

|  |
| --- |
| Overview of changes to provisions for community visitors |
| *Disability and Social Services Regulation Amendment Act 2023* |

|  |
| --- |
| OFFICIAL |



Contents

[1. Introduction 1](#_Toc166741166)

[2. When will the changes commence? 2](#_Toc166741167)

[3. Summary of the changes 2](#_Toc166741168)

[3.1 Changes to the types of disability accommodation that community visitors can visit 2](#_Toc166741169)

[Accommodation approved by the Minister 3](#_Toc166741170)

[Functions of community visitors – accommodation approved by the Minister 4](#_Toc166741171)

[Accommodation approved by the Victorian Senior Practitioner 4](#_Toc166741172)

[Requests to see a Community Visitor 5](#_Toc166741173)

[3.2 Further changes to the *Disability Act 2006* and *Residential Tenancies Act 1997* 5](#_Toc166741174)

[New definition of SDA dwelling 5](#_Toc166741175)

[Repeal of group home provisions 6](#_Toc166741176)

[3.3 Offences 7](#_Toc166741177)

[4. More information 7](#_Toc166741178)

[4.1 Acts 8](#_Toc166741179)

[4.2 Glossary of terms 8](#_Toc166741180)

# Introduction

The *Disability and Social Services Regulation Amendment Act 2023* (the **Amendment** **Act**) became law on Tuesday 23 May 2023.

The Amendment Act makes changes to the *Disability Act 2006* (**Disability Act**), *Residential Tenancies Act 1997* (**Residential Tenancies Act**), and other relevant Acts to strengthen rights, protections, and safeguards for people with disability in Victoria.

This summary describes changes to provisions (rules) in the Disability Act for community visitors (**CV**) and related changes to the Residential Tenancies Act. The changes expand the types of disability accommodation that CVs can visit.

CVs are independent volunteers appointed by the Governor-in-Council and managed by the Office of the Public Advocate. Under Victorian legislation, CVs can visit and inspect certain types of disability accommodation, supported residential services and mental health facilities to inquire into the quality and standard of services provided to residents.

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

Links to more information, contacts and guidance for providers can be found at the end of this document. A glossary of key terms used in this paper is provided at [Table 2](#_Glossary_of_terms).

# When will the changes commence?

The changes described in this summary commence at different times.

The following changes commenced on 24 May 2023:

* changes to allow the Minister for Disability (the **Minister**) to approve accommodation as visitable by CVs (including related changes to the functions and powers of CVs, the rights of residents to request a visit, and the obligations of providers in respect of accommodation approved by the Minister)
* changes to allow the Victorian Senior Practitioner to inspect accommodation approved by the Minister
* changes to allow CVs to visit accommodation approved by the Victorian Senior Practitioner for the purposes of compulsory treatment.

All other changes described in this summary, including changes to the Residential Tenancies Act, will commence on 1 July 2024.

# Summary of the changes

## Changes to the types of disability accommodation that community visitors can visit

Currently, CVs are empowered under the Disability Act to visit the following types of accommodation (at any time and without prior agreement from service providers or residents):

* residential services (including ‘group homes’ gazetted under the Disability Act)
* residential treatment facilities
* short-term accommodation
* Specialist disability accommodation (**SDA**) enrolled with the National Disability Insurance Scheme (**NDIS**) (**SDA enrolled dwelling**) where an SDA residency agreement is in place under Part 12A of the Residential Tenancies Act.

CVs can also visit an SDA enrolled dwelling where a residential rental agreement under Part 2 of the Residential Tenancies Act is in place, but only if requested by a resident or someone on their behalf.

Following the changes to the Disability Act that commenced on 23 May 2023, CVs can continue to visit these types of accommodation. In addition, CVs can now visit:

* accommodation approved by the Minister as visitable by CVs (Minister approved premises)
* accommodation approved by the Victorian Senior Practitioner for the purposes of providing compulsory treatment.

### Accommodation approved by the Minister

The Disability Act now allows for the Minister to approve disability accommodation provided by a disability service provider or registered NDIS provider as visitable by CVs. This will ensure that future disability accommodation models not currently covered by the legislation, but that may require independent monitoring, can be identified and approved as visitable by CVs if needed.

The Minister can approve accommodation where:

* a person with disability lives and receives disability services; or
* an NDIS participant lives and receives services under the NDIS; or
* a Disability Support for Older Australians (**DSOA**) client lives and receives disability services from an NDIS provider.

The Minister cannot approve accommodation that is privately owned or rented by a person with disability, an NDIS participant, a DSOA client, or a family member of one of those persons. However, from 1 July 2024, accommodation that is rented by a person with disability or NDIS participant will be visitable by CVs where the accommodation meets the new definition of ‘SDA dwelling’ that will be inserted into the Residential Tenancies Act (refer to [New definition of SDA dwelling](#_New_definition_of)).

The changes allow for:

* CVs to visit Minister approved premises at any time and without prior agreement
* the Minister to direct CVs to visit a Minister approved premises
* the Victorian Senior Practitioner to inspect a Minister approved premises if the Victorian Senior Practitioner reasonably believes that restrictive practices or compulsory treatment are being used at the accommodation.

Accommodation approved by the Minister under these rules will be published in the Victoria Government Gazette.

### Functions of community visitors – accommodation approved by the Minister

The Disability Act sets out the functions of CVs when visiting accommodation approved by the Minister. These functions include 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 or the NDIS Act
* any complaint made to a CV by a resident.

These functions are similar to the functions of CVs in relation to other types of visitable accommodation under the Disability Act.

### Accommodation approved by the Victorian Senior Practitioner

The Disability Act now empowers the Victorian Senior Practitioner to approve accommodation as suitable for the provision of supervised treatment to a person under a supervised treatment order.

Accommodation approved by the Victorian Senior Practitioner is deemed to be a ‘residential service’ under the Disability Act and visitable by CVs. The existing functions and powers of CVs when visiting a residential service under the Disability Act have not changed.

For more information on changes to rules for compulsory treatment under the Disability Act, please access the *Overview of changes to provisions for compulsory treatment* summary.[[1]](#footnote-2)

### Requests to see a Community Visitor

A resident of accommodation approved by the Minister, or a resident of accommodation approved by the Victorian Senior Practitioner, or anyone on a resident’s behalf, may request a visit from a CV.

Where a resident requests a visit, the disability service provider or registered NDIS provider must notify the Community Visitors Board within 72 hours of the request being received. Failure to comply with this obligation is an offence.

If the disability service provider or registered NDIS provider is present when a Community Visitor visits the accommodation, the provider must keep a record of the visit. This is to ensure proper record keeping of visits. Failure to comply with this obligation is an offence.

## Further changes to the *Disability Act 2006* and *Residential Tenancies Act 1997*

The Amendment Act will make further changes to the Disability Act and the Residential Tenancies Act. These changes will commence on 1 July 2024. The changes will further expand the types of accommodation that CVs can visit under the Disability Act.

### New definition of SDA dwelling

The changes will insert a new definition of ‘SDA dwelling’ into the Residential Tenancies Act.

The new definition of SDA dwelling will expand the types of accommodation that community visitors can visit under the Disability Act to include permanent long-term accommodation where daily independent living support is provided to one or more residents and funded by a specified entity or program, in addition to SDA enrolled dwellings.

Specified entities and programs include:

* the Secretary to the Department of Families, Fairness and Housing; or
* the Transport Accident Commission; or
* the Victorian WorkCover Authority; or
* the NDIS; or
* the Commonwealth DSOA program or a prescribed program.

The definition of SDA dwelling does not include:

* accommodation that is not occupied under an SDA residency agreement or residential rental agreement under the Residential Tenancies Act
* 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.
* a health or residential service
* temporary crisis accommodation
* short-term accommodation or accommodation that is used to provide respite or transitional accommodation.

Once the changes to the Residential Tenancies Act commence on 1 July 2024, CVs will be empowered to visit an SDA dwelling occupied under an SDA residency agreement at any time and without prior notice.

Where an SDA dwelling is occupied under a residential rental agreement, CVs will be empowered to visit the accommodation only if requested by a resident, or if requested by another person on behalf of the resident.

For more information on the changes to the Residential Tenancies Act, please access the *Overview of changes to the Residential Tenancies Act 1997* summary.[[2]](#footnote-3)

### Repeal of group home provisions

The Amendment Act will repeal (delete) Part 5 Division 2 of the Disability Act which relates to group homes. These changes will commence on 1 July 2024.

When these changes commence, group homes currently gazetted under the Disability Act will automatically become SDA dwellings and residents will automatically become SDA residents under the Residential Tenancies Act.

A residential statement provided to residents of gazetted group homes under the Disability Act will automatically become an ‘SDA residency agreement’. This means that residents will receive immediate protections under Part 12A of the Residential Tenancies Act.

For more information on the changes to residential services, please access the *Overview of changes to provisions for residential services* summary.[[3]](#footnote-4)

For more information on the changes to the Residential Tenancies Act, please access *the Overview of changes to the Residential Tenancies Act 1997* summary.[[4]](#footnote-5)

## Offences

The Amendment Act inserts two new offences into the Disability Act regarding Minister approved accommodation:

* It is an offence for a disability service provider or registered NDIS provider of a Minister approved accommodation not to notify the CVs Board within 72 hours of receiving a CV visit request
* It is an offence for a disability service provider or registered NDIS provider who is present when a CV visits accommodation approved by the Minister to not to keep a record of the visit.

Each offence is punishable by a maximum penalty of 5 penalty units. For the period 1 July 2023 to 30 June 2024, the value of one penalty unit is set at $192.31.

# More information

Links to the Amendment Act and other Acts mentioned in this summary are listed in **Table 1**.

For more information about the Victorian CVs program, visit the [Office of the Public Advocate’s CVs website](https://www.publicadvocate.vic.gov.au/your-rights/in-your-home/community-visitors).

A factsheet and other summaries about the changes made by the Amendment Act are available on the Department of Families, Fairness and Housing [*Disability and Social Services Regulation Amendment Act 2023* website](https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023).[[5]](#footnote-6)

## Acts

Table 1. Links to relevant Acts

|  |  |
| --- | --- |
| Act | Where to find it |
| ***Disability and Social Services Regulation Amendment Act 2023* (Amendment Act)** | [Victorian Legislation *Disability and Social Services Regulation Amendment Act 2023* website](https://www.legislation.vic.gov.au/as-made/acts/disability-and-social-services-regulation-amendment-act-2023)[[6]](#footnote-7) |
| ***Disability Act 2006* (Disability Act)** | [Victorian Legislation *Disability Act 2006* website](https://www.legislation.vic.gov.au/in-force/acts/disability-act-2006)[[7]](#footnote-8) |
| ***National Disability Insurance Scheme Act 2013 (Cth)* (NDIS Act)** | [Federal Register of Legislation *National Disability Insurance Scheme Act 2013* website](https://www.legislation.gov.au/C2013A00020/latest/text)[[8]](#footnote-9) |
| ***Residential Tenancies Act 1997* (Residential Tenancies Act)** | [Victorian Legislation *Residential Tenancies Act 1997* website](https://www.legislation.vic.gov.au/in-force/acts/residential-tenancies-act-1997/104)[[9]](#footnote-10) |

## Glossary of terms

Table 2. Key terms

| Term | Meaning |
| --- | --- |
| **Act** | In Victoria, an Act is a law that has been passed by both houses of Parliament and assented to by the Governor of Victoria (Royal Assent). |
| **Amendment** | An amendment is a change made to an existing law or regulation. It is a formal process that involves changing, adding, or deleting provisions in a law or regulation. |
| **Commencement** | Commencement means the time when provisions (rules) in an Act come into effect. Commencement provisions are included in an Act. They specify the date on which a whole Act, or different parts of an Act, come into effect. |
| **CV** | Community visitors |
| **Disability service provider** | In this document, ‘disability service provider’ means a provider who is:* a person or body registered on the register of disability service providers under the Disability Act; or
* the Secretary to the Department of Families, Fairness and Housing.

Note: some providers may be both a ‘disability service provider’ under the Disability Act, and a registered NDIS provider. |
| **DSOA** | Disability Support for Older Australians program (Commonwealth) |
| **NDIS** | National Disability Insurance Scheme |
| **Head renter** | The head renter is the person whose name is on a residential rental agreement with a residential rental provider. |
| **Registered NDIS provider** | In this document, registered NDIS provider means an individual or organisation that is registered with the NDIS Quality and Safeguards Commission. |
| **Residential rental agreement** | A residential rental agreement is an agreement established under Part 2 of the Residential Tenancies Act. It used to be called a lease or a residential tenancy agreement. |
| **Residential rental provider** | A residential rental provider is the person who provides accommodation for rental under a residential rental agreement. A residential rental provider used to be called a landlord. |
| **SDA** | Specialist disability accommodation is accommodation for people with disability with high support needs. SDA may be occupied by only one person with disability or shared with other people with disability. |
| **SDA residency agreement** | An agreement entered into or established under Part 12A of the Residential Tenancies Act. SDA residency agreements are similar to residential rental agreements but include additional protections for SDA residents. |
| **Victoria Government Gazette** | The Victoria Government Gazette provides official notification of decisions or actions taken by, or information from, the Governor of Victoria, government authorities, government departments, local councils, companies and individuals. To access the gazette, visit the [Victoria Government Gazette website](https://www.gazette.vic.gov.au).[[10]](#footnote-11) |

To receive this document in another format, phone (03) 9821 6113 or email the Disability Act Review Team DisabilityActReview@dffh.vic.gov.au

**Help for people with hearing or speech communication difficulties**

Contact us through the National Relay Service (NRS). For more information on the NRS:

* visit [**National Relay Service**](https://www.accesshub.gov.au/about-the-nrs) https://www.accesshub.gov.au/about-the-nrs
* call the NRS Helpdesk on 1800 555 660.

Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.

© State of Victoria, Australia, Department of Families, Fairness and Housing, May 2024.

**ISBN** 978-1-76130-501-6 **(pdf/online/MS word)**

Available at the [department's Disability and Social Services Regulation Amendment Act 2023 web page](https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023)
https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023.

1. Available from the Department of Families, Fairness and Housing [*Disability and Social Services Regulation Amendment Act 2023* website](https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023) https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023 [↑](#footnote-ref-2)
2. Available from the Department of Families, Fairness and Housing [*Disability and Social Services Regulation Amendment Act 2023* website](https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023) https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023 [↑](#footnote-ref-3)
3. Available from the Department of Families, Fairness and Housing [*Disability and Social Services Regulation Amendment Act 2023* website](https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023) https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023 [↑](#footnote-ref-4)
4. Available from the Department of Families, Fairness and Housing [*Disability and Social Services Regulation Amendment Act 2023* website](https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023) https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023 [↑](#footnote-ref-5)
5. https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023 [↑](#footnote-ref-6)
6. https://www.legislation.vic.gov.au/as-made/acts/disability-and-social-services-regulation-amendment-act-2023 [↑](#footnote-ref-7)
7. https://www.legislation.vic.gov.au/in-force/acts/disability-act-2006 [↑](#footnote-ref-8)
8. https://www.legislation.gov.au/C2013A00020/latest/text [↑](#footnote-ref-9)
9. https://www.legislation.vic.gov.au/in-force/acts/residential-tenancies-act-1997/104 [↑](#footnote-ref-10)
10. https://www.gazette.vic.gov.au [↑](#footnote-ref-11)