



# Specialist Disability Accommodation (SDA) and Residential Notices

## Information for **SDA providers**

This document is to help **SDA providers** fulfill their obligations under the Residential Tenancies Act (the Act) in regards to notifications to the Office of the Public Advocate (OPA).

This includes:

- how to notify OPA when required under Part 12A of the Residential Tenancies Act
- OPA's role when it receives these notices
- OPA's expectations of SDA providers in relation to the notices.

The information is a summary only. For more detailed information you may need to call Consumer Affairs Victoria, OPA, or a lawyer. Contact details are at the end of this document.

## How to notify OPA if you have issued a residential notice

Send your notice to the following email address:

[residentialnoticesopa@justice.vic.gov.au](mailto:residentialnoticesopa@justice.vic.gov.au)

## What is OPA's role when it receives the notices?

OPA has a safeguarding role for residents when it receives notices. OPA will check:

- where the resident is living and how they are going
- what supports the person has
- the validity of the notices
- the justification for the notices
- any issues that gave rise to the giving of the notice, and whether these can be resolved
- if there is a need for an NDIS plan review and change to the person's supports.

## OPA's expectations of SDA providers in relation to notices

**SDA providers** are required by law to notify OPA within 24 hours of giving the notice to the resident. Failure to do so may incur a penalty up to 60 penalty units (or \$9,913 as at 1 July 2019).

### Notice of temporary relocation

OPA expects the SDA provider will have complied with its legal obligations. These are largely set out in section 498ZV of the Residential Tenancies Act 1997. We draw your attention to these aspects of the law in particular.

Subject to a number of qualifications, section 498ZV(1) provides that a notice of temporary relocation may be given on these grounds:

- (a) the SDA resident by act or omission endangers the safety of other SDA residents or staff at the SDA enrolled dwelling
- (b) the SDA resident is causing serious disruption to the proper use and enjoyment of the SDA enrolled dwelling by other SDA residents
- (c) the SDA resident is a danger to themselves and the SDA resident can no longer be appropriately supported in the SDA enrolled dwelling
- (ca) the SDA resident can no longer be appropriately supported in the SDA enrolled dwelling
- (d) it is for the SDA resident's safety or wellbeing
- (e) the SDA resident has caused serious damage or destroyed any part of the SDA enrolled dwelling
- (f) the SDA resident has used the SDA enrolled dwelling for a purpose that is illegal at common law or under an Act
- (g) specialist disability accommodation will no longer be provided at the SDA enrolled dwelling
- (h) the SDA enrolled dwelling is no longer suitable for the provision of specialist disability accommodation
- (i) the SDA provider intends to repair, renovate or reconstruct the SDA enrolled dwelling immediately after the notice of temporary relocation has effect and has obtained all necessary permits and consents to carry out the work and the work cannot be properly carried out unless the SDA resident vacates the area or room of the SDA enrolled dwelling exclusively occupied by the SDA resident.

A notice of temporary relocation **cannot** be made on the basis of ground (e) where any of the following have significantly contributed to the serious damage or destruction:

- fair wear and tear
- accidental damage
- the reasonable use of the SDA enrolled dwelling
- the reasonable use of any aids, equipment, fixtures and fittings used in the SDA enrolled dwelling
- the act or omission of a person who is not the SDA resident
- any behaviour arising from the SDA resident's disability including circumstances aggravating to the SDA resident's disability or emotional wellbeing
- a failure by a person to implement or comply with the SDA resident's support plan or NDIS behaviour support plan
- the unauthorised use of a restrictive practice within the meaning of the Disability Act 2006
- circumstances suggesting that the SDA resident has been subjected to abuse or neglect.

### SDA providers must:

- specify a relocation period (of not more than 90 days' duration)
- in the case of ground (i), have first offered the SDA resident an equivalent area or room as an alternative
- relocate the SDA resident for the entire period specified in accommodation that is **suitable**
- take steps to resolve the matter giving rise to the notice as soon as reasonably possible
- bring the notice to the attention of the following within 24 hours of its being issued:
  - the Public Advocate, AND
  - the resident's guardian / administrator (where applicable), AND,
  - Consumer Affairs Victoria AND
  - the NDIA (unless the SDA resident is funded under the Commonwealth's Continuity of Support Programme)

AND

- SDA providers must notify the SDA resident's Supported Independent Living (SIL) provider as soon as possible.

### OPA expects the **SDA provider** will:

- provide a copy of the notice given to the resident to OPA
- provide a copy of the residency agreement to OPA
- advise OPA of the name, address and contact details of:
  - the resident and where the resident has been relocated to
  - you, the SDA provider
  - the SIL provider at the original residence
  - the SIL provider 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)
- advise OPA of the reasons for the issuing of the notice
  - where appropriate, a statement of events leading up to the issuing of the notice
- advise OPA of any supports or government bodies involved with the resident.



## 2. Notice to vacate

OPA expects the **SDA provider** will have complied with its legal obligations. These are largely set out in section 498ZX of the Residential Tenancies Act 1997. We draw your attention to these aspects of the law in particular.

Subject to a number of qualifications, section 498ZX provides that a notice to vacate may be given on these grounds:

- (a) the SDA resident owes at least 14 days unpaid rent to the SDA provider
- (b) the SDA resident by act or omission endangers the safety of other SDA residents or staff at the SDA enrolled dwelling
- (c) the SDA resident is causing serious disruption to the proper use and enjoyment of the SDA enrolled dwelling by other SDA residents

- (d) the SDA resident is a danger to themselves and the SDA resident can no longer be appropriately supported in the SDA enrolled dwelling
- (e) the SDA resident can no longer be appropriately supported in the SDA enrolled dwelling
- (f) the SDA resident has caused serious damage or destroyed any part of the SDA enrolled dwelling
- (g) the SDA resident has used the SDA enrolled dwelling for a purpose that is illegal at common law or under an Act
- (h) the SDA provider intends to repair, renovate or reconstruct the SDA enrolled dwelling immediately after the termination date and has obtained all necessary permits and consents to carry out the work and the work cannot be properly carried out unless the SDA resident vacates the SDA enrolled dwelling
- (ha) the SDA provider intends to demolish the SDA enrolled dwelling immediately after the termination date and has obtained all necessary permits and consents to carry out the demolition and the demolition cannot be properly carried out unless the SDA resident vacates the SDA enrolled dwelling
- (k) the SDA enrolled dwelling is to be sold or offered for sale with vacant possession
- (l) the SDA resident has failed to comply with an order of the Tribunal under section 498ZS.

For the grounds in [blue](#), a valid notice of temporary relocation must have been given at least 24 hours before a notice to vacate can be issued. The notice to vacate will specify a termination date that is not less than 90 days. The table below shows the corresponding provisions of the notices of temporary relocation and the notices to vacate.

Notice of temporary relocation s498ZW(1)	Notice to vacate S498ZX(1)	Issue involves
(a)	(b)	Endanger safety of other SDA residents or staff
(b)	(c)	Cause serious disruption
(c)	(d)	Danger to themselves and can no longer be appropriately supported in dwelling
(ca)	(e)	Can no longer be appropriately supported in the dwelling
(e)	(f)	Cause serious damage or destroyed part of dwelling
(f)	(g)	Use of dwelling for an illegal purpose
(i)	(h)	Repair, renovation or reconstruction of dwelling

For grounds [\(b\)](#), [\(c\)](#), [\(d\)](#), [\(e\)](#), [\(f\)](#) or [\(g\)](#) (but not [\(h\)](#)) the notice to vacate cannot be given unless the **SDA provider** believes the conduct is likely to reoccur.

For grounds (f) and (l), the notice cannot be given 'if any of the following have significantly contributed to the serious damage or destruction caused, or the failure to comply with the order':

- fair wear and tear
- accidental damage
- the reasonable use of the SDA enrolled dwelling;
- the reasonable use of any aids, equipment, fixtures and fittings used in the SDA enrolled dwelling;
- the act or omission of a person who is not the SDA resident;
- any behaviour arising from the SDA resident's disability including circumstances aggravating to the SDA resident's disability or emotional wellbeing;
- a failure by a person to implement or comply with the SDA resident's support plan or NDIS behaviour support plan;
- the unauthorised use of a restrictive practice within the meaning of the Disability Act 2006;
- circumstances suggesting that the SDA resident has been subjected to abuse or neglect.

**SDA providers** must bring the notice to the attention of the following within 24 hours of its being issued:

- the Public Advocate, AND
- the resident's guardian / administrator, AND,
- Consumer Affairs Victoria, AND
- the NDIA (unless the SDA resident is funded under the Commonwealth's Continuity of Support Programme)

AND

- **SDA providers** must notify the SDA resident's Supported Independent Living (SIL) provider as soon as possible if the notice relates to grounds (b), (c), (d), (e) or (f).

OPA expects the **SDA provider** will:

- provide a copy of the notice given to the resident to OPA
- provide a copy of the residency agreement to OPA (unless previously given)
- unless previously given, advise OPA of the name, address and contact details of:
  - the resident
  - you, the SDA provider
  - any SIL providers involved
  - any NDIS support coordinator (if known)
  - the NDIS planner (if known)
  - any guardian, administrator or NDIS Plan Nominee
- advise OPA of the reasons for the issuing of the notice
  - where appropriate, an updated statement of events setting out what steps the SDA provider or SIL provider have taken to resolve the matter(s) giving rise to the issue of any temporary notice of relocation
- advise OPA of any supports or government bodies involved with the resident.



### 3. Notice of intention to vacate

A resident may give the **SDA provider** a 'notice of intention to vacate' the dwelling under section 498ZZA of the Residential Tenancies Act.

The notice could also be given by the resident's guardian or administrator.

The notice must be given in writing and specify the date on which the resident intends to vacate the dwelling.

When the **SDA provider** receives such a notice, the **SDA provider** has an obligation to notify the following within 24 hours:

- the NDIA (unless the SDA resident is not a NDIS participant, for example is an older person funded through the Commonwealth Government's Continuity of Support Programme) AND
- OPA
- the resident's guardian or administrator, as the case requires
- Consumer Affairs Victoria.

OPA expects the SDA provider will:

- provide a copy of the notice given by the resident to OPA
- provide a copy of the residency agreement to OPA (unless previously given)
- unless previously given, advise OPA of the name, address and contact details of
  - the resident
  - you, the SDA provider
  - any SIL providers involved
  - any NDIS support coordinator (if known)
  - the NDIS planner (if known)
  - any guardian, administrator or NDIS Plan Nominee
- advise OPA of any supports or government bodies involved with the resident.



### 4. Notice of intention to terminate

A resident may give an **SDA provider** a notice of intention to terminate the SDA residency agreement (s498ZX(1)(j)).

This notice can only be given by the resident where the **SDA provider** contravenes the provider's obligation to provide the resident with an information statement at least 7 days before the resident and the **SDA provider** entered into the residency agreement.

The **SDA provider** must notify:

- the NDIA (where the resident is an NDIS participant)
- OPA
- the resident's guardian or administrator, and
- Consumer Affairs Victoria.

OPA expects the **SDA provider** will:

- provide a copy of the notice given by the resident to OPA
- provide a copy of the residency agreement to OPA (unless previously given)
- advise OPA of the name, address and contact details of
  - the resident
  - you, the SDA provider
  - any SIL providers involved
  - any NDIS support coordinator (if known)
  - the NDIS planner (if known)
  - any guardian, administrator or NDIS Plan Nominee
- advise OPA of any supports or government bodies involved with the resident.



## For more information

Office of the Public Advocate

Phone: 1300 309 337

Email: [residentialnoticesopa@justice.vic.gov.au](mailto:residentialnoticesopa@justice.vic.gov.au)

Website: [publicadvocate.vic.gov.au](http://publicadvocate.vic.gov.au)

Consumer Affairs Victoria

Phone: 1300 404 319

Website: [consumer.vic.gov.au](http://consumer.vic.gov.au)

Email: Via the online enquiry form on Consumer Affairs Victoria's website