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| Obligations of service providers operating a residential service for people on supervised treatment orders |
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# Purpose

The Victorian Government continues to regulate the use and authorisation of restrictive practices by disability service providers and registered NDIS providers in Victoria. This includes the use of supervised treatment orders (STOs) for residents of disability residential services and specialist disability accommodation (SDA).

These guidelines explain the obligations of service providers operating a residential service for people on STOs under the *Disability Act 2006.*

# Supervised treatment

Supervised treatment means treatment used for a person with an intellectual disability under an STO who:

* is receiving residential services or residing in SDA
* meets the criteria under section 191 of the Disability Act.

The criteria include:

* The person has previously caused serious harm to another person.
* The person poses a significant risk of harm to another person.
* The services to be provided to the person under a treatment plan and an NDIS behaviour support plan will benefit the person and substantially reduce the above risks.
* The person is unable or unwilling to comply voluntarily with a treatment plan or an NDIS behaviour support plan and it is therefore necessary to detain the person to ensure compliance to prevent a significant risk of harm to others.

An STO is a civil order made by the Victorian Civil and Administrative Tribunal (VCAT) under Part 8, Division 5 of the Disability Act. Part 8 sets out the processes and requirements for obtaining an STO for:

* a non-NDIS or NDIS participant residing in a residential service with a residential statement under Part 5, Division 1 or 2 of the Disability Act
* an NDIS participant residing in an SDA-enrolled dwelling on an SDA residency agreement under Part 12A of the *Residential Tenancies Act 1997* (RTA).

Applications for STOs must include a certificate given by the Victorian Senior Practitioner specifying that the person for whom the application is made:

* has an intellectual disability
* is receiving a residential service, or is an SDA resident living in an SDA-enrolled dwelling under an SDA residency agreement
* has a treatment plan approved by the Victorian Senior Practitioner (which attaches or includes an NDIS behaviour support plan as required if the person is an NDIS participant).

Refer to [‘Useful links’](#_Useful_links) for other relevant guidelines provided by the Victorian Senior Practitioner and the NDIS Quality and Safeguards Commission.

# Identifying disability residential services

Before a disability service provider can obtain an STO for a person, it must have certification from the Victorian Senior Practitioner that the provider is operating a residential service. This requirement also applies to an NDIS provider who is making an STO application as a disability service provider.

## Residential protections under Part 5 of the Disability Act

Part 5 of the Disability Act provides residential rights for residents whose accommodation is exempted from the RTA. This Part comprises:

* **Division 1**, which provides specific rights for people living in residential services and requirements for disability service providers of residential services. Rights and duties are detailed in a residential statement provided to residents.
	+ Services that operate only under Division 1 provide short- and medium-term accommodation options, such as respite or transitional services where long-term residency or tenancy rights are not applicable, including Specialist Forensic Disability Accommodation.[[1]](#footnote-1)
* **Division 2**, which provides additional residency rights for people living in longer-term accommodation that has been declared by the Minister under section 64(1) of the Disability Act as a group home and gazetted in the Victorian Government Gazette.
	+ Division 2 provisions are expected to be superseded in the future when most residents transition to the new SDA Part 12A provisions of the RTA.

## Definition of a residential service

The Disability Act (section 3(1) defines a ‘residential service’ as residential accommodation:

* provided by, on behalf of, or by arrangement with, a disability service provider
* provided as accommodation in which residents are provided with disability services
* supported by rostered staff that are provided by a disability service provider
* admission to the residential service is in accordance with a process determined by the Secretary, Department of Families, Fairness and Housing (the department).

Note that the funding source of supports does not determine whether a service meets the definition as a residential service.

The residential accommodation may be:

* owned by the Secretary of DFFH, the Director of Housing or a community service organisation
* a private rental property where the disability service provider enters a lease agreement (head lease) with the property owner
* an SDA-enrolled dwelling where residents are awaiting SDA funding approval or are unable to access SDA funding.

These residential accommodation options apply where there is an arrangement with a registered disability service provider to provide a disability service at the property.

A disability service provider registered under the Disability Act by the Secretary of the department may also be a registered NDIS provider providing Supported Independent Living (SIL) services to residents who are NDIS participants in a residential service.

Note: Rostered staff are disability support staff providing disability services according to a roster system set by the disability service provider within a 24-hour period in a residential service. The staff roster is in place for the hours of support required by residents in a residential service.

# Procedures for admission to a residential service

Providers of residential services must have procedures for admission, including the offering of vacancies in the residential service.

For services operating under Part 5, Division 2 of the Disability Act (gazetted group homes), the Secretary of the department has published guidelines outlining admission requirements. For services operating under Part 5, Division 1, service providers must have their own procedures for admission. A representative of the Secretary must approve admission processes used on an individual-case basis.

Where a service provider is establishing a new property as a residential service, for example a rental property, a representative of the Secretary must approve the use of the property as a residential service under the Disability Act. This happens as part of the services admission process. For the purposes of providing supervised treatment at the property, the representative of the Secretary of the department is the Director, Disability Forensic Services.

Prior to approval of the property as a residential service by the Secretary of the department, the disability service provider must agree to meet the requirements of the Disability Act for disability residential services. They must agree to:

* provide a person with a residential statement when the person commences residing in the property
* provide a statement of residents’ rights and duties, including the right to see a community visitor and the right to make a complaint
* provide notice of any changes to the residential statement
* meet requirements for the management of residents’ money.

Following agreement, the department will notify the Community Visitors Program that the property is visitable under Part 6, Division 7 of the Disability Act.

# SDA protections under the Residential Tenancies Act

The RTA provisions under Part 12A continue and strengthen the rights protections that were provided for people living in group homes under the Disability Act. The RTA does not apply to residential services.

As group homes residents transition to SDA arrangements under the RTA, group homes that are SDA-enrolled dwellings are de-gazetted and the Disability Act no longer applies.

Where group homes and residents are not able to transition to SDA arrangements, group homes have been re-gazetted under the Disability Act. In these circumstances, disability service providers must retain registration under the Disability Act, and rights remain protected under residential statements.

See the link to the Disability Act registration policy and registration renewal application form below.

## SDA provider obligations under the NDIS

SDA providers are required to comply with the quality and safeguards requirements of the NDIS Quality and Safeguards Commission, set out in the NDIS Practice Standards and Quality indicators and the National Disability Insurance Scheme (Supported Disability Accommodation) Rules 2020.

**Appendix A** provides a checklist for disability service providers and NDIS providers to assist with understanding and identifying what elements can constitute a disability residential service.

**Appendix B** provides a checklist for SDA enrolled dwellings.

# Useful links

* [Victorian Senior Practitioner website](https://www.dffh.vic.gov.au/victorian-senior-practitioner)
<https://www.dffh.vic.gov.au/victorian-senior-practitioner>
* [Information for Authorised Program Officers](https://www.dffh.vic.gov.au/information-authorised-program-officers)
<https://www.dffh.vic.gov.au/information-authorised-program-officers>
* [Compulsory Treatment](https://www.dffh.vic.gov.au/compulsory-treatment)
<https://www.dffh.vic.gov.au/compulsory-treatment>
* [NDIS Commission – Regulated Restrictive Practices](https://www.ndiscommission.gov.au/regulated-restrictive-practices)
<https://www.ndiscommission.gov.au/regulated-restrictive-practices>
* [NDIS Commission – Behaviour Support](https://www.ndiscommission.gov.au/providers/behaviour-support)
<https://www.ndiscommission.gov.au/providers/behaviour-support>
* [Disability Act 2006](https://www.legislation.vic.gov.au/in-force/acts/disability-act-2006/043)
<https://legislation.vic.gov.au/in-force/acts/disability-act-2006/043>
* [Policy, procedures, and forms for the registration of DHHS-funded disability service providers and community services – DFFH Service Providers](https://providers.dffh.vic.gov.au/policy-procedures-and-forms-registration-dhhs-funded-disability-service-providers-and-community)
<https://providers.dffh.vic.gov.au/policy-procedures-and-forms-registration-disability-service-providers-and-community-services>

# Appendix A: Disability residential services checklist

**To meet the definition of a ‘residential service’ the following criteria apply. The answer to all five questions must be Yes to meet the definition.**

1. Is the accommodation provided by, on behalf of, or by an arrangement with, a registered disability service provider under the *Disability Act 2006* for the purposes of providing disability services to residents?
	* + Note: Accommodation can be owned by the Secretary, the Director of Housing or a community service organisation, or it can be a private rental property where the disability service provider is the lessee, or it can be an SDA-enrolled dwelling where residents are awaiting SDA funding approval or are unable to access SDA funding.
2. Do all residents receive disability services at the accommodation from a registered disability service provider?
3. Do residents have rostered staff provided by a registered disability service provider (not ad hoc)?
4. Is the process of admission to the accommodation in line with a process determined by the Secretary?
	* + Note: A representative of the Secretary must approve admission processes used on an individual-case basis and must approve that the property can operate as a residential service under the Disability Act.
5. Have residents been given a residential statement as required under Part 5 of the Disability Act?

**A residential service cannot be:**

* a private home in which a family resides and supports the person, or a home owned by the person or their family for their exclusive use
* accommodation which a person with a disability rents directly from a property owner that is not a disability service provider (or an NDIS provider that is also a disability service provider) and where standard tenancy arrangements are in place.
* an SDA-enrolled dwelling providing SDA residential rights protections under the *Residential Tenancies Act 1997*.
* accommodation used for a supported residential service within the meaning of Supported Residential Services (SRS) under the *SRS (Private Proprietors) Act 2013*.

# Appendix B: Specialist Disability Accommodation (SDA) checklist

**To meet the definition of ‘Specialist Disability Accommodation’ the following criteria apply. The answer to all five questions must be Yes to meet the definition.**

1. Is the accommodation provided by a registered NDIS provider that is registered to provide SDA?
2. Is the accommodation enrolled as an SDA-enrolled dwelling under the *National Disability Insurance Scheme Act 2013* (Cth) (NDIS Act) and the rules made under the [NDIS (Specialist Disability Accommodation) Rules 2020](https://www.ndis.gov.au/providers/housing-and-living-supports-and-services/specialist-disability-accommodation/sda-registration-and-dwelling-enrolment) (SDA Rules)? <https://www.ndis.gov.au/providers/housing-and-living-supports-and-services/specialist-disability-accommodation/sda-registration-and-dwelling-enrolment>
3. Does the sole resident or each co-resident in a shared dwelling have SDA as part of their NDIS support plan?
4. Is admission to the accommodation in accordance with the process determined by the National Disability Insurance Agency, and in accordance with the SDA Rules and the requirements of Part 12A of the *Residential Tenancies Act 1997* (RTA)?
5. Has the resident or each resident in a shared dwelling entered or established individual SDA residency agreements under Part 12A of the RTA with the SDA provider? Alternatively, has the resident or each resident in a shared dwelling entered into one Residential Rental Agreement under Part 2 of the RTA with the SDA provider?

The accommodation is not SDA if it is:

* not enrolled under the NDIS Act and SDA Rules
* accommodation where a person rents from a property owner that is not a registered SDA provider
* accommodation used for a supported residential service within the meaning of the *Supported Residential Services (Private Proprietors) Act 2013*
* a residential service operated by a registered disability service provider under Part 5 of the *Disability Act 2006*.

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1. Specialist Disability Forensic Accommodation (SFDA) provides a forensic disability residential intervention for people with cognitive disability who display high-risk offending behaviours and/or high-risk behaviours of concern. The objective of the accommodation service is to provide forensic disability support and treatment within a residential setting to the target group, as defined in the SFDA operating model, to support them to reduce their risk of recidivism and to support their community reintegration. For more information see [SFDA program requirements](https://providers.dffh.vic.gov.au/specialist-forensic-disability-accommodation-program-requirements-funded-services) <https://providers.dffh.vic.gov.au/specialist-forensic-disability-accommodation-program-requirements-funded-services>. [↑](#footnote-ref-1)