

# Specialist Disability Accommodation

## Consumer Affairs Victoria’s regulatory role

Consumer Affairs Victoria has certain regulatory responsibilities for Specialist Disability Accommodation agreements under Victorian renting laws.

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## Purpose

This document is a guide for residents, providers and organisations and people that support residents of Specialist Disability Accommodation (SDA) dwellings. It details the regulatory role of Consumer Affairs Victoria (CAV). It does not have legal force or replace the relevant legislation.

## Context

SDA is housing designed for people with extreme functional impairment or very high support needs. It gives people with a disability the ability to live independently.

In July 2019, SDA residential agreements became part of the [Residential Tenancies Act 1997](#) (the Act). CAV ensures compliance with certain obligations related to these agreements under Victorian renting laws.

An SDA residency agreement is a contract for residency between an SDA resident and SDA provider.

Where a person is moving into SDA, under the Act the SDA provider must enter into or establish an SDA residency agreement with the resident under Part 12A, unless the resident enters into a residential rental agreement under Part 2.

The Act sets out rights and responsibilities to reflect the lifecycle of a rental agreement – from before a rental agreement is signed, during an agreement and after the agreement ends.

Information about Part 12A SDA residencies is available on our website: [Specialist disability accommodation \(SDA\) - Consumer Affairs Victoria](#)

Information about Part 2 residential rental agreements is available on our website: [Renting - Consumer Affairs Victoria](#)

CAV's regulatory approach is broad, ranging from education to enforcement. Further detail is provided below. All offences and penalties are listed below in Table 1.

See Table 2 for information about the different protections applied to standard residential rental agreements and SDA residency agreements.

## Resolving disputes

It is the responsibility of SDA providers to have policies and procedures to manage and deal with complaints. These must be outlined in an SDA residency agreement.

A resident's guardian or administrator can act on their behalf when a dispute arises.

Although the Victorian Civil and Administrative Tribunal (VCAT) is the main avenue for resolving disputes, most matters can be settled without going to VCAT.

There are a number of options open to residents and providers for resolving disputes. The best action to take will depend on the issue at hand.

There are a number of self-help tools on CAV's website, including a page on resolving disputes: [Legal and dispute support - Consumer Affairs Victoria](#).

The Tenancy Assistance and Advocacy Program (TAAP) is funded by CAV and delivered by community agencies across Victoria.

TAAP agencies provide a range of services, including information and referral to other services, negotiation with rental providers, and assistance in preparing for and attending hearings at the VCAT. Further information is available on our website: [Tenancy Assistance and Advocacy Program - Consumer Affairs Victoria](#)

CAV may also be able to assist with disputes between residents and providers. Our regulatory role and compliance approach is detailed in the next sections.

## Our regulatory role

We are Victoria's consumer affairs regulator. Our purpose is to help Victorians be responsible and informed businesses and consumers.

Our vision for Victoria's rental sector is a fair and safe rental market. Our role in regulating renting laws includes:

- educating renters and rental providers on their rights and responsibilities
- conciliating disputes between renters and rental providers
- funding community agencies to provide advocacy support to eligible Victorians
- enforcing and ensuring compliance with consumer and rental laws.

Under the Act, CAV has four key functions in providing protections for SDA residents:

1. Provide information and support to understand rights and responsibilities
2. Register SDA agreements and notices
3. Conduct rent reviews and non-urgent repair inspections
4. Undertake compliance and enforcement activities for certain provisions

More information on each of these functions is set out below.

## 1. Providing information and support to understand rights and responsibilities

Our key objective is voluntary compliance. We proactively engage with rental providers to inform them of their responsibilities and assist them to make sure they know how to comply. We work to ensure the law is clear, keeps pace with changing markets, and does not impose unnecessary red tape.

To support voluntary compliance, we use a range of mediums to inform renters and rental providers about their responsibilities and rights. We use digital, telephone and face-to-face channels to achieve this.

There is extensive information on our website for both SDA residents, providers and support people: [www.consumer.vic.gov.au/housing/specialist-disability-accommodation](http://www.consumer.vic.gov.au/housing/specialist-disability-accommodation)

Our telephone-based information services are focused on areas within our direct responsibility and form an important part of our risk-based approach to regulation. We have a dedicated team in our contact centre to provide information about SDA agreements.

In addition to our information services, in certain circumstances we provide dispute services for SDA residents. Our primary dispute service offering is delivered by telephone with the aim of obtaining a timely resolution.

CAV officers can also make referrals to TAAP agencies when vulnerable renters require additional support to navigate their way through a rental issue.

## 2. Maintaining a register of SDA agreements and notices

When an SDA provider enters or establishes an SDA residency agreement, they must notify CAV within 14 days. This safeguard ensures residents have a written agreement and that CAV as the regulator is aware of the agreement.

Providers must also notify CAV once certain notices are issued. This provision provides an additional layer of administrative protection for residents that is unique to SDA residency agreements.

Notifications to CAV must occur in the following instances:

- a provider has given a resident a Notice of temporary relocation or a Notice to vacate
- a provider has given a resident a Notice of withdrawal

- a resident has given a provider a Notice of intention to vacate, or a Notice of intention to terminate.

There are statutory timeframes for notifying CAV and that information can be accessed on our website: [Notifying us of SDA agreements and notices - Consumer Affairs Victoria](#).

### 3. Rental assessments

Residents can request CAV undertake an assessment if they have received a rent increase notice and they regard the proposed rent as excessive.

Residents or their chosen support person can also ask us to assess instances where they have made a non-urgent repairs request and the repairs have not been undertaken by their provider.

An assessment often requires a CAV staff member to carry out an onsite inspection of the rented premises. In these instances, we will make contact with the resident or their guardian/administrator to organise a suitable inspection time.

Once an assessment has been completed, we will produce a written report and provide it to:

- the SDA resident and their chosen person (if any) in the case of a non-urgent repairs assessment, or
- the SDA resident, resident's guardian or administrator (if any) and the SDA provider in the case of an excessive rent assessment.

We also attempt to negotiate a settlement between both parties. If agreement cannot be reached, a resident may elect to take the matter to VCAT. Residents should submit their CAV report to VCAT as the Tribunal member will refer to the report when making their determination and legally binding order.

#### Excessive rent

All renters can seek support from CAV if they think their rent is excessive. Such requests follow receipt of a rent increase notice.

A resident has 30 days from the time a rent increase was given to make a request to CAV. If they miss the timeframe, they may apply directly to VCAT.

Once a rent investigation is complete, we are required to produce a report and provide a copy to the resident, the SDA resident's guardian or administrator (if any) and the provider.

Further information can be located on our website: [Challenging rent increases or high rent - Consumer Affairs Victoria](#)

#### Non-urgent repairs

A non-urgent repair is any repair that is not an 'urgent repair'.

Residents should notify their provider about a non-urgent repair in writing. Residents can also ask for someone else to talk to the SDA provider about repairs. This person is called a 'chosen person' and can be a guardian, administrator, relative or anyone else the SDA resident chooses.

There is a [Notice to SDA provider form](#) which can be used to request non-urgent repairs.

Providers must fix non-urgent repairs within 14 days of written notice. If they do not fix the issue in 14 days, residents can send us a request to assess the matter.

An assessment will involve an onsite inspection of the property.

Once the investigation is complete, a report will be provided to both the resident and their chosen person (if any). This report is valid for 60 days. Residents can apply to VCAT within this time for a legally binding repairs order.

Further information can be located on our website.

[Repairs in rental properties - Consumer Affairs Victoria](#)

[Repairs and maintenance in SDA - Consumer Affairs Victoria](#)

## 4. Compliance and enforcement

Our residential tenancies compliance program aims to ensure rental providers meet their obligations. We encourage compliance by:

- Identifying and responding swiftly and with the greatest impact, sending a clear message.
- Educating rental providers about their obligations.
- Inspecting high-risk rental providers to check compliance.
- Timely and targeted responses to breaches.

Ongoing compliance activities in the SDA space includes:

- Monitoring and reviewing compliance risks and emerging issues that are presented to us via a range of intelligence sources.
- Exchange of valuable, on-the-ground information and intelligence with key stakeholders. This is particularly important for SDA properties, where issues are less likely to be reported by vulnerable residents.

We focus on conduct that is deliberate and ongoing, high risk and that affects SDA residents. How we respond to non-compliance will depend on the individual matter, our regulatory powers and the escalations framework detailed in the [CAV Compliance Policy](#).

Most provisions in the Act establish rights and responsibilities between residents and providers and are not enforceable by CAV. However, some provisions establish conduct obligations or offences, with penalties applying if they are breached. These can be enforced by CAV.

Misconduct may result in an escalated response and the action we take will depend on the nature of the breach, the consumer detriment involved and the compliance posture (attitude or response) of the rental provider. We may elect to take one or more of the following actions:

- Multi-agency strategies with partners and national counterparts.
- Administrative actions – disciplinary actions, official warnings, and infringements.
- Criminal or civil proceedings in a court or tribunal.

Where a contravention carries an infringement penalty, for less serious breaches and where the conduct is technical or isolated, we may issue the rental provider with an official warning instead of an infringement penalty. Where the conduct is more serious, an infringement penalty may be issued.

Enforcement action includes civil proceedings or criminal prosecution. If conduct is blatant and ongoing, we may make an assessment that it requires court action.

Civil and criminal penalties can only be enforced through a court or tribunal and are reserved for matters posing the highest risk. The Act sets out all offences and the penalties for non-compliance.

Offences pertaining to rental agreements that are **not** SDA agreements, are detailed on our website: [Penalties - renting - Consumer Affairs Victoria](#).

Offences relating to SDA agreements are detailed in Table 1 on the next page.

There is information for residents or their guardians/administrators about making a complaint on our website: [Complaints in SDA - Consumer Affairs Victoria](#).

SDA stakeholders/partners can provide us information and intelligence about potential non-compliance via the email address: [partners@cav.vic.gov.au](mailto:partners@cav.vic.gov.au)

Table 1: Offences – Part 12A SDA agreements

Section description	Summary	Section number	Penalty
Information statement required to be given to resident	<p>A provider must give a resident an information statement 7 days prior to entering into or establishing an agreement with a resident.</p> <p>The information statement must set out certain information in a form approved by the Director of CAV.</p> <ul style="list-style-type: none"> <li>• <a href="#">SDA residency agreement information statement (Word, 62KB)</a>, or</li> <li>• <a href="#">Residential rental agreement information statement (Word, 64KB)</a>.</li> </ul> <p>Anyone that might sublet the property must also be provided an approved information statement.</p>	498D(1) - 498D(3)	<p>Each breach, 300 penalty units in the case of a natural person</p> <p>750 penalty units in the case of a body corporate</p>
Notice of revocation of registration	<p>If the registration of a person under the NDIS as a registered provider is revoked, that person must give the resident written notice of that fact.</p> <p>Section 498DA(1)(b) specifies what must be included in a written notice.</p> <p>The notice must be issued within 5 days of the registration being revoked.</p>	498DA(1)	25 penalty units
Notice of revocation of enrolment	<p>If a dwelling ceases to be an SDA enrolled dwelling the provider must provide the resident written notice of this.</p> <p>Section 498DA(2)(b) specifies what must be included in a written notice.</p> <p>The notice must be issued within 5 days after the dwelling ceases to be enrolled.</p>	498DA(2)	25 penalty units
Written notice of agreement to Director of CAV	<p>Providers must give written notice to Director of CAV of any residency agreement within 14 days of it being entered into or established.</p>	498F(5)	60 penalty units
Copy of agreement to be made available to resident	<p>A copy of residency agreement to be made available to resident and their guardian or administrator.</p>	498H(a) 498H(b)	<p>Each breach, 25 penalty units</p>

Section description	Summary	Section number	Penalty
Agreements in standard form	The agreement must be in a standard/prescribed form.	498I(2)	25 penalty units
Misleading or deceptive conduct	<p>A provider must not induce a person to enter into an SDA residency agreement by making a false or misleading representation concerning any of the following:</p> <ul style="list-style-type: none"> <li>characteristics of the dwelling</li> <li>the use to which the dwelling is capable of being put or may lawfully be put</li> </ul> <p>the existence or availability of facilities</p>	498LC(3)	<p>60 penalty units in the case of a natural person</p> <p>300 penalty units in the case of a body corporate</p>
Limit on payment in advance	A provider must not require a resident to pay the rent more than 30 days in advance	498ZC	60 penalty units
Where and how is rent to be paid	<p>Must not require a resident to pay rent by a cheque or other negotiable instrument that is post-dated, and</p> <p>Must provide a rent payment method that incurs no additional costs is reasonably available to the resident (other than bank fees or account fees payable on the resident's bank account)</p>	498ZD(2) 498ZD(3)	Each breach, 60 penalty units
Receipts for rent	Must give a written receipt of rent in accordance with the Act	498ZE(1) – 498ZE(3)	Each breach, 25 penalty units
SDA resident's goods not to be taken for rent	A person must not take or dispose of a resident's goods on account of any rent owing by the resident	498ZF	60 penalty units
Certain charges prohibited	<p>The following charges are prohibited:</p> <ul style="list-style-type: none"> <li>A guarantee for the performance of the resident's duties under the Act</li> <li>A charge or indemnity for a charge in relation to the making, continuation or renewal of a residency agreement that is a premium, bonus, commission or key money</li> <li>A charge in relation to the inspection of the dwelling by a resident</li> <li>The first issue of a rent payment card under an SDA residency agreement</li> </ul> <p>The establishment or use of direct debit facilities or any other electronic payment facility for payment of rent</p>	498ZL(2) - 498ZL(5)	Each breach, 60 penalty units
Provider must not seek overpayment for utility charge	A provider must not seek payment or reimbursement for a cost or charge for utilities that is more than the relevant	498ZN	60 penalty units

Section description	Summary	Section number	Penalty
	utility supplier would have charged the resident for the supply or use of electricity, water, bottled gas or oil		
Notify that notice of temporary relocation has been issued to SDA recipient	A provider must notify the Chief Executive Officer of the <a href="#">NDIA</a> , Public Advocate and the Director of CAV of the details of a notice of temporary relocation within 24 hours of the notice being given to an SDA recipient	498ZV(4)	60 penalty units
Notify that notice of temporary relocation has been issued to CoS supported accommodation client	A provider must notify the Public Advocate and the Director of CAV of the details of a notice of temporary relocation within 24 hours of the notice being given to a Continuity of Support (CoS) supported accommodation client. For more information about what a CoS client is refer to: <a href="#">Continuity of support   NDIS</a>	498ZV(5)	60 penalty units
Notify that notice to vacate has been issued to SDA recipient	An <a href="#">SDA provider</a> or mortgagee must notify the Chief Executive Officer of the <a href="#">NDIA</a> , the <a href="#">Public Advocate</a> and the <a href="#">Director</a> of CAV of the details of a <a href="#">notice to vacate</a> within 24 hours of the notice being given to an SDA recipient.	498ZX(7) (SDA provider) 498ZZD(3) (mortgagee)	60 penalty units
Notify that notice to vacate has been issued to CoS supported accommodation client	An <a href="#">SDA provider</a> or mortgagee must notify the <a href="#">Public Advocate</a> and the <a href="#">Director</a> of CAV of the details of a <a href="#">notice to vacate</a> within 24 hours of the notice being given to a CoS supported accommodation client.	498ZX(8) (SDA provider) 498ZZD(4) (mortgagee)	60 penalty units
Personal documents left behind	If a person who has a lawful right to personal documents reclaims the documents, the enrolled dwelling owner must not refuse to give the documents to that person	498ZZZA(2)	150 penalty units in the case of a natural person 750 penalty units in the case of a body corporate
Goods left behind	A former SDA resident may request proceeds of sale of goods	498ZZZG(3)	30 penalty units

## Comparison – Part 2 and Part 12A agreements

Table 2 provides a comparison of protections available to renters with a Part 2 residential rental agreement and SDA residents with a Part 12A SDA residency agreement.

Table 2: Comparison of agreements

Protection for SDA resident	Residential rental agreement	SDA residency agreement
Provider can charge a bond	✓	X
Each resident has separate agreement	X	✓
Providers are required to give and explain an information statement to the resident before establishing or entering into an agreement	✓	✓
Providers are required to explain information statement to resident in a mode that resident is most likely to understand	✓	✓
Providers are required to explain agreement to resident in a mode that resident is most likely to understand	X	✓
Providers are required to notify CAV when entering into a new SDA residency agreement	X	✓
Providers must issue notice of temporary relocation prior to notice to vacate in certain circumstances	X	✓
Residents may apply to VCAT to declare harsh and unconscionable term invalid	✓	✓
Residents can apply to VCAT for urgent repairs	✓	✓
Residents can apply to Director of CAV to investigate need for non-urgent repairs	✓	✓
Right of entry by Office of the Public Advocate's Community Visitors	X	✓
Residents can request the provider arrange for a community visitor to visit them in their home	✓	✓
Providers must give notice in writing of proposed increase in rent	✓	✓
Residents may apply to Director of CAV to investigate excessive rent	✓	✓
Providers cannot demand or receive guarantee from resident for performance of SDA resident's duties	✓	✓

Protection for SDA resident	Residential rental agreement	SDA residency agreement
CAV, NDIA and Office of Public Advocate must be notified by SDA provider if notice to vacate is issued by provider	X	✓

## Additional resources

[Legislation administered by Consumer Affairs Victoria - Consumer Affairs Victoria](#)

[National Disability Insurance Scheme \(NDIS\)](#)

[SDA pricing and payments | NDIS](#)

[Specialist disability accommodation | Homes Victoria](#)

[Residential tenancies | VCAT](#)