

|  |
| --- |
| Residency Management Practice Manual |
| Department-owned Specialist Disability Accommodation:  May 2022 |
|  |

Contents

[Overview 2](#_Toc103156235)

[Glossary 2](#_Toc103156236)

[Collaboration Agreements 2](#_Toc103156237)

[Rent setting and increases 5](#_Toc103156238)

[Rent collection 6](#_Toc103156239)

[Rental arrears 7](#_Toc103156240)

[Financial hardship 9](#_Toc103156241)

[Absence from an SDA 11](#_Toc103156242)

[Requests from residents to change rooms 14](#_Toc103156243)

[Pets 15](#_Toc103156244)

[Incidents and issues reporting 15](#_Toc103156245)

[Emergency management 18](#_Toc103156246)

[Notice of temporary relocation 19](#_Toc103156247)

[Notice to vacate 24](#_Toc103156248)

[Goods left behind 27](#_Toc103156249)

[If a resident dies 29](#_Toc103156250)

# Overview

The Department of Families, Fairness and Housing (department) is a registered National Disability Insurance Scheme (NDIS) provider of Specialist Disability Accommodation (SDA).

The purpose of this Practice Manual is to outline the processes that department staff (staff) follow when managing residencies in department-owned SDA.

This Practice Manual does not apply to SDA that is not owned by the department, or to services provided by resident’s Supported Independent Living (SIL) providers. Residents, or their nominated contact person, can contact those organisations directly for information about their services.

# Glossary

The following terms are used in relation to this policy.

|  |  |
| --- | --- |
| **Term** | **Definition** |
| Department | Victorian Department of Families, Fairness and Housing |
| NDIA | National Disability Insurance Agency, the Commonwealth statutory agency that implements the NDIS |
| NDIS | National Disability Insurance Scheme |
| Participant | A person with a disability who has met the access requirements to become an NDIS participant |
| Resident’s support network | People who support residents with decision making and could include their nominated contact person, advocate or guardian. |
| Specialist Disability Accommodation (SDA) | Housing provided by an NDIS-registered SDA provider to participants needing specialist housing to help with the delivery of their supports. SDA is the dwelling itself and not the supports provided there. |
| SDA resident | A participant currently residing in an SDA |
| Staff | Employees of the department |
| Supported independent living (SIL) provider | Provider of support to participants, including help with or supervision of the tasks of daily life. |

# Collaboration Agreements

## What is a Collaboration Agreement?

Under the NDIS Practice Standards, SDA providers must have documented arrangements in place with resident’s SIL providers that outline roles and responsibilities for providing services to residents.

To meet this requirement, the department has a Collaboration Agreement with each SIL provider operating in department-owned SDA.

The Collaboration Agreement includes matters prescribed by the NDIS Practice Standards, and additional items to ensure each party works together to achieve the common goal of improved quality of life, safety, continued accommodation, and independence for residents.

A fact sheet about what is included in the Collaboration Agreement is available from our [**website**](https://www.homes.vic.gov.au/collaboration-agreement-information-sheet-february-2022)<https://www.homes.vic.gov.au/collaboration-agreement-information-sheet-february-2022>.

Residents or their nominated contact person can request a copy of the Collaboration Agreement between the department and their SIL provider by sending an email to [**myhome@homes.vic.gov.au**](mailto:myhome@homes.vic.gov.au).

## Eligibility requirements for a Collaboration Agreement

The department will have Collaboration Agreements with SIL providers that residents have service agreements with.

The department requires that providers delivering services in department-owed SDA are registered with the NDIS to deliver:

* assistance with daily life tasks in a group or shared living arrangement, or
* assistance with daily personal activities

Providers must also have completed the NDIS Practice Standards: Implementing behaviour support plans module.

Staff will confirm the SIL provider meets these registration requirements before entering into a Collaboration Agreement. Staff may require evidence from SIL providers to confirm they meet these requirements.

## What if residents want to change their SIL provider

Residents can change their SIL provider.

This applies to all residents in department-owned SDA, including residents whose SIL provider was selected through the process of transferring government-delivered support services to five non-government organisations. The department does not have any arrangements with any SIL provider that prevents residents from exercising choice about their other NDIS supports, including SIL.

The Collaboration Agreement outlines how the department and SIL providers will work together in the best interests of the residents who we both have a service agreement with. If residents of an SDA decide to end their service agreement with their current SIL provider, then that SDA dwelling will be removed from the Collaboration Agreement the department holds with the SIL provider. Following confirmation of the residents new chosen SIL provider, staff will either:

* establish a Collaboration Agreement with the new SIL provider (where the provider is not already delivering services in other department-owned SDA), or
* add the SDA to an existing Collaboration Agreement (where the provider is also delivering services in other department-owned SDA).

Many residents in department-owned SDA have NDIS funding that requires they share their SIL supports with one or more housemates. Where this is the case, those residents will need to agree on the same SIL provider.

If residents want to change their SIL provider, they should discuss this with their support network. This may include their NDIS supports, such as an NDIA planner or support coordinator. Residents or their nominated contact person may wish to access advocacy services to assist them in raising these concerns. Staff can help residents access advocacy support by directing them to the [Disability Advocacy Resource Unit](https://www.daru.org.au/organisation-type/individual-advocacy) who have a register of advocacy agencies on their website at <https://www.daru.org.au/organisation-type/individual-advocacy>.

Where residents share their SIL supports, the department can assist residents and their support networks to contact each other about this matter. Residents can contact the department about changing their SIL provider by emailing [**myhome@homes.vic.gov.au**](mailto:myhome@homes.vic.gov.au).

When residents and their support networks have confirmed if they will change their SIL provider, the department will need to know the new SIL providers name and contact details, and the date the change will occur.

The department will then liaise with both the departing and incoming SIL provider to ensure a smooth transition (in relation to the SDA dwelling).

## Monitoring Collaboration Agreements

**The department will meet with each SIL provider it has a Collaboration Agreement with every 12 months, or at any other time requested by either party, to review** the operation of the agreement.

Residents and their nominated contact person can request to attend a meeting (or part of a meeting). If this occurs, staff will work with the resident’s SIL provider to arrange a time and place for the meeting that is suitable to the resident/s. Residents, or their nominated contact person can request to be part of a meeting by sending an email to [**myhome@homes.vic.gov.au**](mailto:myhome@homes.vic.gov.au).

If either the department or the SIL provider is concerned that obligations under the Collaboration Agreement are not being met, they must give written notice to the other party outlining the nature of the dispute.

Staff will do this through the Director, Disability Homes Victoria, and be consistent with the dispute requirements outlined in the Collaboration Agreement.

## SDA needs to be added or removed from the Collaboration Agreement

SDA dwellings may be added or removed from Collaboration Agreements from time to time including when:

* residents have chosen to engage a different SIL provider
* the property will no longer be used for SDA
* the SIL provider has withdrawn from delivering services to residents of the SDA.

If a new SDA dwelling is to be **added**, staff will arrange with the SIL provider to:

* update Schedule 1 (the part of the agreement that lists the SDA dwellings the agreement applies to) by written agreement with the SIL provider
* complete a property condition report summary and assessment of property hazards or risks to residents, staff, or other visitors at the SDA
* confirm a key contact (also called a property representative) for the SDA
* meet within three months of a new SDA having been added to the Collaboration Agreement.

If an SDA dwelling is to be **removed** from Schedule 1 of a Collaboration Agreement, the SIL provider must make good any damage to the property caused by the SIL provider (including their representatives, staff and engaged contractors), excluding fair wear and tear.

Staff will arrange with the SIL provider to:

* inspect and assess the SDA against the property condition report summary for this dwelling
* as soon as reasonably practicable, update Schedule 1 by written agreement with the SIL provider.

## What staff do near the end date of a Collaboration Agreement

Before the end of the Collaboration Agreement period, staff will discuss arrangements for extending the agreement with the resident’s SIL provider.

Extension of the agreement will be given in writing to the SIL provider through a new Collaboration Agreement.

## Terminating a Collaboration Agreement

The Collaboration Agreement outlines the circumstances under which the agreement can be terminated.

As far in advance as reasonably practicable before the termination of an agreement, staff will work with the SIL provider to ensure a transition plan is developed to support residents transition to an alternate SIL provider, if applicable.

# Rent setting and increases

## How the department sets rent

Residents in department-owned SDA are charged different rent depending on when they moved into the SDA.

The amount of rent residents pay is documented in their SDA residency agreement.

Rent is the amount paid by a resident to occupy a room in the SDA and for use of common areas. It does not include items that residents are responsible for such as the usage cost of utilities for example electricity, gas, telephone, water (if the property is separately metered) and other services usage charges.

### Residents who lived in department-owned SDA before 30 June 2021

Residents who lived in department-owned SDA before 30 June 2021 have rent set at the same proportion of the Disability Support Pension as they were paying prior to that date. They also pay the amount of Commonwealth Rent Assistance that they receive. This will continue to apply if the resident moves to a different department‑owned SDA.

### Residents who moved in from 1 July 2021 and new residents

Residents who moved into department-owned SDA from 1 July 2021, and new residents, have rent set at:

* 25 per cent of the maximum basic rate of the Disability Support Pension for people 21 years or older, or
* 25 per cent of the sum of the maximum basic rate of the Disability Support Pension plus youth disability supplement for people under 21 years old,

and

* 100 per cent of the Commonwealth Rent Assistance that they receive.

If the resident does not receive the Disability Support Pension, the resident’s rent will be equivalent to the above.

## Rent increases

Rent is increased in proportion to increases to relevant Centrelink payments.

This is usually applied every **six months**. Where an increase to Centrelink payment does not result in an increase to rent (such as deferral of rent increases through the coronavirus (COVID-19) pandemic), the next rent increase will take all relevant Centrelink increases into account.

The department must give residents and their administrator **60 days’ written notice** of any change in their rent. The notice includes a copy of a revised ‘Attachment 3’ (which is part of the residents SDA residency agreement).

If a resident or their administrator thinks the rent increase is too high, they can ask Consumer Affairs Victoria to investigate. Consumer Affairs Victoria will give the resident a report of their findings. The report can be used by the resident to apply to the Victorian Civil and Administrative Tribunal (VCAT) for a decision. The resident can only ask for a rent assessment within **30 days** of getting a notice of rent increase.

While VCAT decides the matter, the resident must pay the lesser amount of either the:

* increased rent amount
* previous rent amount plus 10 per cent.

# Rent collection

## How residents pay rent

Residents or their administrator sign a direct debit request form when they first move into an SDA. This enables the department to collect rent from a resident’s nominated bank account.

Residents pay rent one month in advance. Rent is collected through direct debit on the 24th day of each month.

When rent increases occur, the department adjusts the direct debit amount. Residents do not need to sign a new direct debit request form.

The department does not charge any fees for this payment method. Some banks may have account fees and service charges, including fees if there are insufficient funds in the account. These charges are the responsibility of the resident and their administrator.

## Ending rent collection

Staff need to terminate rent collection if a resident leaves the SDA.

This may be because:

* a resident has given the department notice of intention to vacate
* a resident has died
* the department has issued a notice to vacate.

Rent collection will end on the date:

* the resident vacated the SDA
* a resident died.

In circumstances where a resident is admitted to hospital and a decision is made that they will not return to the SDA, rent collection will end from the date the department is advised in writing that the resident will not return (which will be taken as a notice of intention to vacate).

### Returning rent to a resident

As residents pay rent one month in advance, there may be a credit balance following termination of rent collection.

Staff will notify the resident and their administrator (or other legal representative in the event of a resident’s death) that this money will be refunded when the account has been finalised.

### Rental arrears at the end of rent collection

If there are [**rental arrears**](#_Rental_arrears) following the termination of rent collection, the department will inform the resident and their administrator (or other legal representative in the event of a resident’s death) of the amount owing and request payment in full.

If the resident has died and there are insufficient funds available in their estate, the debt will be written off.

# Rental arrears

The department requires all residents to pay rent in advance to ensure rental accounts remain in credit.  Rental arrears occur when a direct debit fails and a resident goes into debt.

Rental arrears are recorded and monitored in the Housing Integrated Information Program (HiiP), the department’s housing information management system.

When a rental arrears occurs, even if it is a small amount, the staff will work with the resident’s administrator to identify how it happened and to arrange to pay the arrears. This ensures the amount of arrears does not continue to build and become more difficult for the resident to repay.

Fair, consistent, and transparent decisions will be made with clearly documented evidence of issues, actions taken, resolution or rationale for escalating.

## Direct debit failures or missed payments

Staff regularly review rent payments and act if residents are in rental arrears.

If rent is in arrears, staff contact the resident’s administrator by phone to:

* discuss the rental arrears
* identify how the rental arrears occurred
* remind the administrator that all rental accounts must be in credit
* request the rental arrears be paid in full or negotiate a repayment agreement.

If staff cannot contact the resident’s administrator, they will send an **initial arrears letter**, which will include:

* an account statement
* details of the rental arrears
* a request to the resident’s administrator to bring the rental account up to date.

If the resident’s administrator does not make contact within **two days** of receiving the letter and the account remains in arrears, staff will again attempt to make contact by phone or email.

If the rent is **more than 14 days** in arrears and attempts to contact the resident’s administrator have not been successful or have not resulted in the arrears being paid, staff and their line management may issue a **breach of duty notice** under s498ZP of the *Residential Tenancies Act 1997*.

## Repayment agreements

If a resident cannot immediately pay a rental arrears amount in full, a repayment agreement can be negotiated.

The Tenancy Operations Manager or equivalent may approve repayment amounts:

* **less than three per cent** – if the resident’s administrator can show that paying more will put the resident in [**financial hardship**](#_Financial_hardship)
* **five per cent or greater** – if the resident’s administrator can show this will be financially manageable.

A lump sum may also be paid as part of the local agreement.

A repayment agreement is broken when a repayment is not made. This is called a **broken agreement**.

A **broken agreement letter** will be sent to the resident and their administrator requesting they make up the missed payments or contact the department.

Staff will also contact the resident’s administrator to discuss:

* the reason why the payment was missed
* how to make-up the missed payment– this requires the resident’s administrator to pay the missed payment through **up to two payments** incorporated with rental payments
* the action the department may take if the missed payments are not paid.

If the rental arrears are equivalent to 14 or more days’ rent and the resident’s administrator does not make up the missed payments within 14 days, the department may issue a breach of duty notice under s498ZP of the *Residential Tenancies Act 1997*.

## Issuing a breach of duty notice

A breach of duty notice is issued if:

* the resident’s administrator has not responded to the initial arrears letter and the total rental arrears amount is equivalent to at least 14 days’ rent
* there is disagreement over the amount of rental arrears following an account reconciliation
* a repayment agreement cannot be agreed to, or
* the repayment agreement has been broken and missed payments have not been made up.

Where complex tenancy issues are identified, the Tenancy Operations Manager or equivalent will consider the contributing factors before determining the next course of action.

If issued, the breach of duty notice will specify the details of the rental arrears and the action required (including timeframes) to resolve the arrears. The notice will also specify that, if the notice is not complied with, the department may make an application for compensation or compliance to VCAT.

## Progressing to VCAT

If the resident’s administrator has not paid the arrears within the timeframe outlined in the breach of duty notice, staff should contact the administrator to discuss:

* reason for the non-payment of rental arrears
* responsibility and requirement to pay rent and arrears
* supports required to help address the rental arrears
* that the department will apply for a VCAT hearing if the rental arrears are not paid or an agreement is not made
* importance of repaying the rental arrears and making regular rental payments.

If the matter still cannot be resolved, staff and their line management may apply to VCAT for a compensation order or a compliance order within 90 days after the end of the required time included in the breach of duty notice.

# Financial hardship

The *NDIS SDA Price Guide* sets out maximum amounts that can be charged for rent and board (such as meals, utilities, whitegoods, and shared furniture). These limits mean that residents will have at least 25 per cent of their Disability Support Pension for other expenses.

However, there may be occasions where a resident experiences financial hardship due to one-off extraordinary circumstances, such as medical bills associated with a sudden illness, or longer-term circumstances.

Financial hardship occurs when an SDA resident is unable to pay their rent without unduly affecting their health and wellbeing.

The department can reduce or waive rent for an approved period where financial hardship exists. Note that the department will not reduce or waive rent if the financial hardship has resulted from fees charged by another NDIS service provider.

## How to request consideration of financial hardship

The resident or their administrator must complete the [**financial hardship application form**](https://www.homes.vic.gov.au/financial-hardship-application-form) <<https://www.homes.vic.gov.au/financial-hardship-application-form>> and attach evidence to support their application.

The application form and supporting documents can be emailed to [**myhome@homes.vic.gov.au**](mailto:myhome@homes.vic.gov.au).

The application must be supported by evidence of:

* the resident’s annual income
* any expenditure, savings, and assets
* reasons why payment of rent would unduly affect the persons health and wellbeing
* actions taken to reduce expenditure
* actions taken to ensure that reasonable and necessary supports related to the resident’s disability have been included in the resident’s NDIS plan.

If the application is incomplete, staff will support the resident and their administrator to get the information needed to complete the application.

Residents and their administrator do not have to disclose personal or health information in the application form but should be informed that this may affect the department’s ability to assess the application and could adversely affect the outcome.

## Collection and disclosure of information

Information given to the department in a financial hardship application will be held by the department in line with the *Privacy and Data Protection Act 2014* (Vic) and the *Health Records Act 2001* (Vic).

Information collected from residents can only be shared with another party with the written permission of the resident’s administrator.

## How financial hardship is assessed

Assessment of the application will consider:

* how much rent the resident is paying
* how long the issue causing hardship is likely to last
* the resident’s discretionary expenditure (spending that the resident has control over such as entertainment and holiday travel) and non-discretionary expenditure (spending that cannot be reduced without unduly affecting the person’s health and wellbeing, such as food and medical expenses)
* whether the person is receiving all the income support allowances they may be entitled to – **note**: the resident’s administrator is responsible for ensuring the resident is receiving all the income support they are entitled to.

A rent reduction or waiver will only be granted if the resident’s administrator is able to clearly show that:

* no further adjustments can be made to the income and expenditure of the resident without unduly affecting the person’s health and wellbeing (impact on health and wellbeing is measured by access to the ordinary necessities of life such as medication, food, housing, clothing, and health services)
* the resident has no other source of income supplement, including any additional financial assistance that may be available to support the person’s level of expenditure
* the financial hardship did not result from an increase in fees by another NDIS service provider.

## Decisions on applications

The Director, Disability Homes Victoria, will make the decision to approve or not approve a financial hardship application.

If the application is approved, rent will be reduced or waived.

The decision and the reason for the decision will be given to the resident and their administrator in writing **within 28 days** of a complete application being received.

The decision will always have a time limit and may also have review dates depending on the length of time. At a minimum, a review will be undertaken annually.

## Reviewing decisions

Residents or their administrator can request a review by email to [**myhome@homes.vic.gov.au**](mailto:myhome@homes.vic.gov.au).

The request should include any new information that may not have been considered as part of the original decision.

The resident or their administrator may choose to have a representative, such as an advocate, representing them in the review process. Residents or their nominated contact person may wish to access advocacy services to assist them in raising concerns. Staff can help residents access advocacy support by directing them to the [**Disability Advocacy Resource Unit**](https://www.daru.org.au/organisation-type/individual-advocacy) who have a register of advocacy agencies on their website at <https://www.daru.org.au/organisation-type/individual-advocacy>.

A senior department manager who was not part of the original decision will conduct the review.

If the resident or their administrator is still unhappy with the outcome, they can make a complaint. For information about making a complaint to the department, see the[**department’s Making a complaint page**](https://www.dffh.vic.gov.au/making-complaint).

# Absence from an SDA

## Temporary absences

A temporary absence is when:

* the department is notified that a resident will be absent from the SDA for between six weeks and six months
* the department becomes aware that a resident has been absent from the SDA.

Absence due to a [**notice of temporary relocation**](#_Notice_of_temporary) being issued is not considered a temporary absence.

The department’s objective in managing temporary absence is to support people with a disability, who are vulnerable in the housing market, to maintain secure and stable accommodation.

As absences from the SDA can have a financial impact on both the department and the resident’s SIL provider, decisions to approve a temporary absence will be made in consultation with the SIL provider.

## How to notify the department of an absence

Residents must give advance notice of an absence that will be longer than six weeks – except where this is not possible. A resident or their nominated contact person can notify the department of an absence by emailing [**myhome@homes.vic.gov.au**](mailto:myhome@homes.vic.gov.au) as soon as they know they will be absent from the SDA.

On receipt of notice that a resident will be absent, staff will confirm the resident’s SIL provider is aware of the absence.

The resident’s SIL provider may also be the party that notifies the department of a resident’s absence through Collaboration Agreement obligations to keep each other informed of matters that affect residents’ continued accommodation.

Staff will confirm with the resident and their nominated contact person:

* the reason for the absence and if [**special circumstances**](#_Assessing_a_notice) apply
* departure and return dates
* contact details for the resident during the period of absence, including their nominated contact person if the resident will not be contactable
* the process for seeking an extension.

The department does not need to be notified about absences under six weeks.

## Assessing a notice of absence

Staff will arrange a meeting with the resident’s SIL provider to review the circumstances of the resident’s absence.

The department recognises there are temporary absences that are beyond the control of residents and is committed to supporting residents to keep their accommodation in the longer term where special circumstances apply.

**Special circumstances** include when a resident is:

* receiving in-patient treatment in a hospital for an extended period
* temporarily residing in a nursing home
* in psychiatric, physical or drug or alcohol rehabilitation treatment
* on remand or incarcerated for a period up to six months. In the event the remand and/or incarceration is for longer than six months, the resident may submit a request for an extension to the department for consideration.

Special circumstances also include when a resident is a victim of violence from other residents and leaves the SDA for their own safety (for example, to another accommodation).

Where special circumstances do not exist (such as an extended holiday) consideration will be given to the length of absence being sought and the ongoing availability of SDA and SIL funding during the resident’s absence.

## Temporary absence is not approved

If an absence period is not approved, the department will confirm with the resident if they will continue to live in the SDA.

If not, the resident should notify the department of their intention to vacate.

If the department intends to instead issue a notice to vacate to the resident, it will follow the procedures for issuing [**notices to vacate**](#_Notices_to_vacate).

If the resident is already absent from the SDA and has left goods behind, these may be treated as [**goods left behind**](#_Goods_left_behind).

## Communicating the decision to the resident

If the absence is approved, staff send a letter to the resident and their nominated contact person confirming:

* dates of the absence
* department's requirements if an extension is needed
* any agreed change to rent.

If the absence is **not** approved, staff send a letter to the resident and their nominated contact person with:

* the reason why the absence has not been approved
* if a notice to vacate will be issued
* information about how to make a complaint if the resident is unhappy with the decision.

In either case, staff will also notify the resident’s SIL provider of the decision within **48 hours**.

## Extending an approved absence

Absences of greater than six months are generally not supported unless there are special circumstances.

If a resident requests an extension of the six-month period by up to six months, staff will investigate the request and recommend a course of action for approval by the Tenancy Operations Manager or above.

The evidence gathered in discussion with the resident should include:

* date the resident originally left the SDA
* date the resident intends to return to the property
* reason for the extension
* impact on the resident should the extension not be approved
* if the resident will be contributing SIL or SDA funding from their NDIS plan while they are away.

The Tenancy Operations Manager or above will consider:

* whether the resident is absent due to special circumstances
* the resident’s history, including any complex tenancy issues
* involvement of other departmental programs, for example, Disability Justice, Multiple and Complex Needs Initiative, Office of Professional Practice
* the additional amount of time the resident has requested
* any resident or household issues relevant to the decision
* any previous temporary absence periods, including frequent temporary absences (excluding special circumstances)
* opportunities given to the resident to explain their current circumstances
* in line with the human rights considerations, the resident’s human rights that may be affected by the decision – taking into account the individual circumstances and consequences that may result from the proposed action (for example, will non-approval cause the person to be at risk of homelessness?).

If the extension is not approved and the person does not return, the bedroom in the SDA may be considered abandoned and a notice to vacate may be issued.

## Rent during a resident’s absence

If special circumstances are agreed to by the department, a subsidy may be approved to reduce rent up to a monthly rate of $65 per month (pro-rata) if the resident is expected to pay accommodation costs elsewhere or has no income during this period.

A rent subsidy will **not** be given to residents whose temporary absence is within their control (such as an extended vacation) or where an absence is less than six weeks.

The subsidy will remain in place for the approved period of absence or until the resident returns to the SDA if sooner that the approved period. Any rent increases that occurred in the resident’s absence will be applied on their return.

Consideration will also be given to strategies that support and sustain the resident’s accommodation where possible. These actions are to be approved by Tenancy Operations Manager and may include:

* removing rental costs for the period of the absence
* renegotiating any debt repayment requirements (such as rental arrears) during the temporary absence period.

## Other available support

Other strategies that the Tenancy Operations Manager may consider on a case-by-case basis to support a resident’s accommodation include:

* issuing a [**notice of temporary relocation**](#_Notice_of_temporary) (or a [**notice to vacate**](#_Notices_to_vacate) if a temporary notice has already been issued) to a resident who has perpetrated violence leading to another resident temporarily leaving the SDA
* supporting the resident to identify an alternative housing option if preferred (for example, in the case of a resident leaving to avoid assault).

## Engaging residents in the process

Residents are given the opportunity to explain in writing and in person why they will be temporarily absent, including the effect that any decision not to approve will have on them.

If a decision is made **not** to approve a temporary absence, the reason for that decision will be given in writing, including information about how to make complaint if the resident is unhappy with the outcome.

Consideration will be given to special circumstances when the need for a temporary absence is beyond the resident’s control.

# Requests from residents to change rooms

## How to request a room change

The residential tenancy agreement records the resident’s SDA address and room number. To ensure the agreement remains valid, the department must be aware of and provide written confirmation to residents of any change in room number.

Residents or their nominated contact person can request a room change by emailing [**myhome@homes.vic.gov.au**](mailto:myhome@homes.vic.gov.au). The request should include:

* the number of the new room
* why they want to change.

Room change requests are most likely to occur when a vacancy arises in SDA. Requests for room changes will be considered promptly by staff to ensure minimal delay in advertising a vacancy.

Note: If a resident wants to change SDA, for example, move to another department-owned SDA, they must apply for that vacancy. This includes movement between separately enrolled SDA units that are co-located on the same site. All department vacancies are advertised on the [**Housing Hub website**](https://www.housinghub.org.au) **<https://www.housinghub.org.au/>**

### Considerations for approving a request

In considering a room change request, staff contact the resident’s SIL provider to confirm there are no reasons that would prevent the request from being approved and that all residents in the SDA have had the opportunity to also consider a room change.

The department will also consider any works that may be needed to enable the room change (such as installation of a power point to enable a ceiling hoist to be used) and whether the room has design features that are not needed by the resident (for example, where a room has existing ceiling hoist provisions that are not needed by the resident requesting the change but may be used by potential applicants).

The department will confirm the outcomes of a resident’s request by email.

If approved, a new SDA residency agreement will be issued reflecting the room change. The department will immediately proceed with advertising the vacancy (that is, the SDA residency agreement does not need to be signed before the vacancy can be advertised).

If **not** approved, the resident and their nominated contact person will be advised by email of the reasons why that decision has been made and how they can seek a review of that decision.

# Pets

## How to request a pet

Under the Residential Tenancies Act 1997, residents must have a consent from the SDA provider to keep a pet.

A pet means any animal except an assistance dog (a dog that is trained to perform tasks to support a person with disability).

The resident or their nominated contact person must complete a pet request form and email it to **SDA.coordinator@homes.vic.gov.au**. The form is on [**Consumer Affairs Victoria website’s Pets in rental properties page**](https://www.consumer.vic.gov.au/housing/renting/repairs-alterations-safety-and-pets/pets) <https://www.consumer.vic.gov.au/housing/renting/repairs-alterations-safety-and-pets/pets>.

If a pet request is approved, residents are responsible for all costs and activities needed to care for the pet (such as food, registration, and veterinary bills).

## Considerations for approving a request

The department can only refuse a pet request if the Victorian Civil and Administrative Tribunal (VCAT) decides it is reasonable to do so.

In considering a request, the department will take into account:

* the views, preferences and needs of other residents in shared SDA, including consultation with the SIL provider
* whether the premises are suitable for keeping the requested pet (such as the size of property, outdoor areas)
* any relevant council laws that limit the number or type of animals that can be kept.

If the department objects to a resident keeping the pet, staff and their line manager must apply to VCAT for an order to refuse on reasonable grounds within **14 days** of receiving the pet request.

Staff will complete the rental provider section of the pet request form, indicating whether consent for the pet is given or if the department will apply to VCAT to refuse consent. Staff will send the form back to the resident and keep a copy for department records.

If the resident or their nominated contact person is not satisfied with the outcome, they can make an application to VCAT to appeal the decision.

# Incidents and issues reporting

### Incidents

In most circumstances, incidents that occur in SDA will be the responsibility of the resident’s SIL provider as they will be connected to the supervision, health, safety, and wellbeing of residents in the accommodation. The resident’s SIL provider will use their own incident management systems to record, report and manage incidents as required.

Whilst it is not intended for duplicate incident reports to be made, where an incident has occurred that directly relates to the provision of SDA services, such as a building failure that results in serious harm to a resident, the department must ensure its obligations as a registered NDIS provider are met. This applies even if a SIL provider has also reported this incident to the NDIA or within their own systems.

The department is required to:

* have an incident management system to record and manage incidents that occur in connection with SDA services we deliver to residents
* notify the NDIS commission of all [**reportable incidents**](#_NDIS_reportable_incidents), including alleged reportable incidents, that occur in connection with SDA services we deliver to residents.

### Critical incident management system (CIMS)

Acts, omissions, events, or circumstances that occur in connection with providing SDA services to a resident, or could have, caused harm to the resident will be reported and managed by department staff through CIMS.

Staff can learn more about CIMS on the [intranet’s Client Incident Management System page](https://intranet.dhhs.vic.gov.au/client-incident-management-system) <https://intranet.dhhs.vic.gov.au/client-incident-management-system>.

### NDIS reportable incidents

When an incident in connection to provision of SDA services meets the NDIS Quality and Safeguards Commission (NDIS Commission) definition of a ‘reportable incident’, staff must report the incident to the Tenancy Operations Manager or equivalent – they will report the incident through the Reportable Incidents Portal within **12 hours** of the incident occurring.

NDIS reportable incidents are defined as:

* the death of a person with disability
* serious injury of a person with disability
* abuse or neglect of a person with disability
* unlawful sexual or physical contact with or assault of a person with disability
* sexual misconduct committed against or in the presence of a person with disability, including grooming of the person with disability for sexual activity
* unauthorised use of a restrictive practice.

The NDIS Commission may require the department to give more information about any internal or external investigation or assessment that has been undertaken for a reportable incident. The department will also need to respond to any corrective and restorative measures made by the NDIS Commission following a reportable incident.

More information about reportable incidents is available on the [NDIS Commission website’s Incident management and reportable incidents page](https://www.ndiscommission.gov.au/providers/incident-management-and-reportable-incidents) <https://www.ndiscommission.gov.au/providers/incident-management-and-reportable-incidents>.

### Non-reporting by other providers

If staff witness a reportable incident or misconduct by another registered NDIS provider, staff should raise this as a concern with that provider.

Where staff believe the registered NDIS provider connected to the incident has not notified the NDIS Commission, staff and their line manager may **contact the NDIS Commission Complaints team by calling 1800 035 544**. The NDIS Commission would then contact the NDIS provider to request a reportable incident notification if no notification had been submitted.

## Issues management

### Issues that residents or their SIL providers can report to the department

The Collaboration Agreement between the department and resident’s SIL providers requires that both parties work together in good faith to achieve the common goal of improved quality of life, safety, continued accommodation, and independence for residents.

The Collaboration Agreement outlines issues that the department and resident’s SIL provider must make each other aware of and work together to resolve.

Residents or their nominated contact person can also report to the department any issue they are concerned about that is related to their SDA. If the issue relates to one of the following, the department will also inform the resident’s SIL provider in-line with commitments in the Collaboration Agreement.

Staff will work with resident’s SIL providers to resolve the following issues:

* any accommodation concern that affects resident outcomes
* perceived or actual conflicts of interest in the delivery of accommodation and support services
* responding to violence, abuse, exploitation, or conflict involving a resident
* resolution of complaints or concerns from residents
* a claim by a resident that either the department or their SIL provider is not meeting their obligations as a service provider
* any issue that may lead to a [**notice of temporary relocation**](#_Notice_of_temporary), [**notice to vacate**](#_Notices_to_vacate) or [**breach of duty**](#_Issuing_a_breach) notice to a resident
* property damage by a resident
* incidents that were caused or contributed to by the condition of the property
* neighbourhood disturbances or disputes that affect the SDA property
* a reasonable suspicion of illegal activities occurring at the property
* work, health, and safety issues that relate to the SDA property.

### How residents or their SIL providers notify the department of issues

Residents, their nominated contact or their SIL provider should email details of the issue to [**myhome@homes.vic.gov.au**](mailto:myhome@homes.vic.gov.au), including:

* the date, address, details of the incident
* details of how residents or staff are affected
* any immediate actions taken.

For maintenance issues, including repairs needed due to property damage, the resident, their nominated contact or the SIL provider should email **SDA.maintenance@dhhs.vic.gov.au**.

### Responding to an issue

Staff contact the person or SIL provider who raised the issue within **five business days** of being notified to discuss the issue and confirm the action that will be taken to ensure a responsive and coordinated approach that meets residents’ needs and (where necessary) considers group and individual needs.

Staff ensure that any necessary remedial actions, such as repairs, are undertaken in a timely manner.

Staff record and store details of issues raised, and actions taken to resolve these matters using secure internal information systems.

# Emergency management

‘Emergency’ includes natural disasters and pandemic.

Natural disaster includes flood, earthquake or bushfire that causes damage to properties or makes proprieties uninhabitable due to loss of power or water.

Pandemic is the worldwide spread of a new disease (such as the coronavirus (COVID-19) pandemic).

## Preparing for emergencies

The department will ensure:

* an annual property risk assessment is undertaken that includes emergency preparedness
* the assessment identifies property maintenance and emergency preparedness work to be undertaken by either the department as the property owner or the resident’s SIL provider
* all property works the department is responsible for (as identified through the assessment) are completed
* all SDA are notified to the local Municipal council.

## During an emergency

The department will:

* follow relevant authorised directions, such as emergency and public health directives
* where requested, provide information that may be needed to support residents’ access to emergency relief payments, such as evidence of residency.
* promptly repair any damage caused by natural disasters
* if an SDA needs to be vacant for proper assessment or repair to occur, issue a [**notice of temporary relocation**](#_Notice_of_temporary) after consultation with residents and their SIL providers
* share any information the department receives about an emergency that helps deliver safe accommodation and support services to residents.

## Resident and SIL provider responsibilities

The resident’s SIL provider should have a business continuity strategy that outlines how residents will be supported in an emergency, including where residents will go if an evacuation is needed.

Residents may need to pay for accommodation and transport costs associated with an evacuation.

Residents or their support network may be able to apply for government emergency relief payments to help meet these costs. The department can provide information to support this process, such as evidence of residency.

In addition, as SIL providers support residents to manage utilities in SDA, the resident’s SIL provider is responsible for contacting utility providers to ensure they are aware of residents with specific needs (such as the need for uninterrupted power supply) and for access to emergency supports or equipment that may be available.

# Notice of temporary relocation

## Important note: Notices issued under the Disability Act 2006

Most residents who live in department-owned SDA have their tenancy rights protected under the *Residential Tenancy Act 1997* (RTA) and have SDA residency agreements in place.

A small number of residents living in department-owned SDA do not meet the RTA definition of an ‘SDA resident’. These residents have their tenancies protected through the *Disability Act 2006* (Disability Act) and have a residential statement in place.

Unless otherwise stated, the following relate to notices issued under the RTA. See ‘[**Requirements for notices issued under the Disability Act**](#_What_are_the)’ for information about SDA covered by the Disability Act.

Staff can check the departments Housing Integrated Information Program to confirm which agreement is in place for a resident.

## Issuing a notice of temporary relocation

A notice of temporary relocation can be issued under section 498ZV of the RTA and requires a resident to leave the SDA for a period of up to 90 days.

Most of the grounds where a [**notice to vacate**](#_Notices_to_vacate) can be issued require a notice of temporary relocation to be issued first. This allows time for:

* circumstances to be reviewed and assessed
* appropriate planning to ensure the support needs of all residents are met
* ensuring the residency rights of the resident who receives a notice of temporary relocation are met.

The notice will be issued to the resident, with a copy to their nominated contact person or guardian, where a guardian has been appointed for accommodation matters.

## When a notice of temporary relocation can be issued

Section 498ZV of the RTA states that an SDA provider may give an SDA resident a written notice of temporary relocation from an SDA enrolled dwelling if:

* the resident endangers the safety of other SDA residents or staff at the SDA by act or omission
* the resident is causing serious disruption to the proper use and enjoyment of the SDA by other residents
* the resident is a danger to themselves, and the resident can no longer be appropriately supported in the SDA
* the resident can no longer be appropriately supported in the SDA
* it is for the SDA resident's safety or wellbeing
* the resident has used the SDA for a purpose that is illegal
* specialist disability accommodation will no longer be provided at the SDA
* the SDA is no longer suitable for specialist disability accommodation
* the SDA provider intends to repair, renovate, or reconstruct the SDA immediately after the notice of temporary relocation has effect, has all necessary permits and consents to carry out the work and the work cannot be properly carried out unless the SDA resident vacates their room
* the SDA resident has caused serious damage or destroyed any part of the SDA.

Under the RTA, the last point does not apply where any of the following have significantly contributed to the damage:

* fair wear and tear
* accidental damage
* reasonable use of the SDA
* reasonable use of any aids, equipment, fixtures, and fittings used in the SDA
* the act or omission of someone other than the SDA resident
* any behaviour arising from the resident's disability including circumstances aggravating to the resident's disability or emotional wellbeing
* someone failing to implement or comply with the resident's support plan or NDIS behaviour support plan
* unauthorised use of a restrictive practice within the meaning of the Disability Act
* circumstances suggesting that the SDA resident has been subjected to abuse or neglect.

## Duration of a notice of temporary relocation

A notice of temporary relocation must specify a relocation period ending not more than **90 days** after the date on which the notice has effect.

If the notice relates to works to be undertaken, the period must be no longer than the time needed to carry out the work.

A notice of temporary relocation can take effect immediately from the time it is given or from a time specified in the notice.

## Considerations for issuing a notice of temporary relocation

The agreement of the resident to a move should be sought before a notice is issued. Staff will consult with their SIL provider to confirm who should have this discussion as it may vary depending on the issue giving rise to the notice.

If the resident agrees, a notice does not need to be issued. A copy of the resident’s agreement in writing will be given to the resident, their nominated contact person and their SIL provider. This will include:

* who made the agreement
* the basis on which the decision was made
* details of the temporary relocation

Issues that give rise to the need for temporary relocation can be identified by department staff or a resident’s provider.

Staff will work with the resident’s SIL provider to identify strategies that can support the resident to keep their accommodation (for example, considering building modifications that help address safety concerns).

Staff must consider the potential impact of any proposed action on the resident’s rights (and those of other residents in the SDA) under the Charter of Human Rights and Responsibilities (2006). Find out more on the [Victorian Equal Opportunity & Human Rights Commission website](https://www.humanrights.vic.gov.au/for-public-sector/human-rights/) <https://www.humanrights.vic.gov.au/for-public-sector/human-rights/>.

Where the department is issuing a notice of temporary relocation to repair, renovate or reconstruct the SDA, staff will give the SDA residents and their SIL provider as much notice as possible of the work needed and identify suitable alternate accommodation – at least **seven days’** notice will be given in writing.

## Evidence to support a notice of temporary relocation

Before issuing a notice, staff must ensure there is evidence to support the notice including:

* a summary listing of events and actions taken to show that all reasonable actions have been taken before a notice of temporary relocation is issued
* details of contact with the resident’s other supports including their nominated contact person, NDIS support coordinator, behaviour support specialists or other appropriate specialist.

SDA providers are required by law to notify the Office of the Public Advocate (OPA) when a notice of temporary relocation is issued to a resident. Staff need to ensure they have the following details for OPA:

* a copy of the notice given to the resident
* a copy of the resident’s SDA residency agreement
* the name, address and contact details of:
  + the resident and where the resident has been relocated to
  + the SIL at the original residence and at the relocated residence (if different)
  + any NDIS support coordinator (if known)
  + the NDIS planner (if known)
  + any guardian, administrator or NDIS Plan Nominee (if known)
* the reasons for issuing the notice and, where appropriate, a statement of events leading up to the notice
* any supports or government bodies involved with the resident.

More information about [evidence that OPA requires can be found on their website](https://www.publicadvocate.vic.gov.au/residential-notices/sda-providers/notices-issued-by-provider) <https://www.publicadvocate.vic.gov.au/residential-notices/sda-providers/notices-issued-by-provider>.

Staff will need to work with the resident’s SIL provider to ensure this evidence is available. Collaboration Agreements between the department and resident’s SIL providers require both parties to work together to resolve issues that affect resident outcomes and to ensure written documentation about matters that may lead to a notice is provided as soon as reasonably practicable.

## Once a notice of temporary relocation has been issued

The Director, Disability Homes Victoria, approves a notice of temporary relocation. They will confirm that:

* there is evidence to support the issuing of the notice
* consideration has been given to the effect on the resident’s human rights (and any other person affected by the decision to issue the notice).

The notice of temporary relocation must be issued in writing using the format prescribed by Consumer Affairs Victoria. Residents and their nominated contact person are also given a copy of the Easy English information sheet. This is available on the [Consumer Affairs Victoria website’s Notices to end an SDA residency page](https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/for-residents/notices-to-end-an-sda-residency-residents) <https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/for-residents/notices-to-end-an-sda-residency-residents>.

When a resident is issued a notice, department staff must also notify the following parties within **24 hours** of the notice being issued:

* Office of the Public Advocate – by emailing a copy of the notice and other evidence described previously to **residentialnoticesopa@justice.vic.gov.au**
* Consumer Affairs Victoria (CAV) – by completing [CAV's Enter a notice given to an SDA resident online form](https://forms.consumer.vic.gov.au/forms/sdaln) <https://forms.consumer.vic.gov.au/forms/sdaln>
* The NDIA (unless the resident is funded under the Disability Support for Older Australians program – formerly the Continuity of Support program).

As soon as possible after the notice is issued, staff should confirm with the resident’s SIL provider in writing arrangements for the period of temporary relocation, including:

* the date the notice was issued to the resident and their contact person
* alternate accommodation arrangements
* how all parties will be engaged and informed through the relocation period
* actions to be taken before the resident returns
* the circumstances that may lead to a notice to vacate being issued.

## Arranging suitable alternate accommodation

The department is responsible for arranging suitable alternate accommodation for the period noted in the notice of temporary relocation.

Staff will arrange suitable alternate accommodation reasonably close to the SDA. This may include use of a short-term accommodation and assistance property (also known as respite), another SDA or other type of accommodation.

The alternate accommodation will be arranged in consultation with the resident, their nominated contact person or guardian if one is appointed for accommodation, and the resident’s SIL provider to ensure it meets the needs of the resident and that staff are able to work safely in the new location. The resident will continue to pay rent at the rate stated in their SDA residency agreement. There are no additional rental costs related to the alternate accommodation.

If the resident needs to move out of their room for repairs or renovations and there is another room available with the same rent, this must be offered to the resident in the first instance.

## Moving because of imminent risk of harm to the resident or others

In exceptional circumstances, a SIL provider may have relocated a resident before consulting with the department, for example, where a resident has immediately endangered the safety of others outside of business hours.

The Collaboration Agreement requires resident’s SIL providers to inform the department as soon as practicable when an issue affecting a resident’s accommodation occurs.

Staff will work with the resident’s SIL provider to identify strategies that can support the resident to return to the SDA or, where required, issue a notice of temporary relocation.

Where the Director, Disability Homes Victoria, approves a notice of temporary relocation, staff will work with the resident’s SIL provider to review the accommodation the person was immediately moved to and confirm arrangements for the period of the notice.

## Withdrawing a notice

The department can withdraw a notice of temporary relocation at any time before the resident vacates the SDA. The withdrawal of a notice of temporary relocation must be in writing.

## End of the temporary relocation period

When the notice of temporary relocation expires, the resident is entitled to return to the SDA unless a [**notice to vacate**](#_Notices_to_vacate) has been issued to the resident.

## Engaging residents in the process

Staff will ensure that the resident, their nominated contact person and SIL provider are informed as early as possible if a notice will be issued for repair, renovation, or reconstruction. Staff will also ensure they are consulted in making alternate arrangements through that period.

Staff will seek the resident’s agreement to a temporary move before a notice is issued, providing clear justification for the reasons why the move is required.

Staff will ensure there is sufficient evidence to support the notice being issued, including ensuring that, where applicable, the residents and their supports have had the opportunity to review their support plan.

The notice will be issued in Easy English using either:

* the prescribed Consumer Affairs Victoria template to residents – see [Consumer Affairs Victoria website’s Notices to end an SDA residency page](https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/for-residents/notices-to-end-an-sda-residency-residents) <https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/for-residents/notices-to-end-an-sda-residency-residents>
* the notice provided in [the department’s Issuing notices to vacate under section 76 of the Disability Act 2006: Guidelines for disability services providers](https://providers.dffh.vic.gov.au/issuing-notices-vacate-under-section-76-disability-act-2006-guidelines-disability-services) <https://providers.dffh.vic.gov.au/issuing-notices-vacate-under-section-76-disability-act-2006-guidelines-disability-services>.

Residents or their nominated contact person may wish to access advocacy services to assist them in this process. Staff can help residents access advocacy support by directing them to the [Disability Advocacy Resource Unit](https://www.daru.org.au/organisation-type/individual-advocacy) who have a register of advocacy agencies on their website at <https://www.daru.org.au/organisation-type/individual-advocacy>.

## Requirements for notices issued under the Disability Act

There are some differences about when and how to issue a notice of temporary location for residents who live in an SDA that is gazetted as a group home under the Disability Act.

Staff can check the departments Housing Integrated Information Program to confirm which type of agreement is in place for residents who may be issued a notice. Residents who have a residential statement issued by their SIL provider will have notices issued according to Disability Act requirements.

Under the Disability Act, the SIL provider (as the disability service provider defined in the Disability Act) can issue a notice of temporary relocation to SDA residents. However, the Collaboration Agreement between the department and resident’s SIL providers requires that a notice can be issued only by instruction from the department, or with the departments consent. When a notice is issued by the SIL provider on the department’s instruction or with consent, the department will be responsible for the provision of suitable alternate accommodation.

The organisation that issues the notice of temporary relocation must comply with the requirements outlined in [the department’s Issuing notices to vacate under section 76 of the Disability Act 2006: Guidelines for disability services providers](https://providers.dffh.vic.gov.au/issuing-notices-vacate-under-section-76-disability-act-2006-guidelines-disability-services) <https://providers.dffh.vic.gov.au/issuing-notices-vacate-under-section-76-disability-act-2006-guidelines-disability-services>. These guidelines include directions for notices of temporary relocation and template letters for notifying the resident and the Office of the Public Advocate.

# Notice to vacate

## Important note: Notices issued under the Disability Act 2006

Most residents who live in department-owned SDA have their tenancy rights protected under the Residential Tenancy Act 1997 (RTA) and have SDA residency agreements in place.

A small number of residents living in department-owned SDA do not meet the RTA definition of an ‘SDA resident’. These residents have their tenancies protected through the Disability Act and have a residential statement in place.

Unless otherwise stated, the following relates to notices issued under the RTA. Refer to ‘[**Requirements for notices to vacate issued under the Disability Act**](#_What_are_the_1)’ for information about SDA dwellings covered by the Disability Act.

Staff can check the departments Housing Integrated Information Program to confirm which type of agreement a resident has.

## Issuing a notice to vacate

A notice to vacate can be issued under section 498ZX of the RTA and requires a resident to permanently leave the SDA.

The RTA requires that a [**notice of temporary relocation**](#_Notice_of_temporary) has been issued before a notice to vacate, except when the notice to vacate is for not paying rent.

The notice will be issued to the resident, with a copy to their nominated contact person or guardian, where a guardian has been appointed for accommodation matters.

## When a notice to vacate can be issued

Section 498ZX of the RTA states that an SDA provider can issue a notice to vacate if:

* the resident owes at least 14 days’ unpaid rent
* the resident endangers the safety of other residents or SDA staff by act or omission
* the resident causes serious disruption to the proper use and enjoyment of the SDA by other residents
* the resident is a danger to themselves and the resident can no longer be appropriately supported in the SDA
* the resident can no longer be appropriately supported in the SDA
* the resident has caused serious damage or destroyed any part of the SDA
* the resident has used the SDA for a purpose that is illegal at common law or under an Act
* the SDA provider intends to repair, renovate or reconstruct the SDA immediately after the termination date, has all necessary permits and consents to carry out the work and the work cannot be properly carried out unless the resident vacates the SDA
* the SDA provider intends to demolish the SDA immediately after the termination date, has all necessary permits and consents to carry out the demolition and the demolition cannot be properly carried out unless the resident vacates the SDA
* the SDA is to be sold or offered for sale with vacant possession (this means it is being sold without anyone living in it)
* the resident has failed to comply with an order of VCAT under section 498ZS of the RTA.

This does not apply if the serious damage or destruction is due to:

* fair wear and tear
* accidental damage
* reasonable use of the SDA
* reasonable use of any aids, equipment, fixtures and fittings used in the SDA
* the act or omission of someone other than the resident
* any behaviour arising from the resident's disability including circumstances aggravating to the resident's disability or emotional wellbeing
* someone failing to implement or comply with the resident's support plan or NDIS behaviour support plan
* unauthorised use of a restrictive practice within the meaning of the Disability Act 2006
* circumstances suggesting that the resident has been subjected to abuse or neglect.

## Considerations before issuing a notice to vacate

The RTA requires that a notice to vacate cannot be issued until at least **24 hours** after a [**notice of temporary relocation**](#_Notice_of_temporary) has been issued for reasons other than non-payment of rent.

Staff should ensure that any actions undertaken to try to resolve issues that lead to the notice of temporary relocation have been completed.

For reasons that relate to the conduct of the resident, the Director, Disability Homes Victoria, must be satisfied there is a reasonable expectation that the conduct is likely to reoccur.

The notice to vacate must specify a termination date of not less than **90 days** and be issued in writing using the format prescribed by Consumer Affairs Victoria. Residents and their nominated contact person will also be given a copy the Easy English information sheet, available on the [Consumer Affairs Victoria website’s Notices to end an SDA residency page](https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/for-residents/notices-to-end-an-sda-residency-residents) <https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/for-residents/notices-to-end-an-sda-residency-residents>.

There are specific evidence requirements when a notice to vacate is being issued for major repairs or renovations, because the property will be demolished or because the property will be sold with vacant possession. These requirements are listed on the [Consumer Affairs Victoria website’s Notices to end an SDA residency page](https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/for-residents/notices-to-end-an-sda-residency-residents) <https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/for-residents/notices-to-end-an-sda-residency-residents>.

## Challenging a notice to vacate

A resident can apply to VCAT to challenge the notice if they disagree with the reason, it was issued or believe that the notice was not issued correctly.

## Who needs to be notified of a notice to vacate?

Staff must notify:

* Consumer Affairs Victoria (CAV) – by completing [CAV's Enter a notice given to an SDA resident online form](https://forms.consumer.vic.gov.au/forms/sdaln) <https://forms.consumer.vic.gov.au/forms/sdaln>
* The NDIA (unless the resident is funded under the Continuity of Support program).
* Office of the Public Advocate (OPA) – by emailing a copy of the notice and evidence described in the next paragraph to **residentialnoticesopa@justice.vic.gov.au**.

Staff need to ensure they have the following details for OPA (unless previously given when notifying of a notice of temporary relocation):

* a copy of the notice to vacate given to the resident
* a copy of the residency agreement (unless previously given)
* the name, address and contact details of the resident, their SIL provider, NDIS contacts and any guardian, administrator or NDIS plan nominee (if known) (unless previously given)
* the reasons for issuing the notice and, where appropriate, an updated statement of events setting out what steps the department or the resident’s SIL provider have taken to resolve the matters giving rise to the either the notice of temporary relocation or notice to vacate
* any supports or government bodies involved with the resident.

More information about [evidence that OPA requires can be found on their website](https://www.publicadvocate.vic.gov.au/residential-notices/sda-providers/notices-issued-by-provider) at <https://www.publicadvocate.vic.gov.au/residential-notices/sda-providers/notices-issued-by-provider>.

Staff need to work with the resident’s SIL provider to ensure this evidence is available. Collaboration Agreements between the department and resident’s SIL providers require both parties to work together to resolve issues that affect resident outcomes and to ensure written documentation about matters that may lead to a notice is provided as soon as reasonably practicable. Staff should confirm in writing with the resident’s SIL provider that a notice to vacate has been issued as soon as possible after the notice is issued.

## Ensuring the person has somewhere to live

If a notice to vacate is issued while a notice of temporarily relocation still applies, the department must give the resident suitable alternate accommodation until the vacate date on the notice or until the person finds another SDA.

Staff must ensure the resident’s nominated contact person and NDIS supports are aware the notice has been issued and are working to identify another SDA.

If the resident needs to move out of their room for repairs or renovations and there is another room available with the same rent, this must be offered to the resident in the first instance.

## Withdrawing a notice to vacate

The department can withdraw a notice to vacate at any time before the resident vacates the SDA. The withdrawal of a notice to vacate must be in writing.

## Other actions when a notice to vacate is issued

The SDA residential agreement between department and the SDA resident and rental collection automatically ends on the vacate date in the notice.

Staff automatically end the NDIS SDA service agreement with the resident.

## Engaging residents in the process

Staff ensure that the resident, their nominated contact person and their SIL provider are informed as early as possible if a notice will be issued for major repairs or renovations, demolition, or sale.

Staff will ensure there is sufficient evidence to support the notice being issued, including ensuring that (where applicable) the residents and their supports have had the opportunity to review their support plan.

The notice will be issued in Easy English using either:

* the prescribed Consumer Affairs Victoria template to residents – see [Consumer Affairs Victoria website’s Notices to end an SDA residency page](https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/for-residents/notices-to-end-an-sda-residency-residents) <https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/for-residents/notices-to-end-an-sda-residency-residents>
* the notice provided in [the department’s Issuing notices to vacate under section 76 of the Disability Act 2006: Guidelines for disability services providers](https://providers.dffh.vic.gov.au/issuing-notices-vacate-under-section-76-disability-act-2006-guidelines-disability-services) <https://providers.dffh.vic.gov.au/issuing-notices-vacate-under-section-76-disability-act-2006-guidelines-disability-services>.

Residents or their nominated contact person may wish to access advocacy services to assist them in this process. Staff can help residents access advocacy support by directing them to the [Disability Advocacy Resource Unit](https://www.daru.org.au/organisation-type/individual-advocacy) who have a register of advocacy agencies on their website at <https://www.daru.org.au/organisation-type/individual-advocacy>.

## Requirements for notices issued under the Disability Act

There are some differences about when and how a notice to vacate is issued for residents who live in SDA that is gazetted as a group home under the Disability Act.

Staff can check the departments Housing Integrated Information Program (HiiP) to confirm which type of agreement is in place for a resident who may be issued a notice. Residents who have a residential statement issued by their SIL provider, will have notices issued according to Disability Act requirements.

Under the Disability Act, a SIL provider (as a disability service provider under the Disability Act) can issue a notice to vacate to SDA residents. However, the Collaboration Agreement between the department and resident’s SIL providers requires that a notice can be issued only by instruction from the department, or with the departments consent.

The organisation that issues the notice to vacate must comply with the requirements outlined in [the department’s Issuing notices to vacate under section 76 of the Disability Act 2006: Guidelines for disability services providers](https://providers.dffh.vic.gov.au/issuing-notices-vacate-under-section-76-disability-act-2006-guidelines-disability-services) <https://providers.dffh.vic.gov.au/issuing-notices-vacate-under-section-76-disability-act-2006-guidelines-disability-services>.

# Goods left behind

Goods left behind are any personal effects that have been left behind by a resident who has left the SDA – for example furniture, electrical goods, clothing, and other personal items.

This can include personal documents. Personal documents are a category of goods left behind which are treated differently to other goods left behind.

Personal documents include:

* official documents – such as passport, driver’s licence, or other identification
* photographs
* images on still and video cameras
* files on computer hard drives
* any other document a person would keep.

## If goods are left behind

In most circumstances, the resident’s SIL provider alerts staff that a resident has left goods behind and may have already made attempts to return the goods to the former resident, their nominated contact person or legal representative.

Staff work with the resident’s SIL provider to ensure that, even where a resident’s SIL provider may have taken some action already, requirements of the RTA about how goods left behind are treated have been met.

If not done already, contact the former resident, their nominated contact person or legal representative so that arrangements can be made to return the goods to them.

If the resident or their nominated contact person cannot be contacted, staff will issue a notice of goods left behind.

If personal documents are left behind, department staff will issue a notice of personal documents left behind.

These forms is on the [Consumer Affair Victoria website’s Goods left behind in SDA page](https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/for-providers/goods-left-behind-in-sda-providers) <https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation/for-providers/goods-left-behind-in-sda-providers>.

The department must look after **goods left behind for 14 days** from the date the notice of goods left behind is received.

If the resident does not collect their goods by the date on the notice, the department can sell or dispose of them appropriately where they have no monetary value, are dangerous or consist of perishable food.

If the goods are sold, the resident can ask for the proceeds of the sale, minus the department’s ‘out of pocket’ costs. They must do this within **six months** of the sale. If no claim is made within **six months** of the date of sale, the department must pay the proceeds of the sale (less out of pocket costs) into the Residential Tenancies Fund established under the RTA.

The department must look after **personal documents for 90 days** from the date the notice of personal documents left behind is received.

If personal documents remain unclaimed after 90 days, the department will contact the resident’s SIL provider to arrange for:

* unopened mail to be returned to the sender
* official documents to be returned to the issuing agency (for example, return bankbooks and credit cards to the bank, driver’s licence to VicRoads)
* securely disposing remaining documents (documents should be shredded or placed in a secure document disposal bin).

Where the resident’s SIL provider has undertaken to do all or some of these actions, written confirmation from the SIL provider is required to confirm the items were dealt with correctly. Alternatively, the resident’s SIL provider can deliver these items to the department to manage.

If goods are damaged, sold or thrown out in a way that is against the law, the resident can apply to VCAT for compensation.

# If a resident dies

## Important definitions

**Representative** – The person the department will work with to finalise a deceased resident’s tenancy.

**Legal personal representative** is the person with the greatest legal right to administer the deceased’s estate. They may be either of the following persons:

**Executor** - Where there is a Will, the person appointed to handle the affairs and administer and distribute the deceased estate. They will be named on a ‘grant of probate’ issued by the court.

**Administrator** - Where there is no Will, the next of kin or a state appointed trustee, who is granted ‘letters of administration’ and is authorised to manage the affairs of someone after death. Note that a ‘administrator’, who is the person that the department works with on financial matters during an SDA resident’s tenancy, is not the same as the ‘Administrator’, although State Trustees or the next of kin may fulfil both roles.

**Next of Kin** is the closest living relative (by blood or marriage) of a deceased person.

**Deceased estate** - The total of a person’s property at the time of their death. For example, money, personal possessions, and any other assets less any debts and liabilities.

## How will the department know when a resident dies?

The department may be contacted by several parties about the death of a resident including:

* the SIL provider through Collaboration Agreement obligations to keep each other informed as soon as reasonably practicable may include notification of a vacancy through the offering residency process
* the deceased person’s next of kin
* the deceased person’s legal persons representative – either the executor or the administrator
* other parties, such as an administrator.

Staff will deal with these matters sensitively and respectfully, particularly when the representative is the next of kin or familiar with the resident.

It is not the department’s role, including the Tenancy Operations team, to inform a resident’s next of kin of their death. If the next of kin contacts the department before they have been notified of the resident’s death, refer them to the appropriate organisation (such as the police or hospital).

## Identifying the resident’s representative

Deceased residents may have a ‘grant of representation’. This is a legal document provided by the Supreme Court that enables an executor or administrator to deal with the deceased’s assets and includes:

* collecting and distributing the deceased person’s assets, including goods from the SDA
* paying any debt owing.

Sometimes the next of kin can do these tasks informally without needing any court documentation.

As the department does not hold significant assets on behalf of SDA residents, the department does not require a deceased SDA resident’s next of kin to have a grant of representation from the Supreme Court. However, staff will seek to confirm if there is a legal personal representative in place before dealing with the person’s next of kin as the representative.

Whoever first contacts the department about the resident’s death may be able to provide information about who the person’s representative is, including if a legal personal representative is or will be appointed.

The resident’s SIL provider may also be able to assist as they will also have taken action to identify and confirm the representative.

Staff should ask for evidence that confirms who the representative is, which may include:

* a certified copy of the will identifying the executor
* grant of probate or letters of administration issued by the supreme court (note that it can take several days after the person has died for these letters to be issued)
* the death certificate showing a person as the next of kin
* if the death certificate is not available, an official document showing the relationship of the next of kin to the deceased.

## If contact with the representative cannot be established

Where staff cannot establish who the representative is, the department can:

* contact Victoria Police to see if they can provide details of who the next of kin is
* contact State Trustees who can assist in locating the next of kin or representative.

Staff will provide any relevant information from the file to appropriate organisations (such as police, coroner, hospital, State Trustees) to aid their investigations in establishing who the next of kin may be.

## Correspondence address

When the resident’s death has been confirmed, the department’s correspondence address for the person should be changed to ‘The Estate of <insert name> (Deceased) c/o the SDA address’, unless another address is established for the representative.

All other correspondence relating to the deceased estate should also be addressed in this way. Do not address mail to an individual.

**Do not send** letters until staff have confirmed that the representative is aware of the resident’s death.

## Ending the residency

Staff will write to the resident’s representative confirming that the SDA residency agreement and rent collection has ended on the date of the resident’s death, and to advise of arrangements for:

* collecting goods left behind
* finalising the residents account which may include a reimbursement of unpaid rent or payment of rental arrears and arrangements for NDIS SDA payments.

## Collecting goods left behind

When a resident dies, their representative is responsible for collecting any of their belongings.

The representative should arrange for collecting goods with the resident’s SIL provider at a time that is convenient for SDA residents.

If the department believes there is no next of kin, they should follow the procedures for [**goods left behind**](#_Goods_left_behind).

## Returning unpaid rent

If ending the SDA residency agreement results in a credit balance, staff will notify the resident’s representative that this money will be refunded once the account has been finalised.

## Resident in arrears when residency agreement ends

If there are rental arrears for the deceased resident, the department will inform the representative of the amount owing and request payment in full.

If there are insufficient funds available in their estate, the debt will be written off.

## SDA payments

SDA payments will continue to be claimed until the earlier of the following:

* the vacancy is filled
* 60 days have passed for a two- or three-bedroom enrolled SDA
* 90 days have passed for a four- or five-bedroom enrolled SDA

## Preparing for a new resident

The department will confirm with the person’s representative and the resident’s SIL provider that the deceased person’s goods have been collected.

The department will identify maintenance or other works to prepare the vacant bedroom for a new occupant. This will include professional cleaning and repair of any damage, such as replacement of carpet due to wear and tear.

To receive this document in another format, [email My Home](mailto:myhome@homes.vic.gov.au) <myhome@homes.vic.gov.au>, or phone 1300 161 485 using the National Relay Service 13 36 77 if required.

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

© State of Victoria, Australia, Department of Families, Fairness and Housing, May 2022.

**ISBN** 978-1-76096-563-1 **(pdf/online/MS word)**