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| **Overview of changes to the *Residential Tenancies Act 1997*** |
| *Disability and Social Services Regulation Amendment Act 2023* |
| OFFICIAL |



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# Introduction

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

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

This summary provides an overview of the changes to the Residential Tenancies Act.

These changes will commence (come into effect) on 1 July 2024. Until this time, the existing provisions (rules) in the Residential Tenancies Act will continue to apply.

More information about the rights and obligations of specialist disability accommodation (**SDA**) providers and residents, including relevant forms and templates, are available from the [Consumer Affairs Victoria website](https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/).[[1]](#footnote-2)

**Note:** From 1 July 2024, the SDA term in the Residential Tenancies Act will have a broader meaning than the definition of SDA in the National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020 (Cth).

Under the Residential Tenancies Act, the SDA term will include:

* National Disability Insurance Scheme (**NDIS**) funded SDA
* similar types of disability accommodation and supports, including accommodation provided by NDIS supported independent living (**SIL**) providers.

This summary is provided as general information only and is not legal advice. Readers should refer directly to the latest versions of the Disability Act and the Residential Tenancies Act and seek independent legal advice if required.

## Navigating this document

Links to more information, relevant Acts and a glossary of key terms used in this paper are provided at [Appendix 1: More information](#_Appendix_1:_More).

Key actions for SDA providers from 1 July 2024 are set out at [Appendix 2: Key actions for SDA providers from 1 July 2024](#_Appendix_2:_Key_1).

Fictional case studies to help understand how the changes apply to different types of accommodation are provided at[Appendix 3: Case studies](#_Appendix_3:_Case_1).

Key definitions from the Residential Tenancies Act are provided at[Appendix 4: Extract of key definitions in the Residential Tenancies Act 1997](#_Appendix_4:_Extract).

# Summary of key changes

## What are the key changes?

The changes will insert new definitions of SDA dwelling, SDA provider and SDA resident into the Residential Tenancies Act (refer to [New definitions of SDA dwelling, SDA provider and SDA resident](#_Changes_to_definitions)).

These changes will:

* expand the range of providers that have obligations under the Residential Tenancies Act
* support more people with disability to access the enhanced residential rights protections under the Residential Tenancies Act for residents of SDA, including people who get funding from:
	+ NDIS
	+ Transport Accident Commission
	+ Victorian WorkCover Authority
	+ Department of Families, Fairness and Housing
	+ Commonwealth Disability Support for Older Australians program
* broaden the range of accommodation that community visitors can visit.

## Why are the changes needed?

The changes are needed to address gaps in residential rights and protections for people living in disability accommodation in Victoria.

The changes will mean that more Victorians with disability can access the enhanced residential protections provided by the Residential Tenancies Act.

## What is not changing?

The changes do not affect:

* current SDA residency agreements
* the powers of community visitors to visit existing SDA enrolled dwellings
* the need for SDA providers to notify Consumer Affairs Victoria of new SDA residency agreements
* the general obligations of SDA providers under the Residential Tenancies Act.

## What the changes mean for people with disability

The changes to the Residential Tenancies Act will mean that more people with disability can access the enhanced residential rights protections available under the Residential Tenancies Act.

This will mean that more people in disability accommodation can be visited by community visitors.

This may include people with disability whose accommodation and supports are funded by the:

* NDIS
* Department of Families, Fairness and Housing
* Transport Accident Commission
* Victorian WorkCover Authority
* Commonwealth Disability Support for Older Australians program.

From 1 July 2024, residents of an SDA dwelling must be offered the choice of entering or establishing an SDA residency agreement, where this choice has not been previously offered. Residents may also choose to remain under a residential rental agreement.

An SDA residency agreement offers additional protections for residents, including safeguards against eviction and rent increases. Community visitors can inspect accommodation where an SDA residency agreement is in place, at any time and without notice.

The changes do not affect the rights and obligations of SDA residents living in an SDA enrolled dwelling under an existing SDA residency agreement.

## What the changes mean for providers

From 1 July 2024, some disability accommodation and support providers will have new obligations under the Residential Tenancies Act.

It is important that providers, including NDIS SIL providers, understand the changes to the Residential Tenancies Act and consider if they apply to the type of supports and accommodation they provide.

The [Consumer Affairs Victoria website](https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/)[[2]](#footnote-3) contains information for SDA providers regarding:

* obligations of SDA providers under the Residential Tenancies Act
* residential agreements available under the Residential Tenancies Act.

### SDA enrolled dwellings occupied under an SDA residency agreement

The changes to the Residential Tenancies Act do not change the obligations of SDA providers who are providing an existing SDA enrolled dwelling to an SDA resident under an SDA residency agreement.

However, these providers should note that some changes have been made to the rules for SDA residential notices (refer to [Changes to residential notices for SDA residency agreements](#_Changes_to_residential_1)).

### SDA enrolled dwellings occupied under a residential rental agreement

SDA providers who are renting an existing SDA enrolled dwelling to an SDA resident under a residential rental agreement (refer to [Glossary of terms](#_Glossary_of_terms)) will have new obligations from 1 July 2024.

These providers should:

* refer to [New definitions of SDA dwelling, SDA provider and SDA resident](#_New_definitions_of)
* refer to [Appendix 2: Key actions for SDA providers from 1 July 2024](#_Appendix_2:_Key_1)
* note that changes have been made to the rules for SDA residential notices (refer to [Changes to residential notices for SDA residency agreements](#_Changes_to_residential_1))
* continue to comply with all relevant obligations for SDA providers under the Residential Tenancies Act.

### Other accommodation that will become an SDA dwelling from 1 July 2024

Providers of accommodation to people with disability under a residential rental agreement (refer to [Glossary of terms](#_Glossary_of_terms)) that meets the new definition of SDA dwelling will have new obligations from 1 July 2024.

These providers should:

* refer to [New definitions of SDA dwelling, SDA provider and SDA resident](#_New_definitions_of)
* refer to [Appendix 2: Key actions for SDA providers from 1 July 2024](#_Appendix_2:_Key_1)
* become familiar with and comply with all relevant obligations for SDA providers under the Residential Tenancies Act.

### Group homes operated as a residential service under the Disability Act

From 1 July 2024, group homes that were operating under the Disability Act as residential services prior to 1 July 2024 will become an SDA dwelling under the new definition and transition to residential protections under the Residential Tenancies Act.

Prior to 1 July 2024, group homes operating under the Disability Act were excluded from the Residential Tenancies Act. This is because alternative residential protections were provided under the Disability Act.

For group homes that will transition to the Residential Tenancies Act on 1 July 2024:

* a group home will become an SDA dwelling
* a resident will become an SDA resident
* the provider of a group home will become an SDA provider
* an existing residential statement will deemed to be an SDA residency agreement
* the term of the SDA residency agreement will be for the period of the original residential statement
* the ‘rent’ and ‘services’ components of the residential charge specified in the original residential statement will be the ‘rent’ and ‘utilities’ charges in the SDA residency agreement.

Providers of group homes that will transition to the Residential Tenancies Act will have new obligations from 1 July 2024.

These providers should:

* refer to [New definitions of SDA dwelling, SDA provider and SDA resident](#_New_definitions_of)
* refer to [Appendix 2: Key actions for SDA providers from 1 July 2024](#_Appendix_2:_Key_1)
* become familiar with and comply with all relevant obligations for SDA providers under the Residential Tenancies Act.

# New definitions of SDA dwelling, SDA provider and SDA resident

## New definition of SDA dwelling

The changes will insert a new SDA dwelling term into the Residential Tenancies Act.

The change will expand the types of accommodation (dwellings) that are covered under Part 12A of the Residential Tenancies Act.

From 1 July 2024, SDA dwelling will mean:

* an SDA enrolled dwelling (a dwelling enrolled with the NDIS as SDA)
* any other dwelling that provides permanent long-term accommodation, where daily independent living support is provided to one or more residents and funded by:
	+ the Transport Accident Commission
	+ the Victorian WorkCover Authority
	+ the NDIS
	+ the Department of Families, Fairness and Housing
	+ the Commonwealth Disability Support for Older Australians program.

The following types of accommodation are not an SDA dwelling:

* accommodation that is not occupied under an SDA residency agreement or a residential rental agreement
* 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.

## New definition of SDA provider

The term SDA provider is defined in the Residential Tenancies Act. This term will be updated from 1 July 2024.

Prior to 1 July 2024, an SDA provider means:

* a person who is providing an SDA enrolled dwelling to an SDA resident with NDIS SDA funding.

From 1 July 2024, SDA provider will mean a provider that:

* owns or is the leaseholder of a property that meets the definition of SDA dwelling; and
* rents or proposes to rent a property to an SDA resident under a residential rental agreement or an SDA residency agreement.

An SDA provider may include an NDIS SIL provider or other type of disability accommodation and support provider.

The owner of an SDA dwelling is not considered the SDA provider if:

* the dwelling is sub-let to an NDIS provider or other disability and accommodation service provider, and
* the provider who sub-lets the property then rents the property to one or more SDA residents.

In this case, the provider that is sub-letting the property to SDA residents is determined to be the SDA provider.

## New definition of SDA resident

The term SDA resident is defined in the Residential Tenancies Act.

Prior to 1 July 2024, an SDA resident means a person with disability living in an SDA enrolled dwelling who has NDIS SDA funding.

From 1 July 2024, SDA resident will mean a person with disability who:

* receives, or is eligible to receive, funded daily independent living support; and
* is living in, or proposes to live in an SDA dwelling (including an SDA enrolled dwelling) under:
	+ an SDA residency agreement, or
	+ a residential rental agreement.

# Choice of residential agreement

## Key differences between residential rental agreements and SDA residency agreements

Under the Residential Tenancies Act, an SDA resident may choose a:

* residential rental agreement, or
* SDA residency agreement.

The key differences between a residential rental agreement and an SDA residency agreement are set out below.

An SDA residency agreement:

* provides enhanced residential protections against eviction, rent increases and bond payments for SDA residents, and unannounced visits by community visitors
* is an individual agreement and each resident in a house will have their own SDA residency agreement
* is more appropriate for a shared accommodation setting where multiple SDA residents live and access supports.

A residential rental agreement (refer to [Glossary of terms](#_Glossary_of_terms)):

* requires everyone in the house to be on one shared agreement
* allows residents the option to live with a mix of SDA and non-SDA residents
* is more appropriate where an SDA resident wishes to live with a spouse, friend or family who are not SDA residents.

For more information about the differences between an SDA residency agreement and a residential rental agreement, please visit [Consumer Affairs Victoria website](https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/).[[3]](#footnote-4)

**Note:** All residents in an SDA dwelling must be on the same type of agreement. This means that all residents can have individual SDA residency agreements, or all residents can be on a single residential rental agreement.

If an SDA resident chooses to live with a person who is not an SDA resident (for example with their spouse or in a share house with friends who are not SDA residents), the SDA resident and any other resident living at the SDA dwelling will need to enter a residential rental agreement.

## Entering and establishing an SDA residency agreement

An SDA residency agreement can either be entered into or established with an SDA resident.

An SDA provider and an SDA resident can:

* enter into an SDA agreement if the resident understands the information statement and can sign the agreement, or
* establish an SDA agreement if the resident cannot understand or sign the agreement.

Information about how to enter into or establish an SDA residency agreement is available at the [Consumer Affairs Victoria website](https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/).[[4]](#footnote-5)

## Registering an SDA residency agreement

If an SDA residency agreement is entered into or established, an SDA provider must:

* notify Consumer Affairs Victoria in writing within 14 days; and
* give a copy of the SDA residency agreement to the SDA resident and their guardian or administrator (as applicable).

Information about notifying Consumer Affairs Victoria of an SDA residency agreement is available at the [Consumer Affairs Victoria website](https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/).[[5]](#footnote-6)

# Other changes

## Changes to residential notices for SDA residency agreements

The changes will streamline requirements for residential notices issued by SDA providers under the Residential Tenancies Act.

From 1 July 2024, the changes will remove the requirement for SDA providers to notify the Public Advocate directly of certain residential notices issued to SDA residents under an SDA residency agreement.

Instead, SDA providers will need to notify the Director of Consumer Affairs Victoria, who will then notify the Public Advocate and other funding bodies or authorities.

Requirements for SDA providers to also notify the National Disability Insurance Agency (**NDIA**) of certain residential notices issued or received in respect of an SDA residency agreement with an NDIS participant, have not changed.

Information on notification requirements is available at the [Consumer Affairs Victoria website](https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/).[[6]](#footnote-7)

## Changes to who community visitors can visit

The changes to the Residential Tenancies Act will expand the range of disability accommodation settings that community visitors can visit.

When the changes to the Residential Tenancies Act commence on 1 July 2024, Community Visitors will be empowered to:

* visit an SDA dwelling (including an SDA enrolled dwelling) unannounced, where an SDA residency agreement is in place
* visit an SDA dwelling (including an SDA enrolled dwelling) where a residential rental agreement is in place – only if a resident or another person on their behalf requests a visit.

A summary of changes to the rules for community visitors made by the Amendment Act is available at the Department of Families, Fairness and Housing [Disability and Social Services Regulation Amendment Act 2023 webpage](https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023).[[7]](#footnote-8)

## Offences

Some SDA providers will have new obligations from 1 July 2024 (refer to [What the changes mean for providers](#_What_the_changes) and [Appendix 2: Key actions for SDA providers from 1 July 2024](#_Appendix_2:_Key_1)).

Failure to comply with these obligations may be an offence and attract significant penalties.

Under the Residential Tenancies Act, it is an offence, among other things, for an SDA provider to:

* prepare an SDA residency agreement or residential rental agreement that is not in the standard form
* misrepresent how the Residential Tenancies Act applies to an SDA resident
* misrepresent any of the terms of an agreement
* misrepresent a resident’s rights and duties under an agreement
* threaten, intimidate or persuade a person not to exercise their rights.

These offences will continue to apply from 1 July 2024.

All SDA providers, including disability accommodation and support providers that will become SDA providers from 1 July 2024, must comply with all relevant obligations under the Residential Tenancies Act.

For more information about the rights and obligations of SDA providers and SDA residents, visit the [Consumer Affairs Victoria website](https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/).[[8]](#footnote-9)

An SDA provider is unsure of their rights and responsibilities under the Residential Tenancies Act should seek independent legal advice.

# Appendix 1: More information

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

A list of terms used in this document is provided at **Table 2**.

For more information about the changes to the Residential Tenancies Act, including Easy Read information, visit the Department of Families, Fairness and Housing [Changes to the Residential Tenancies Act 1997 webpage](https://www.dffh.vic.gov.au/changes-residential-tenancies-act-1997).[[9]](#footnote-10)

For more information about the rights and obligations of SDA providers and SDA residents, visit the [Consumer Affairs Victoria website](https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/).[[10]](#footnote-11)

For more information about the Victorian community visitors program, visit the [Office of the Public Advocate’s Community Visitors webpage](https://www.publicadvocate.vic.gov.au/your-rights/in-your-home/community-visitors).[[11]](#footnote-12)

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 webpage](https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023).[[12]](#footnote-13)

## Acts

Table 1. Links to relevant Acts

|  |  |
| --- | --- |
| Act | Where to find it |
| ***Disability and Social Services Regulation Amendment Act 2023* (Vic)(Amendment Act)** | [Victorian Legislation *Disability and Social Services Regulation Amendment Act 2023* webpage](https://www.legislation.vic.gov.au/as-made/acts/disability-and-social-services-regulation-amendment-act-2023)[[13]](#footnote-14) |
| ***Disability Act 2006* (Vic) (Disability Act)** | [Victorian Legislation *Disability Act 2006* webpage](https://www.legislation.vic.gov.au/in-force/acts/disability-act-2006)[[14]](#footnote-15) |
| ***National Disability Insurance Scheme Act 2013* (Cth*)* (NDIS Act)** | [Federal Register of Legislation *National Disability Insurance Scheme Act 2013* webpage](https://www.legislation.gov.au/C2013A00020/latest/text)[[15]](#footnote-16) |
| ***Residential Tenancies Act 1997* (Vic)(Residential Tenancies Act)** | [Victorian Legislation *Residential Tenancies Act 1997* webpage](https://www.legislation.vic.gov.au/in-force/acts/residential-tenancies-act-1997/104)[[16]](#footnote-17) |

## Glossary of terms

Table 2. Key terms used in this document

| 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 (Royal Assent). |
| **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. |
| **Consumer Affairs Victoria** | Consumer Affairs Victoria is a Victorian Government agency that is responsible for regulating accommodation under the Residential Tenancies Act and other consumer protection laws. |
| **Daily independent living support** | Daily independent living support is a type of funded daily support to help people with disability live in their home. The support may be funded by the NDIS as SIL or funded by another body, such as the Transport Accident Commission. |
| **Group home** | In this document, group home means a residential service declared to be a group home under the Disability Act. |
| **Head renter** | The head renter is the person whose name is on a residential rental agreement with a residential rental provider. |
| **NDIS** | National Disability Insurance Scheme |
| **Residential rental agreement** | An agreement entered under Part 2 of the Residential Tenancies Act. It used to be called a lease or a residential tenancy agreement.In this document, residential rental agreement has the same meaning as the definition at section 3(1) of the Residential Tenancies Act:**residential rental agreement** means an agreement, whether or not in writing and whether express or implied, under which a person lets premises as a residence (but does not include an SDA residency agreement) and includes a fixed term residential rental agreement and a periodic residential rental agreement; |
| **Residential rental provider** | A residential rental provider is the person who provides accommodation for rent 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.From 1 July 2024, the SDA term in the Residential Tenancies Act will have a broader meaning than the definition of SDA in the National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020 (Cth). |
| **SDA dwelling** | SDA dwelling will be a new term under the Residential Tenancies Act. It will include SDA enrolled dwelling as well as other types of SDA, such as SDA funded by the Transport Accident Commission. |
| **SDA provider** | SDA provider is a term in the Residential Tenancies Act. It will be updated to mean a provider of an SDA dwelling. |
| **SDA resident** | SDA resident is a term in Residential Tenancies Act. It will be updated to mean a resident of an SDA dwelling. |
| **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. |
| **SIL** | NDIS Supported Independent Living |

# Appendix 2: Key actions for SDA providers from 1 July 2024

Table 3. Key actions for SDA providers from 1 July 2024.

| Dwelling | Agreement in place as at 30 June 2024 | Key actions | Additional information |
| --- | --- | --- | --- |
| **SDA enrolled dwelling**Accommodation enrolled with the NDIS as SDA. | **SDA residency agreement** | * **Understand and continue to comply with obligations under the *Residential Tenancies Act 1997* (Residential Tenancies Act).**
 | * The key obligations of SDA providers providing an SDA enrolled dwelling to one or more SDA residents under an SDA residency agreement have not changed.
 |
| **SDA enrolled dwelling**Accommodation enrolled with the NDIS as SDA. | **Residential rental agreement** | * **Understand and comply with obligations under the Residential Tenancies Act.**
* **Within six months from 1 July 2024:**
	+ give each SDA resident an information statement in the approved form; and
	+ offer each SDA resident the choice to enter into or establish an SDA residency agreement with the SDA provider.
* **If an SDA residency agreement is entered into or established:**
	+ notify Consumer Affairs Victoria in writing within 14 days; and
	+ give a copy of the SDA residency agreement to the SDA resident and their guardian or administrator (as applicable).
 | * It is an offence not to comply with these transitional obligations.
* Section 498E of the Residential Tenancies Act includes obligations for SDA providers when giving information to an SDA resident.
* If an SDA residency agreement is entered into or established, the existing residential rental agreement is taken to terminate immediately before the SDA residency agreement comes into operation.
 |
| **SDA dwelling**Accommodation that will become an SDA dwelling from 1 July 2024 (other than an SDA enrolled dwelling). | **Residential rental agreement** | * **Understand and comply with obligations under the Residential Tenancies Act.**
* **Within six months from 1 July 2024:**
	+ give each SDA resident an information statement in the approved form; and
	+ offer each SDA resident the choice to enter into or establish an SDA residency agreement with the SDA provider.
* **If an SDA residency agreement is entered into or established:**
	+ notify Consumer Affairs Victoria in writing within 14 days; and
	+ give a copy of the SDA residency agreement to the SDA resident and their guardian or administrator (as applicable).
 | * It is an offence not to comply with these transitional obligations.
* Section 498E of the Residential Tenancies Act includes obligations for SDA providers when giving information to an SDA resident.
* If an SDA residency agreement is entered into or established, the existing residential rental agreement is taken to terminate immediately before the SDA residency agreement comes into operation.
 |
| **Group home** Accommodation operated as a residential service under the *Disability Act 2006*. | **Residential statement** | * **Understand and comply with obligations under the Residential Tenancies Act.**
* **Note that on and from 1 July 2024:**
	+ a group home that was operated as a residential service under the Disability Act will become an SDA dwelling
	+ a resident of that group home will become an SDA resident
	+ the provider operating that group home will become an SDA provider
	+ a residential statement given to a resident prior to 1 July 2024 will be deemed to be an SDA residency agreement
	+ the term of the deemed SDA residency agreement will be for the period of the residential statement
	+ the rent and services components of the residential charge specified in the residential statement will be the rent and utilities charges, respectively, for the purposes of the deemed SDA residency agreement.
* **Within six months from 1 July 2024:**
	+ give each SDA resident an information statement in the approved form.
* **Prior to the end of the SDA residency agreement, and as soon as practical after providing the information statement, make all reasonable efforts to:**
	+ enter into or establish an SDA residency agreement with the SDA resident, or
	+ enter into a residential rental agreement with the SDA resident.
* **If an SDA residency agreement is entered or established:**
	+ notify Consumer Affairs Victoria in writing within 14 days; and
	+ give a copy of the SDA residency agreement to the SDA resident and their guardian or administrator (as applicable).
 | * It is an offence not to comply with these transitional obligations.
* From 1 July 2024, group homes will no longer be regulated as residential services under the Disability Act.
* If a disability service provider operating a group home is not the owner or leaseholder of the group home, the owner or leaseholder of the group home immediately before 1 July 2024 is taken on and from 1 July 2024, to be an SDA provider until the provider enters into an SDA residency agreement or residential rental agreement.
* Section 498E of the Residential Tenancies Act includes obligations for SDA providers when giving information to an SDA resident.
 |

# Appendix 3: Case studies

The following case studies are fictional examples of how the new rules in the Residential Tenancies Act may apply to different types of disability accommodation and support arrangements.

## Case study 1 – NDIS SIL accommodation under residential rental agreement

### Summary

Ruby Disability Services is an NDIS SIL provider.

Ruby Disability Services owns an established four-bedroom house which it rents directly to four people with disability under a residential rental agreement. Each resident is listed as a renter on the residential rental agreement.

Each resident has lived at the accommodation for some time and intends to continue living at the property.

All residents access daily independent living supports at the accommodation from Ruby Disability Services, but they are not eligible for NDIS SDA funding.

The accommodation is not enrolled with the NDIS as SDA.

### What the changes mean for this provider

From 1 July 2024, the property is likely to become an SDA dwelling under the Residential Tenancies Act. The provider would become an SDA provider and each resident would become an SDA resident.

This is because:

* the accommodation is permanent
* the accommodation is long term
* each resident is a person with disability
* daily independent living support is provided to one or more residents at the accommodation and is funded by a specified entity or program (in this case, the NDIS)
* the accommodation is occupied by residents under a residential rental agreement with the NDIS SIL provider
* the accommodation is not, for example, short-term, a health service or temporary crisis accommodation.

From 1 July 2024, Ruby Disability Services will need to take certain actions to comply with the changes to the Residential Tenancies Act (refer to [Appendix 2: Key actions for SDA providers from 1 July 2024](#_Appendix_2:_Key_1)).

## Case study 2 – SDA enrolled dwelling under SDA residency agreement

### Summary

Opal Disability Services is an NDIS provider registered for both SDA and SIL.

Opal Disability Services own two properties which they provide to several people with disability under individual SDA residency agreements.

Each property is enrolled with the NDIS as SDA.

The residents of each property have NDIS SDA funding to live at the accommodation.

### What the changes mean for this provider

Opal Disability Services does not need to take any action from 1 July 2024. This is because:

* the provider is already an SDA provider under the Residential Tenancies Act
* each resident is already an SDA resident
* the accommodation is already an SDA enrolled dwelling
* the accommodation is occupied under individual SDA residency agreements.

Opal Disability Services should continue to comply with their obligations as an SDA provider under the Residential Tenancies Act and note changes to rules for residential notices from 1 July 2024 (refer to[Changes to residential notices for SDA residency agreements](#_Changes_to_residential_1)).

## Case study 3 – Short-term accommodation, short-term NDIS SIL and NDIS medium-term accommodation

### Summary

Emerald Disability Services lets a five-bedroom property from a private owner under a long-term commercial arrangement.

Emerald Disability Services uses the property to provide transitional accommodation and supports, including short-term SIL supports for people waiting to access long-term SIL, short-term accommodation, medium-term accommodation and respite accommodation for NDIS participants, people with Transport Accident Commission funded supports, and their families and carers.

### What the changes mean for this provider

The property will not become an SDA dwelling from 1 July 2024. This is because:

* the accommodation is provided to residents on a short-term or transitional basis
* the accommodation is not directly let, or intended to be let, to residents under a residential rental agreement or an SDA residency agreement.

Emerald Disability Services does not need to take any action following the commencement of the changes to the Residential Tenancies Act on 1 July 2024.

However, from 1 July 2024, if at any time the property is reconfigured to provide long-term SIL or other long-term funded supports, the provider may become an SDA provider and subject to obligations under the Residential Tenancies Act.

## Other accommodation arrangements

The case studies in this section reflect common types of disability accommodation and support arrangements. They are not intended to cover all possible arrangements.

How the Residential Tenancies Act applies to a specific provider, dwelling or resident should be considered on a case-by-case basis. If unsure, providers should seek independent legal advice to ensure they understand and comply with all relevant Victorian and Commonwealth laws.

# Appendix 4: Extract of key definitions in the *Residential Tenancies Act 1997*

Table 4. Legislated definition of SDA dwelling, SDA provider and SDA resident in the *Residential Tenancies Act 1997* (Residential Tenancies Act)

| Term | Prior to 1 July 2024 | From 1 July 2024 |
| --- | --- | --- |
| **SDA dwelling** | This term did not exist in the Residential Tenancies Act.The changes to the Residential Tenancies Act will introduce this new term. | **Section 498BA**(1) In this Act, an ***SDA dwelling*** means— (a) an SDA enrolled dwelling; or (b) any other permanent dwelling that provides long term accommodation and where daily independent living support is provided to one or more residents with a disability funded by a specified entity or program and may comprise—(i) an area or room exclusively occupied by an SDA resident and common areas shared by other SDA residents under an SDA residency agreement; or(ii) the dwelling as a whole occupied exclusively by an SDA resident under an SDA residency agreement; or(iii) the dwelling as a whole occupied under a residential rental agreement by at least one SDA resident and other occupants who may or may not be SDA residents.(2) An SDA dwelling does not include the following—(a) premises that are not occupied under an SDA residency agreement or a residential rental agreement;**Note**See also section 26(3) and the definition of ***residential rental agreement*** in section 3(1).(b) a premises occupied under a residential rental agreement in relation to which the residential rental provider and, if appropriate, the head renter of the premises—(i) do not receive funding from a specified entity or program in relation to any disability support provided at the premises; and(ii) have not entered into an agreement with a specified entity or program in relation to any disability support provided at the premises;(c) a health or residential service;(d) temporary crisis accommodation; (e) a short-term accommodation dwelling or accommodation that is used to provide respite or transitional accommodation.(3) In this section—***head renter***, in relation to rented premises, means a person who—(a) is a renter of the premises under the head residential rental agreement within the meaning of section 91R(1); and (b) has granted another person possession of the premises under a sub-residential rental agreement within the meaning of that section. |
| **SDA enrolled dwelling** | **Section 3(1)*****SDA enrolled dwelling*** means a permanent dwelling—(a) that provides long-term accommodation for one or more SDA residents; and(b) that is enrolled as an SDA dwelling under the National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016 of the Commonwealth as in force from time to time or under other rules made under the National Disability Insurance Scheme Act 2013 of the Commonwealth; and(c) that may comprise of— (i) an area or room exclusively occupied by an SDA resident and common areas shared by other SDA residents under an SDA residency agreement; or(ii) the dwelling as a whole occupied exclusively by an SDA resident under an SDA residency agreement; or(iii) the dwelling as a whole occupied under a residential rental agreement by at least one SDA resident and other occupants who may or may not be SDA residents; | **Section 3(1)**The definition of SDA enrolled dwelling will remain unchanged, except for a change to the date of the National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016 from 2016 to 2020. |
| **SDA provider** | Section 498B***SDA provider means a person—***(a) who is a registered NDIS provider that provides specialist disability accommodation; and(b) who is the owner or leaseholder of an SDA enrolled dwelling; | **Section 3(1)****SDA provider** means a person who is the owner or leaseholder of an SDA dwelling if the premises are let under, or are proposed to be let under, an SDA residency agreement or residential rental agreement to an SDA resident. |
| **SDA resident** | Section 498B***SDA resident means—***(a) a person who is an SDA recipient; or (b) a person who is a CoS supported accommodation client; | **Section 3(1)*****SDA resident means a person with a disability—***(a) who receives, or is eligible to receive, funded daily independent living support; and(b) who is residing, or proposes to reside, in an SDA dwelling under an SDA residency agreement or residential rental agreement. |

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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.

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

Available at the Department of Families, Fairness and Housing [Disability and Social Services Regulation Amendment Act 2023 webpage](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.consumer.vic.gov.au/housing/specialist-disability-accommodation [↑](#footnote-ref-2)
2. https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation [↑](#footnote-ref-3)
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