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| Overview of changes to provisions for Forensic Disability Services |
| *Disability and Social Services Regulation Amendment Act 2023* |
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# 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 the operation of residential treatment facilities (**RTF**) and specialist forensic disability accommodation (**SFDA**) under the Disability Act.

The Amendment Act also makes changes to rules in the Disability Act for residential services (which now include SFDA), the use of restrictive practices and compulsory treatment. Summaries of these changes are available on the [*Disability and Social Services Regulation Amendment Act 2023* website](https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023).[[1]](#footnote-2)

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:

* the new definition of SFDA
* the new power for the Secretary of the Department of Families, Fairness and Housing (the **Secretary**) to determine that a property is SFDA and a new requirement for the Secretary to notify the Public Advocate of that determination within seven days
* changes that require the Secretary to notify a person who made a request for disability services on the decision of that request and their right for review of that decision at the Victorian Civil and Administrative Tribunal (**VCAT**)
* changes that clarify the Secretary can only provide access to disability services provided, funded or contracted by the Secretary
* changes to allow the Secretary to request information, including personal and health information, from any person or body relating to a request for access to disability services
* changes to clarify that security conditions that are restrictive practices, and that apply to all residents in an RTF, must be approved by the Secretary.

All other changes described in this summary will commence on 1 July 2024. These include:

* changes to rules for admission and readmission to an RTF
* changes to provide for the operation of RTFs by prescribed forensic disability service providers
* the requirement for the Secretary to consult with the Victorian Senior Practitioner
* expanded powers and responsibilities of Authorised Program Officers (**APO**) in respect of RTFs
* the requirement for treatment plans for a security resident of an RTF who is subject to compulsory treatment to be explained and provided in an accessible format
* changes to require the Secretary to apply to VCAT for an annual review of a treatment plan and security order, where a security order is in force
* changes to rules for reporting the death of a security resident.

# Summary of the changes

## Specialist forensic disability accommodation

### Definition of specialist forensic disability accommodation

The Amendment Act has expanded the definition of ‘residential service’ under the Disability Act to include SFDA.

The changes also insert a new power for the Secretary to determine that a property is SFDA and a new requirement for the Secretary to notify the Public Advocate of that determination within seven days.

For information on other changes to residential services, please access the *Overview of changes to provision for residential services* summary.[[2]](#footnote-3)

## Admission and readmission to a residential treatment facility

### Definitions and criteria for admission

The changes will insert a new definition of ‘admission’ into the Disability Act. The new definition will cover admission and readmission to an RTF.

The changes will clarify that a person must continue to meet the admission criteria during their placement at the RTF. If the person leaves, readmission will only be permitted if the admission criteria continue to be met.

The changes will also clarify what the Secretary must consider when deciding to admit a person to an RTF. New matters that the Secretary must be satisfied of include:

* the person’s ability to engage in the therapeutic environment and their willingness to engage in and benefit from the treatment
* the level of vulnerability of the person
* any risks the person presents to other residents
* the compatibility of the person with other residents at the facility.

The Secretary must now arrange for the person to undergo an assessment when deciding about an admission.

### Classification of residential treatment facilities and length of admission

The changes will repeal (delete) the classification of RTFs under the Disability Act as short-term (admissions up to five years) or long-term (no limit). This will be replaced with an overall timeframe of admission to an RTF for up to five years, with extensions of further periods not exceeding 12 months.

However, an admission period, including any extension, may not exceed the term of the court order or direction requiring the person to reside at the RTF.

The Secretary may only extend a person’s admission to an RTF for further periods not exceeding 12 months if:

* the person continues to meet the admission criteria
* the person would benefit from further treatment at the facility
* consultation has occurred with the Victorian Senior Practitioner
* the treatment is still appropriate for the person and further treatment is likely to result in a reduction to any risk of violence the person presents to another person.

When deciding to extend an admission, the Secretary must arrange for a person to undergo an assessment and may also consider operational demands.

### Transition out of a residential treatment facility

The changes to the Disability Act will allow the Secretary, at their discretion, to allow a person to remain in an RTF for up to three months despite the person no longer meeting the admission criteria. This will help to ensure that a resident is not left in a situation where they have no suitable accommodation or become homeless.

However, a person must continue to be subject to a relevant order, as that is the basis on which a person may be detained in an RTF. The Secretary must inform the court or body that made the order of the decision to allow the person to remain at an RTF for up to three months.

## Operation of a residential treatment facility by a prescribed forensic disability service provider

The changes to the Disability Act will allow for RTFs to be run by the Secretary (as is currently the case) or a prescribed forensic disability service provider.

To operate an RTF, a service provider must be prescribed in regulations as a forensic disability service provider. These changes will enable disability service providers, such as Forensicare, to provide more integrated forensic disability and mental health services.

Where an RTF is operated by a prescribed forensic disability service provider, the provider will be responsible for day-to-day decisions, including matters such as apprehension of a resident who is absent without leave. The Secretary will remain responsible for decisions on admission.

A forensic disability service provider operating an RTF will need to obtain the Secretary’s approval before:

* allowing, extending or revoking a leave of absence
* granting a special leave of absence
* suspending or lifting a suspension of leave.

Where the Secretary refuses an application for leave, a resident may request for VCAT to review the Secretary’s decision.

When operating a facility, the forensic disability service provider will be required to comply with its obligations as a disability service provider under the Disability Act, including the use of restrictive practices and use of compulsory treatment (refer to the *Overview of changes to provisions for restrictive practices* and the *Overview of changes to provisions for compulsory treatment* summaries).[[3]](#footnote-4)

Unless an order provides otherwise, a person residing in an RTF will remain in the custody of the Secretary whether the Secretary or a prescribed forensic disability service provider is operating the RTF.

The changes provide for an APO of an RTF to apprehend a resident who is absent without leave.[[4]](#footnote-5)

## Consultation with the Victorian Senior Practitioner

The changes to the Disability Act will strengthen the Victorian Senior Practitioner’s role in the process of admission to RTFs. The changes will require the Secretary to consult with, and consider advice provided by, the Victorian Senior Practitioner prior to admitting a person to an RTF. This will ensure greater clinical oversight of admissions and extensions to admissions.

The changes will also require the Secretary to consult with, and consider any advice provided by, the Victorian Senior Practitioner before allowing a person who is subject to a specified order but no longer meets the other admission criteria to continue to reside at an RTF until that order is varied or revoked.

## Powers of the Authorised Program Officer – residential treatment order residents

The changes to the Disability Act will extend certain powers of the Secretary to APOs. The changes will also expand the responsibilities of APOs in respect of a resident who is required to reside at an RTF under a residential treatment order (**RTO resident**).

The APO of an RTF, with the approval of the Secretary, will be able to:

* make an application to a relevant court for a grant of extended leave (which must include a leave plan approved by the APO)
* appeal to the Court of Appeal against a grant of extended leave or to revoke a grant of extended leave
* lift a suspension of extended leave, where the APO is satisfied that the reason a suspension of extended leave no longer exists.

## Preparation of treatment plans

### Preparation and review of treatment plans

The Secretary’s APO is required to:

* prepare a treatment plan within 28 days of a person being admitted to an RTF
* lodge the treatment plan with the Victorian Senior Practitioner for approval
* give a copy to the person subject to the treatment plan.

The changes will extend these requirements to the APO of a prescribed forensic disability service provider operating an RTF. This change will commence 1 July 2024.

The requirements for the APO to apply to VCAT for a review of a treatment plan at least every 12 months have not changed. However, where a security order is in force, the Secretary (rather than the APO as is currently the case) must apply to VCAT for an annual review of the treatment plan and the security order, and the Secretary may be required by VCAT to prepare a new treatment plan.

Section 7 of the Disability Act requires that information, to the maximum extent possible, is provided in the language, mode of communication and terms that the person is most likely to understand.

The changes clarify that the requirements at section 7 apply to the provision of information, including treatment plans, provided to a resident of an RTF.

For more information on changes to requirements for treatment plans, please access the *Overview of changes to provisions for compulsory treatment* summary.[[5]](#footnote-6)

## Information to be provided to a person admitted to a residential treatment facility

The changes will insert a new requirement for the Secretary or a prescribed forensic disability service provider to provide an RTF resident with relevant written information upon admission. This information must include:

* disability services being provided to the person and any associated costs
* conditions of the relevant order or direction requiring the person to reside at the RTF
* any security conditions that apply to the RTF
* how to make a complaint
* rights, entitlements and obligations of the resident, including:
	+ the right to contact an advocate and to get support from the RTF provider to contact an advocate
	+ the right to see a community visitor
	+ the right to a review of the person's treatment plan, including the annual review of the treatment plan by VCAT.
* the person's treatment plan
* information about applications for leave under the Disability Act or any other Act
* that the person may be apprehended if the person is absent from the facility without leave of absence or special leave of absence
* any information that the Secretary or the Senior Practitioner requires to be provided, and any other relevant information.

The accessibility requirements at section 7 of the Disability Act apply to the provision of information to a resident of an RTF.

## Security conditions for residential treatment facilities

A security condition that is a restrictive practice, and that applies to all residents detained in an RTF, must be approved by the Secretary under new section 159A of the Disability Act. This section commenced on 24 May 2023.

The Secretary may approve a security condition if it is for the supervision of residents or the security of the RTF. The Secretary must consult with the Victorian Senior Practitioner before approving a security condition.

The changes clarify that the regime for the authorisation of restrictive practices in sections 201B to 201E of the Disability Act do not apply to security conditions approved by the Secretary under the new section 159A.

As these security conditions apply to all residents, it would be inappropriate for them to be authorised on an individual basis as they could not be varied or amended based on the individual circumstances or needs of individual residents. The approval of such security conditions is required in relation to the whole facility as they are necessary to uphold security and safety for all residents.

## Other changes

### Reporting the death of a security resident

When the facility is operated by a prescribed forensic disability service provider, the changes will insert a new requirement for the person in charge of the RTF to advise the Secretary as to the circumstances in which a security resident has died. Currently, these rules only require the person in charge to advise the Secretary to the Department of Justice and Community Safety.

### Determining access to disability services

The Amendment Act has made several changes to the Disability Act in respect of determining access to disability services under the Disability Act. These include:

* changes to clarify that the Secretary is only responsible for determining access to disability services that the Secretary funds
* a new power for the Secretary to request information (including personal and health information) from any person or body relating to the request for access to disability services.

When requesting information, the Secretary must now obtain the consent of the person or the person's guardian. If the Secretary cannot obtain consent, they must seek it from the person who made the request.

The changes provide that a person or body from whom such information is requested by the Secretary, is authorised to give that information to the Secretary (despite any other law, except the *Charter of Human Rights and Responsibilities Act 2006*).

# More information

Links to the Amendment Act and other Acts mentioned in this summary are listed in [Table 1](#_Acts).

For more information on forensic disability services, visit the department’s [Forensic Disability Services website](https://www.dffh.vic.gov.au/forensic-disability-services).[[6]](#footnote-7)

For more information on the obligations of service providers in respect of the use of restrictive practices and compulsory treatment, please visit the [Victorian Senior Practitioner’s website](https://www.dffh.vic.gov.au/victorian-senior-practitioner).[[7]](#footnote-8)

A factsheet and other summaries about the changes made by the Amendment Act are available on the department’s [*Disability and Social Services Regulation Amendment Act 2023* website](https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023).[[8]](#footnote-9)

## 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)[[9]](#footnote-10) |
| ***Disability Act 2006* (Disability Act)** | [Victorian Legislation *Disability Act 2006* website](https://www.legislation.vic.gov.au/in-force/acts/disability-act-2006)[[10]](#footnote-11) |
| ***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)[[11]](#footnote-12) |

## 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. |
| **APO** | Authorised Program Officer |
| **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. |
| **Department** | Department of Families, Fairness and Housing |
| **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. |
| **RTF** | Residential treatment facility |
| **RTO resident** | A residential treatment order resident means a resident subject to a residential treatment order (within the meaning of the *Sentencing Act 1991*). |
| **Secretary** | Secretary of the Department of Families, Fairness and Housing |
| **Security resident** | Security resident means a person in respect of whom a security order is in force under section 166 of the Disability Act. |
| **SFDA** | Specialist forensic disability accommodation |
| **VCAT**  | Victorian Civil and Administrative Tribunal |

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.

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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. https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023 [↑](#footnote-ref-2)
2. Available from the department’s [*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’s [*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. For more information about these changes, please access the *Overview of changes to provisions for compulsory treatment* summary, available from the department’s [*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. Available from the [*Disability and Social Services Regulation Amendment Act 2023*](https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023)website https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023. [↑](#footnote-ref-6)
6. https://www.dffh.vic.gov.au/forensic-disability-services [↑](#footnote-ref-7)
7. https://www.dffh.vic.gov.au/victorian-senior-practitioner [↑](#footnote-ref-8)
8. https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023 [↑](#footnote-ref-9)
9. https://www.legislation.vic.gov.au/as-made/acts/disability-and-social-services-regulation-amendment-act-2023 [↑](#footnote-ref-10)
10. https://www.legislation.vic.gov.au/in-force/acts/disability-act-2006 [↑](#footnote-ref-11)
11. https://www.legislation.vic.gov.au/in-force/acts/residential-tenancies-act-1997/104 [↑](#footnote-ref-12)