

Specialist Disability Accommodation (SDA) and the Residential Tenancies Act 1997 (RTA)

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.



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

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.

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

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



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).

For information regarding de-gazettal contact the NDIS Service Delivery Branch at DHHS on (03) 9096 8284

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.

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.

SDA residency agreement		Residential tenancy agreement
SDA participants	Tenants	SDA and non-SDA participants
Enter into (signed by resident) or establish (not signed by resident) individual agreements	Starting an agreement	Enter into single agreement with all tenants
No	Bond	Yes
Six monthly increase	Rent	Annual increase
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.	Damage	The resident/s will have to pay for any damage they cause, except for fair wear and tear.
The resident can end the agreement at any time.	Ending an agreement	If it is a fixed-term agreement, the resident cannot end the agreement before the lease end date.
You cannot ask a resident to leave the property without first finding them suitable temporary accommodation.	Notice to vacate	You can serve a notice to vacate for the reasons outlined under Victorian rental laws.

Starting an agreement: Steps

Step 1

Choose an agreement

Step 2

Download the agreement and information statement from the CAV website

Step 3

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

Step 4

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

Step 5

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

Got a question? Ask now! [nds.org.au/helpdesk](https://www.nds.org.au/helpdesk)

For all of your questions

- NDIS
- SDA/SIL
- NDIS Quality and Safeguards
- www.nds.org.au/helpdesk





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