## Slide One

# SDA and the Residential Tenancies Act

National Disability Services Limited (NDS) believes that the information contained in this presentation is correct at the time of publishing, April 2020. NDS reserves the right to vary any of the content without further notice. The information provided in this presentation should not be relied on instead of other legal, medical, financial or professional advice.

This resource was developed with thanks to the Victorian Government and is tailored to the Victorian operating environment.

## Slide two

### This presentation will explore:

Legislative changes in Victoria

Re-gazettal of Victorian residential services and process

Role of Consumer Affairs Victoria (CAV)

The Residential Tenancies Act 1997

Starting an agreement with an SDA resident

Lease type comparison

Steps to starting an agreement

## Slide three

### Safeguarding tenancy rights – legislative changes in Victoria

The Disability Service Safeguards Act 2018 enacted legislative amendments to the Residential Tenancies Act 1997 (RTA) and the Disability Act 2006

SDA was removed from the Disability Act and included in the Residential Tenancies Act under Part 12 A

SDA providers had until 1 Jan 2020 to provide SDA participants with an information statement and either enter into a standard tenancy agreement (Part 2 agreement) or enter into or establish an SDA agreement (Part 12 A agreement) as prescribed by Consumer Affairs Victoria

Existing residential statements became void on 1 January 2020, when properties were automatically gazetted from the Disability Act to the RTA

In response to a number of issues with this process DHHS sought the re-gazettal of properties back under the Disability Act 2006.

## Slide four

### Information regarding re-gazettal

Properties registered under the Disability Act were automatically gazetted from the Disability Act and residential statements became void on 1 January 2020

Legislative changes have been problematic, and resulted in some people with disability being ineligible for either of the two lease options under the RTA

As a short-term-measure, the Victorian Government sought the re-gazettal of properties back under the Disability Act 2006

Re-gazettal enables providers to continue to operate under the Disability Act rather than moving residency arrangements under the RTA, and residents’ rights continue to be protected under residential agreements

## Slide five

### Re-gazettal process

Re-gazettal of the Department owned properties occurred across the board, unless providers advised DHHS that residents had transitioned to valid SDA agreements

Any non-government owned properties registered under the Disability Act were automatically re-gazetted unless the provider contacted DHHS requesting that they be removed from the list

DHHS wrote to all providers of existing gazetted services to advise about the re-gazettal and gave them the opportunity to opt-out if their residents had transitioned to valid SDA agreements

The Department also contacted new providers, with many requesting gazettal of their properties

Providers can de-gazette their properties from the Disability Act at any time by contacting the NDIS Service Delivery Branch at DHHS on (03) 9096 8284

To do so, providers must ensure they are can uphold the requirements of the RTA and be able to legally enter into or establish one of the two lease type arrangements

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Image of Consumer Affairs Victoria brand logo

When a provider can either enter into or establish a valid SDA agreement they can apply for de-gazettal from the Disability Act and commence operating under the Residential Tenancies Act.

Tenancy rights and protections are then regulated by Consumer Affairs Victoria (CAV).

Contact DHHS for information regarding de-gazettal.

## Slide seven

### SDA tenancy laws in Victoria

The Residential Tenancies Act 1997 was amended to protect the residential rights of people living in SDA in Victoria

Creates the SDA residency agreement

* Requires the SDA provider to support the resident make an informed decision
* Offers similar rights as other tenants around limiting the landlords right to enter the property and seeking assistance through VCAT
* Introduces additional protections for SDA residents entering into a tenancy agreement against coercive and deceptive conduct.

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### Starting an agreement with an SDA resident

To meet the requirement of the Residential Tenancies Act, SDA providers must either enter into or establish a Part 12 A SDA residency agreement or entered into a Part 2 tenancy agreement with existing SDA residents

Entering into an agreement (Part 12 A and Part 2):

The resident understands the agreement & can sign it.

Establishing an agreement (Part 12 A only):

The resident needs help understanding the agreement & cannot sign it.

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This slide compares the two different lease types available for SDA participants under the Residential Tenancies Act, these being the SDA residency agreement and the residential tenancy agreement and highlights the differences/similarities in the below seven categories.

SDA residency agreement

Tenants: Available to SDA participants only

Starting an agreement: Enter into (signed by resident) or establish (not signed by resident) individual agreements

Bond: No

Rent: Six monthly increase

Damage: The resident does not pay for damage to the property caused by because of fair wear and tear, their disability or equipment they need to help them with their disability.

Ending an agreement: The resident can end the agreement at any time.

Notice to vacate: You cannot ask a resident to leave the property without first finding them suitable temporary accommodation.

Residential Tenancy agreement

Tenants: Available to SDA and non-SDA participants

Starting an agreement: Enter into single agreement with all tenants

Bond: Yes

Rent: Annual increase

Damage: The resident/s will have to pay for any damage they cause, except for fair wear and tear.

Ending an agreement: If it is a fixed-term agreement, the resident cannot end the agreement before the lease end date.

Notice to vacate: You can serve a notice to vacate for the reasons outlined under Victorian rental laws.

## Slide ten

### Starting an agreement: Steps

This slide has a flowchart of steps as listed:

Step one: Choose an agreement

Step two: Download the agreement and information statement from the CAV website

Step three: Give the agreement and information statement to the resident and support person (if any)

Step four: Explain the information statement to the resident in a way they can understand

Step five: Enter into/establish agreement at least seven days after you gave the resident and support person the agreement

Notify CAV: Notify CAV within 14 days of entering into/establishing an SDA residency agreement

Link to [CAV website](https://www.consumer.vic.gov.au/sda)

## Slide eleven

Got a question? Ask now! Nds.org.au/helpdesk

For all of your questions on NDIS, SDA/SIL, NDIS Quality and Safeguards and any other disability related question.

This slide has an image of a computer with a happy face.

## Slide twelve

NDS logo image

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