26 June - Changes to the provisions for restrictive practices and compulsory treatment

Part B: 10.45-11.15am, 26 June - Changes to the provisions for residential services and forensic disability services

Register on our [events page](#).

Note: you just need to register once, as this will give you access to one or both parts of the session.

Upcoming Events

NDS Victoria State Conference

Wednesday 19 June at Rydges Melbourne

<https://www.nds.org.au/events-and-training/all-events-and-training/nds-s-victorian-state-conference-2024-5256>

Home Fire Safety Q&A for Disability and Aged Care Providers

Tuesday June 25 at 3:30-4.30pm, online

Presented by Country Fire Authority (CFA) and Fire Rescue Victoria (FRV), [register here](#)

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