



# Specialist Disability Accommodation (SDA) and Residential Notices

## Information for **SIL providers**

The information on this fact sheet is to help **Supported Independent Living providers (SIL providers)** in specialist disability accommodation. The information is a summary only. For more detailed information you may need to call Consumer Affairs Victoria, the Office of the Public Advocate (OPA) or a lawyer.

OPA expects SDA providers, owners and mortgagees to provide OPA with information about the **SIL provider**.

### In what way is OPA involved in SDA enrolled dwellings?

OPA has a number of safeguarding responsibilities (detailed on page 8).

Under the *Residential Tenancies Act 1997*, SDA providers must provide OPA with the following notices about residents in SDA enrolled dwellings:

1. a notice of temporary relocation given by the SDA provider
2. a notice to vacate given by the SDA provider
3. a notice from a resident of their intention to vacate
4. a notice from a resident of their intention to terminate the agreement because they were not properly provided with information
5. a notice to vacate from the owner who intends to sell the property
6. a notice to vacate from a mortgagee who intends to take possession of the property.

OPA manages and facilitates the Community Visitor Program. Community Visitors may visit SDA enrolled dwellings and enquire into the appropriateness and standard of the dwelling, the inclusion of residents in the community, the care of residents, any complaints made by residents, and compliance with laws and regulations.

The information on this fact sheet only relates to OPA as a recipient of notices under the Residential Tenancies Act. For more about Community Visitors, visit [OPA's website](#).

## OPA's expectations of SIL providers in relation to residential notices

OPA anticipates that **SIL providers** will be aware that these notices have been given to, or by, residents even before OPA is advised. However, in some circumstances that may not be the case.

The Residential Tenancies Act requires the SDA provider to inform the **SIL provider** that it has given the following notices to a resident:

- 'Notice of temporary relocation' when given on certain grounds (see the next section on notices of temporary relocation and grounds (a), (b), (c), (d), (e) or (f)).
- 'Notice to vacate' when given on certain grounds (see the section below on notices to vacate and grounds (b), (c), (d), (e) or (f)).

OPA sees the **SIL provider** as pivotal in understanding the circumstances that gave rise to the issuing of the notices, and likely pivotal to the next phase concerning the ability of the person to return to the dwelling.

### 1. 'Notice of Temporary Relocation'

An SDA provider may give a resident a notice of temporary relocation on a number of grounds. These are set out in section 498ZV(1) of the Residential Tenancies Act:

- (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.

#### 1.1 Behaviour grounds

Grounds (a), (b), (c), (ca), (e) and possibly (d) relate to a person's behaviour. There is a requirement that 'the SDA provider must take reasonable steps to resolve the matter giving rise to the issue of the notice of temporary relocation as is reasonably possible in the circumstances' (RTA section 498ZV(12)).

The SDA provider is unlikely to have detailed knowledge and understanding of the resident's behaviour and so OPA will look to the **SIL provider** for this. OPA will also look to the **SIL provider** as key to working through the reasonable steps to resolve the behavioural matters that have given rise to the issue of the notice.

OPA expects the **SIL provider** will, upon request, provide information regarding:

### The resident

- name, address and contact details for the resident
- the resident's date of birth
- the resident's disability
- the resident's views about the relocation and the reasons for it.

### The resident's supports

- contact details of the SIL provider at the place of relocation
- a copy of the resident's NDIS plan
- the name and contact details of the NDIS planner
- the names and contact details of the resident's other service providers, such as the NDIS support coordinator, day program, employment
- the names and contact details of any government body involved to assist the resident, you, the SIL provider and SDA provider (for example, MACNI)
- the names and contact details of the resident's supports, such as family, advocates, guardian, administrator, NDIS plan nominee or correspondence nominee
- the name and contact details of any lawyer supporting the resident.

### The issues that led to the giving of the notice

- a statement of events that led to the giving of the notice (OPA will first seek this from the SDA provider)
- a copy of any incident reports relevant to the issues that led to the giving of the notice
- a copy of any analysis of the incident reports (if available)
- a copy of any behaviour support plan currently in use and previously in use
- a copy of any implementation report of the behaviour support plan
- a copy of any assessment that is relevant to understanding the behaviour of the resident
- what steps, if any, have been taken to resolve the matters that led to the issuing of the notice
- what steps the SIL provider considers necessary or helpful in resolving the matters that led to the issuing of the notice.

### The SIL provider

- whether the SIL is receiving in-kind support from DHHS in relation to the SDA dwelling as it is a DHHS owned dwelling
- the SIL provider's relationship with the SDA provider
  - whether they are related entities
  - whether there is a collaboration agreement
  - whether there is anything in the collaboration agreement relevant to the issuing of the notices.

## 1.2 Repair, renovation and reconstruction of the SDA dwelling

An SDA provider may give a resident a notice of temporary relocation in order to repair, renovate or reconstruct the SDA dwelling.

The period of relocation cannot be 'longer than the time required to carry out the work' (RTA s498ZV(2)(b)(ii)).

Where the repairs etc will not affect all areas or rooms, the resident must not be given a notice unless the SDA provider has first offered an equivalent area or room to the resident and the resident has refused to occupy that area or room (RTA s498ZV(3)).

OPA expects the **SIL provider** will, **upon request**, provide information regarding:

### The resident

- name, address and contact details for the resident
- the resident's date of birth
- the resident's disability
- the resident's views about the relocation and the reasons for it.

### The resident's supports

- contact details of the SIL provider at the place of relocation (if different).

### The repairs, renovation or reconstruction

- the likely time-frame for the repairs etc.

### The SIL provider

- whether the SIL is receiving in-kind support from DHHS in relation to the SDA dwelling as it is a DHHS owned dwelling
- the SIL provider's relationship with the SDA provider
  - whether they are related entities
  - whether there is a collaboration agreement
  - whether there is anything in the collaboration agreement relevant to the issuing of the notices.

## 1.3 Other grounds

Where the notice of temporary relocation has been issued on other grounds (for example, the property is to be sold), OPA expects the SIL provider will assist OPA in a collaborative way to bring about optimal outcomes for the resident.

## 2. 'Notice to vacate'

An SDA provider may issue a notice to vacate under the Residential Tenancies Act section 498ZX(1) on the following 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
- (i) the SDA enrolled dwelling is to be sold or offered for sale with vacant possession
- (j) 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.

OPA's expectations of the resident's SIL provider depends on the grounds upon which the notice to vacate was given.

## 2.1 Behaviour grounds

See the previous section 1.1 in relation to notices of temporary relocation based on behaviour grounds as this sets out OPA's expectations of SIL providers.

However, as the matter has developed to the point where the SDA provider has issued a notice to vacate, it would appear the SDA provider is of a view that there are no reasonable steps to resolve the behaviour issues to enable the resident to return.

That may or may not be the view of:

- the resident
- the SIL provider, or
- OPA.

OPA will expect the SIL provider:

- to collaborate with the resident, any specialist behaviour support provider, the Office of the Senior Practitioner (Victoria), the NDIA, the NDIS Quality and Safeguarding Commission and OPA to optimise the development of a behaviour support plan for the resident
- where the SIL provider is also the SIL provider in the place of temporary relocation, to implement any strategies proposed by the specialist behaviour support provider and, where necessary, authorised by Victoria's Senior Practitioner
- to document the outcome of the implementation of such strategies
- to consider how those strategies would operate in the dwelling were the resident to return
- to collaborate in exploring other residential options for the resident, should this be necessary.

## 2.2 Property damage & breach of the resident's duties

An SDA provider may issue a notice to vacate where it is alleged the resident has caused serious damage or destroyed part of the property and also in instances where VCAT has found the resident has breached their duties and made orders in relation to those breaches of duty.

However, a notice to vacate cannot be issued '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.

OPA will expect the **SIL provider**:

- to provide information to OPA whether any of above dot points are relevant to the issue of the notice to vacate
- to provide any documentation relevant to this issue to OPA.

### 3. Notices given by the resident to the SDA provider

The Residential Tenancies Act provides for the resident to give the SDA provider notices:

- Notice of intention to vacate
- Notice of termination.

#### 3.1 'Notice of intention to vacate'

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

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

The SDA provider must notify the following of the details of the notice within 24 hours of receiving it:

- the NDIA (where the person is a participant, but not where the person is funded through the Continuity of Support Programme of the Commonwealth)
- OPA
- the resident's guardian or administrator, as the case requires
- Consumer Affairs Victoria.

OPA expects the SDA provider to provide OPA with details of the SIL provider.

OPA will make inquiries about the resident either through its own staff or through a referral to the Community Visitors Program.

### 4. Notices given by an owner or mortgagee

#### 4.1 Notice to vacate given by an owner

An owner may give a resident a notice to vacate where the dwelling is to be sold or offered for sale with vacant possession (section 498ZX(1)(k)). The notice must be accompanied by documentary evidence which supports the reasons for giving the notice.

As the giving of the notice could result in the resident moving to unsatisfactory accommodation or even homelessness, OPA will be looking to the SIL provider as one organisation able to inform OPA who is supporting the resident to find new accommodation.

OPA expects the **SIL provider** will:

- advise OPA of the name, address and contact details of
  - any NDIS support coordinator (if known)
  - the NDIS planner (if known)
  - any guardian, administrator or NDIS Plan Nominee
  - any advocate, family member or other supporter assisting the resident
- advise OPA of any supports or government bodies involved with the resident.

#### 4.2 Notice by mortgagee

Where a mortgagee becomes entitled to possession of, or to exercise a power of sale of, the dwelling, the mortgagee may give the SDA resident a notice to vacate. (s498ZZD)

As the giving of this notice could result in the resident moving to unsatisfactory accommodation or even homelessness, OPA will be looking to the SIL provider as one organisation able to inform OPA who is supporting the resident to find new accommodation.

OPA expects the **SIL provider** will:

- advise OPA of the name, address and contact details of
  - any NDIS support coordinator (if known)
  - the NDIS planner (if known)
  - any guardian, administrator or NDIS Plan Nominee
  - any advocate, family member or other supporter assisting the resident
- advise OPA of any supports or government bodies involved with the resident.

## What are OPA's safeguarding responsibilities that empowers it to perform this role?

In brief, OPA's roles include:

- seeking assistance for people with disabilities
- representing people with disabilities
- investigating any complaint that a person is under inappropriate guardianship or is being exploited or abused or in need of guardianship
- inspecting premises where people with disabilities are living
- as guardian
- management and facilitation of the Community Visitors Programs in Mental Health, Disability and Supported Residential Services
- as a recipient of residential notices under Part 12A the Residential Tenancies Act concerning SDA enrolled dwellings.

The legislative authority for these roles can be found in the following Acts:

- *Guardianship and Administration Act 1986*
- *Disability Act 2006*
- *Residential Tenancies Act 1997*
- *Mental Health Act 2014*
- *Supported Residential Services (Private Proprietors) Act 2010..*

## 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