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| Notices to vacatein supported residential services |
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## About the Social Services Regulator

The [*Social Services Regulation Act 2021*](https://www.legislation.vic.gov.au/in-force/acts/social-services-regulation-act-2021/001) (the Act), the [*Social Services Regulations 2023*](https://www.legislation.vic.gov.au/in-force/statutory-rules/social-services-regulations-2023/001) (the Regulations), and the [*Social Services (Supported Residential Services) Regulations 2024*](https://www.legislation.vic.gov.au/in-force/statutory-rules/social-services-supported-residential-services-regulations-2024/001)(the SRS Regulations) create a new regulatory framework for social services in Victoria. This framework puts the protection and safety of social service users at the centre of social services delivery.

The Social Services Regulator aims to strengthen protections for social services users to safeguard people from harm, abuse and neglect.

Core objectives include:

* protecting the rights of service users
* supporting safe and effective social services delivery
* minimising the risk of avoidable harm in service delivery.

All service providers, including supported residential services (SRS) providers, must meet requirements in the Act and the Regulations. SRS providers must also meet specific requirements in the SRS Regulations.

There are several reasons why an SRS provider or resident may want to vacate a premises.

## What is a notice to vacate?

When an SRS provider wants to ask a resident to leave their SRS, they must issue the resident with a notice to vacate.

Providers must:

* comply with the Act when issuing a notice to vacate, and
* make sure that residents know their rights.

## What is a notice of intention to vacate?

When an SRS resident intends to vacate the SRS, they need to give notice of this intention to leave. This notice must:

* be within the notice period specified in the resident’s residential and services agreement, or
* give at least 2 days’ notice, if the time period is not specified within the residential and services agreement.

Providers cannot require a resident to give more than 28 days’ notice of their intention to vacate the SRS.

A resident in short-term accommodation (such as respite) does not have to provide notice of their intention to leave the SRS.

When a resident intends to be absent from the SRS temporarily, this should not be taken as an intention to vacate.

## Steps to issue a notice to vacate

SRS providers must only issue a notice to vacate to a resident for the reasons stated in the Act. This means SRS providers:

* cannot ask a resident to leave for any other reason
* must give the notice period specified in the Act.

See Table 1 for more details on when you can issue a notice to vacate.

Table 1: Issuing a notice to vacate

| Notice to Vacate Grounds | Description | Minimum notice period for resident | The issue must also be reported to |
| --- | --- | --- | --- |
| **Resident endangers the safety of other persons** (Section 261 of the Act) | If a resident causes danger to any other resident or staff member, SRS providers can issue an immediate notice to vacate.  | * no minimum notice period required
* the resident can be asked to leave on the date of issue or later.
 | Department of Families, Fairness and Housing (DFFH), within one business day of giving a resident the notice to vacate |
| **Serious damage**(Section 267 of the Act) | If a resident intentionally or recklessly causes or allows serious damage to any part of the SRS, SRS providers can issue an immediate notice to vacate.  | * no minimum notice period required
* the resident can be asked to leave on the date of issue or later.
 | DFFH within one business day of a resident of giving a resident the notice to vacate |
| **Serious interruption to quiet and peaceful enjoyment**(Section 268 of the Act) | Where a resident seriously interrupts the quiet and peaceful enjoyment of the SRS by other residents. Serious interruption to peace and quiet can be a series of incidents that may not individually be considered serious interruption, however may amount to this due to the frequency of the behaviour.  | * immediate or later by agreement
* no minimum notice period required
* the resident can be asked to leave on the date of issue or later
 | DFFH within one business day of giving a resident the notice to vacate |
| **Use of SRS for illegal purposes**(Section 263 of the Act) | If a resident has used (or permitted the SRS to be used) for any purpose that is illegal, an SRS provider can issue a notice to vacate.  | * 2 days
 |  |
| **Resident in need of more health care than available**(Section 265 of the Act) | If you are unable to secure the level of healthcare a resident needs at your SRS. | * at least 14 days’ notice
* must be after the DFFH assessment outlined below.
 | Social Services Regulator |
| **Resident in need of more personal support than available**(Section 266 of the Act) | If you are unable to secure the level of personal support a resident needs at your SRS. | * at least 14 days’ notice
* must be after the DFFH assessment outlined below.
 | Social Services Regulator |
| **Non-payment of fees**(Section 262 of the Act) | When a resident is 14 days in arrears of payment | * 14 days
 |  |
| **Provider proposes to cease carrying on the supported residential service**(Section 260 of the Act) | If an SRS provider proposes to stop conducting the business as an SRS  | * 28 days
 |  |
| **Repairs or demolition of SRS** (Section 264 of the Act) | SRS providers may give a resident notice to vacate if intending to repair, renovate, reconstruct or demolish the SRS. A notice issued on these grounds requires: * obtaining permits and consents to carry out work,
* the work cannot be carried out unless the resident vacates the SRS.

If the proposed repairs, renovations or reconstruction will affect a resident’s room but not affect all the rooms in the SRS:* another similar room must be offered to the resident
* if the resident refuses that offer, it is grounds to issue a notice to vacate.
 | * 60 days
 |  |

### Issuing a notice to vacate when a resident needs further support

Both the Regulator and the Department of Families, Fairness and Housing (DFFH) take seriously the safety of a resident in need of more health care or personal support than available.

There are specific steps you must take **before** you can issue a notice to vacate under these grounds. These include:

* taking reasonable steps to ensure residents receive the level of healthcare or support they need, and
* you must let the Regulator know as soon as possible if you are unable to secure the necessary level of healthcare or support.

To notify the Regulator about needing to secure further healthcare and support for the resident, complete a notifiable incident report: [**Social Services Regulator incident report form**](https://dhhschange.syd1.qualtrics.com/jfe/form/SV_erGLolVeBRFsQdw)

#### DFFH’s response

When we are notified that a resident needs further healthcare and support, we inform DFFH to make enquiries and assess the resident’s needs.

SRS providers will need to review the response from DFFH, before a notice to vacate can be issued.

As part of their enquiry and assessment process, DFFH may:

* request a report from a medical practitioner or relevant health professional
* consult with the resident and their nominated person (where possible)
* refer the resident to appropriate care or health professionals, if a need for further care or support is found. This may include relocating the resident.

After completing their enquiries and assessment on determining whether more healthcare or personal support is needed, DFFH will provide an update to the service provider about the outcome of this assessment.

Once a service provider has received this assessment from DFFH, the resident can be issued a notice to vacate. SRS providers must make sure to first review this assessment, before a notice to vacate may be issued.

### How to issue a notice to vacate

The notice must be in writing[[1]](#footnote-2) and include the section of the Act you are issuing the notice under.

See **Table 2** for further details on what to include:

|  | Details to include in a notice to vacate |
| --- | --- |
|  | * the date when the resident is to leave the SRS
 |
|  | * the reason the notice is being given, including sufficient detail to support your reasons such as facts, dates and circumstances
 |
|  | * a statement informing the resident they may appeal the notice to vacate to the Victorian Civil and Administrative Tribunal (VCAT)
 |
|  | * information about consequences of not meeting requirements outlined in the notice[[2]](#footnote-3)
 |
|  | * a signature and date provided by the SRS provider (or person acting on their behalf).
 |

The SRS provider also:

* must retain a copy of the notice to vacate for their records
* can issue the notice to vacate in person, electronically, or via post (to allow extra time for resident to receive notice)
* must give a copy of a notice to vacate to the resident (and their nominated person if required).

### Requirements to update DFFH and the Regulator

There are requirements to inform DFFH or the Regulator in certain circumstances when issuing a notice to vacate. See Table 3 for further details.

|  | Details of requirement | Provide details of the notice to vacate to: |
| --- | --- | --- |
| **Requirement to inform DFFH** | When you have issued notices to vacate under:* Section 261
* Section 267
* Section 268
 | to srscommunications@homes.vic.gov.au |
| **Requirement to inform the Social Services Regulator** | When you have issued notices to vacate under:* Section 265
* Section 266
 | regulation.north@ssr.vic.gov.au regulation.east@ssr.vic.gov.au regulation.west@ssr.vic.gov.au regulation.south@ssr.vic.gov.au  |

## After issuing a notice

### What if the resident does not agree with the notice?

A resident has the right to apply to VCAT to challenge a notice to vacate, for the following reasons:

* the resident believes the notice has a defect
* the notice was not issued in accordance with the Act
* the reason for the notice is not established.

Residents must apply to VCAT to appeal the notice within set timeframes. See Table 4 for more details.

**Table 4**: Timeframes for applying to VCAT

|  | Reason for notice | Timeframe to appeal |
| --- | --- | --- |
| 1 | A resident endangering the safety of other people at the SRS | 5 days |
| 2 | Causing serious damage to the SRS | 5 days |
| 3 | Causing serious interruption to the quiet and peaceful enjoyment of the SRS | 5 days |
| 4 | All other reasons | 28 days |

### What happens if the resident does not leave the SRS when requested?

If a resident does not meet requirements in the notice to vacate, SRS providers have the right to apply to VCAT if:

* a resident has not left the SRS in the agreed timeframe after receiving a notice to vacate, or
* the resident gives a notice of intention to vacate the SRS and does not leave.

SRS providers must apply to VCAT within **28 days** from the time the resident’s notice to vacate takes effect. Evidence must also be provided to support an application to VCAT.

### VCAT’s role

VCAT will hold a hearing to consider the information provided by you and the resident. Outcomes from the hearing include:

* VCAT will make a decision based on the information presented at the hearing
* VCAT’s decisions are final and must be followed by everyone.

When the application to VCAT has been made by the SRS provider:

* a hearing will occur within 14 days, and
* any order to vacate will be made within 7 days of the hearing.

### VCAT orders

If a notice to vacate is upheld:

* the resident can be ordered to vacate the SRS within 30 days of the date the order to vacate is made
* if a resident does not leave within this timeframe, you may apply to VCAT to obtain a warrant to remove the resident either immediately or within six months of the order to vacate
* there is a time limit on warrants, so you must use it within 30 days of issue.

If a notice to vacate is *not* upheld by VCAT, SRS providers would need to review the reasons provided by VCAT and ensure that these factors are addressed if a new notice to vacate is issued.

## What is the Regulator’s role?

At the outset of the new scheme, our focus is on giving service providers guidance and support to help them understand and meet their requirements. Over time, we will expect organisations to have comprehensively implemented the requirements of the new scheme.

We are committed to protecting service users and will not hesitate to act to protect service users from harm, abuse and neglect. This includes taking enforcement action.

If you do not appropriately issue a notice to vacate you may breach the Act.You may face penalties including prosecution and fines.

## Useful resources and contacts

### Resources

Fact sheets on requirements for Supported Residential Services (SRS) providers are at: <https://www.vic.gov.au/supported-residential-services>

This series of fact sheets on requirements for SRS providers under the Regulations include:

* Using a residential and services agreement (RSA)
* Managing support plans
* Managing residents’ medication
* Staffing requirements
* Managing residents’ money
* Notices to vacate
* Fees, charges and security deposits in supported residential services.

Further information on how to complete an incident report is available at:
[SSR Incident Report - Provider User Guide (PDF, 975 KB)](https://dhhschange.syd1.qualtrics.com/CP/File.php?F=F_YBnPXtLAmAeilbX)

### Contact us

For further information about issuing a Notice to vacate not covered by this fact sheet, you can contact the Social Services Regulator: email the Social Services Regulator <enquiries@ssr.vic.gov.au>.

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| To receive this document in another format, email the Social Services Regulator <enquiries@ssr.vic.gov.au>.Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.© State of Victoria, Australia, Department of Families, Fairness and Housing, December 2024.In this document, ‘Aboriginal’ refers to both Aboriginal and Torres Strait Islander people. ‘Indigenous’ or ‘Koori/Koorie’ is retained when part of the title of a report, program or quotation.ISBN 978-1-76130-751-5 (online/PDF/Word) or (print)Available at [Social Services Regulator registration | vic.gov.au](https://www.vic.gov.au/social-services-regulator-registration) <[Social Services Regulator registration | vic.gov.au](https://www.vic.gov.au/social-services-regulator-registration)> |

1. We do not provide a template for notices to vacate. [↑](#footnote-ref-2)
2. Section 279 (d) of the SRS Regulations. [↑](#footnote-ref-3)