

Regulatory Impact Statement

For the proposed
Supported Residential Services (Private Proprietors)
Regulations 2011

Public Consultation, December 2011

This Regulatory Impact Statement has been prepared for the Department of Health in accordance with the requirements of the *Subordinate Legislation Act 1994* and the *Victorian Guide to Regulation*

SUPPORTED RESIDENTIAL SERVICES (PRIVATE PROPRIETORS) REGULATIONS 2011
REGULATORY IMPACT STATEMENT

In accordance with the *Victorian Guide to Regulation*, the Victorian Government seeks to ensure that regulations are well targeted, effective and appropriate, and that they impose the lowest possible burden on Victorian businesses and the community.

The Regulatory Impact Statement (RIS) process involves an assessment of regulatory proposals and allows members of the community to comment on proposed Regulations before they are finalised. Such public input provides valuable information and perspectives, and improves the overall quality of regulations.

This RIS has been prepared to facilitate public consultation on the proposed Supported Residential Services (Private Proprietors) Regulations 2011. A copy of the proposed Regulations is attached to this RIS.

Submissions are now invited on the proposed Regulations. Unless requested by the author, all submissions will be treated as public documents and may be made available to other parties.

Written comments and submissions should be forwarded by no later than **5:00pm, 30 January 2012** to:

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ABBREVIATIONS

ABS – Australian Bureau of Statistics

MCA – multi-criteria analysis

NCP – National Competition Policy

NPV – net present value

PSC – personal support coordinator

RIS – Regulatory Impact Statement

SAVVI – Supporting Accommodation for Vulnerable Victorians Initiative

SRS – supported residential service

the SRS Act – *Supported Residential Services (Private Proprietors) Act 2010*

the current Act – *Health Services Act 1988*

the current Regulations – Health Services (Supported Residential Services) Regulations 2001

the proposed Regulations – Supported Residential Services (Private Proprietors) Regulations 2011

VPS – Victorian public service

VSL – value of a statistical life

VSLY – value of a statistical life year

SUMMARY

Supported residential services (SRS) are currently regulated under the *Health Services Act 1988*, and the *Health Services (Supported Residential Services) Regulations 2001*. The current model of regulation is based on a broad definition of SRS and a set of principles guiding how those services are provided, coupled with more detailed minimum requirements for those services.

In 2008 the Department of Health commenced a review of the current Act and Regulations. Consultation was a critical element of the review process. A discussion paper was used to highlight key issues with the current SRS regulatory scheme and to seek input from stakeholders. Residents of SRS, their families, SRS staff and proprietors provided feedback to the department. The department also ran a number of public consultation forums across Victoria.

The information gathered through the review process led to the new regulatory regime set out in the *Supported Residential Services (Private Proprietors) Act 2010*. The SRS Act streamlines the administration and regulation of SRS, strengthens occupancy rights, strengthens financial protections, promotes staff capability, introduces outcome-based standards, strengthens reporting of serious incidents and introduces new enforcement mechanisms.

The purpose of the proposed Regulations is to provide for effective administration of the new Act, which is planned to commence from 1 July 2012.

Objectives

The primary objective for government intervention considered in this Regulatory Impact Statement (RIS) is to **protect the safety and wellbeing of residents living in private SRS**.

There are specific objectives in relation to certain parts of the proposed Regulations.

Area of regulation	Objective
Specifying information to be included in an application	To provide clarity to applicants about what information is required to reduce costs to them and government of making and approving applications
Specifying the information to be included in a registration statement	To reduce costs to SRS and government of requesting and providing information for a registration statement
Specifying the information to be provided to residents and prospective residents	To enhance better decision making, reduce search costs, and enable residents to better enforce their rights
Specifying elements of a complaints system	To safeguard the rights of residents to make complaints, and empower residents to exercise that right when needed
Specifying records to be kept and the manner of maintaining them	To effectively record information to facilitate risk identification and investigation of incidents

Area of regulation	Objective
Specifying accommodation and personal support standards and medication requirement	To provide clarity to SRS about what is expected to be provided to residents in an SRS: clarity that the physical premises at which these services are provided are safe, properly maintained and provide a home-like environment; and that personal support services are provided in line with residents needs and delivered in a timely and respectful manner
Specifying minimum staffing requirements	To provide an effective safety net: setting a minimum qualification for key staff in an SRS and a minimum number of staff that must be linked to the level of residents' personal support needs To provide certainty: clarity to SRS to assist them in meeting the requirements of the Act
Specifying a range of other low-impact regulations	To assist in the effective operation of the SRS Act

The objective of setting fees is to appropriately recover costs associated with processing applications, having regard to efficiency, equity and effectiveness of the cost recovery.

Nature of the problem being addressed

SRS operate in a market that accommodates a diverse range of people, some of whom are among Victoria's most vulnerable. Common types of 'market failure', where there is a case for the government to intervene, relevant to SRS are:

- *Addressing public health and safety.* As many people with a disability or the elderly are vulnerable to abuse and exploitation, appropriate regulation is essential to ensure the provision of a minimum standard of accommodation and personal support. If a minimum standard of accommodation is not provided, it will be to the detriment of the potential SRS resident, and may subsequently result in increased demands being placed on the public health and community services system.
- *Addressing 'power asymmetries'.* Due to the dependency of residents on proprietors, and the particular vulnerability of residents, there may be poor protection of residents' rights and interests if left to be managed between proprietors and residents.
- *Addressing inadequate information for residents.* A person with special needs may not have the ability to access adequate information to make an informed decision on whether a particular SRS will satisfy all his or her needs within a safe and comfortable environment. This information imbalance, sometimes referred to as 'information asymmetry', between providers and potential residents justifies regulatory intervention. This imbalance is exacerbated by the fact that residents may be vulnerable and in need of guardianship or protection, and residents may be 'locked in' to a particular provider as there are few alternatives for this population.

Government intervention in the SRS sector may be justified in the pursuit of social and equity objectives such as protecting human rights, protecting the vulnerable and disadvantaged, and relieving geographic and social isolation (for example, by ensuring

adequate community facilities and the appropriate provision of infrastructure). The *Victorian Guide to Regulation* specifically lists SRS as an example of where regulation of minimum quality standards may be justified to achieve social outcomes.

The SRS legislation review identified two main concerns with the existing regulatory scheme: an excessive regulatory burden on proprietors, and inadequate protections for residents in some areas. Specific issues identified through the extensive stakeholder consultations included:

- no statutory tenancy rights (unlike some other accommodation markets)
- lack of clarity and certainty about what payments can be charged and confusion about the protection of residents' money
- variable staff skills, particularly in relation to managing more complex clients
- inadequate complaint handling procedures
- burdensome registration processes.

Many of these were addressed in development of the new Act; however, new regulations to support operation of that Act are required to complete the process. In some instances the Act provides a framework only, or a general obligation, and the rationale for the Regulations is to improve the efficiency and effectiveness of those parts of the Act, for example, through lowering compliance burdens by clearly specifying the information to be provided when making applications for registration.

Summary of costs and benefits of the proposed measures

The estimated costs of the proposed Regulations are indicated in the following table. They reflect costs that are additional to a hypothetical base case of no regulation. That is, they represent the cost of imposing the proposed Regulations on the sector if there were no current regulations. However, for SRS, where regulations have been in place for almost 10 years, the costs of the proposed Regulations would largely be incremental.

Area of regulation	Costs
Specifying information to be included in an application	Compliance burden on applicants (in total) of \$9,507 per year (\$79,064 over 10 years)
Specifying the information to be included in a registration statement	Compliance burden of \$191 per year (\$1,590 over 10 years)
Specifying the information to be provided to residents and prospective residents	Transitional (once-off) cost of \$16,752 to SRS to align with the new requirements and provide a copy of the Act and Regulations
Specifying elements of a complaints system	Small compliance cost impact on proprietors. In particular, the additional cost of undertaking an annual review of complaints is estimated to cost the sector \$11,375 per year (\$95,000 over 10 years) plus the cost of recording complaints of \$6,321 per year (\$52,569 over 10 years)
Specifying records to be kept and the manner of maintaining them	Small compliance cost impact on proprietors

Area of regulation	Costs
Specifying accommodation and personal support standards and medication requirement	Small compliance cost impact on proprietors. In particular, incremental costs of \$64,088 per year (\$532,994 over 10 years) for making records of medicine administration, and \$1,550 per year (\$13,000 over 10 years) for providing a lockable medicines facility
Specifying minimum staffing requirements	Financial cost to SRS sector of \$553,261 per year, or \$4.6 million over 10 years, to meet the staffing requirements
Specifying a range of other low-impact regulations	Negligible cost impact

All 10-year figures are expressed in net present value terms.

In total, these regulations impose additional costs of \$647,968 per year (\$3,703 per SRS), or around \$5.4 million over 10 years (net present value). This equates to a cost of just over \$100 per resident (based on registered bed numbers) per year – in general this cost will not flow directly to residents as there is limited ability to increase the accommodation fees of ‘pension-level’ residents, and the department considers that the burden of costs will be shared between SRS proprietors and residents under ‘above pension’ arrangements.

Against these costs, each of the areas of regulation is expected to achieve benefits that offset the costs. In particular:

- Specifying information to be included with an application is expected to achieve a cost saving of \$18,943 per year (\$157,534 over 10 years) to both applicants and the department, giving an overall net cost saving from this element of the Regulations of \$78,470 over 10 years.
- The compliance costs associated with the registration statement are lower than the alternative of requesting information from SRS on a case-by-case basis (estimated to be \$227 per year and \$1,888 over 10 years), giving an overall small net cost saving to SRS of around \$36 per year and \$298 over 10 years.

Other areas of the proposed Regulations, which have a total additional cost of \$638,270 per year (\$3,647 per SRS, and \$5.3 million over 10 years), were assessed qualitatively in terms of how effective they are likely to be in addressing the desired objectives while minimising regulatory costs. It was considered, given the weights attributed to various criteria that the proposed Regulations are preferable to having no regulations in place, and preferable to other identified feasible alternatives.

One approach of judging the net benefits of the proposed Regulations is to use a ‘break-even’ analysis. This involves placing a value on certain undesirable outcomes, and determining how many of these undesirable outcomes would need to be avoided due to the Regulations in order to justify the costs of the Regulations. The undesirable outcomes in relation to SRS residents are serious injury and/or inadequate sustainment of wellbeing. These are very difficult to quantify.

Of the above costs the bulk of them (around \$636,595 per year) are attributable to measures aimed at protecting the safety of residents (i.e. adequate staffing, effective complaints review, records and storage of medications). Broad estimates are available for

the ‘value of a statistical life’ (VSL), which attempts to place a value on a death avoided. A related, and often more useful, measure is the value of statistical life years (VSLY), indicating the marginal benefit of sustaining a healthy life for 1 additional year.

For this RIS, a VSLY of \$86,000 is used (with a total VSL assumed at \$734,000 – see Attachment C). The department considers that a serious incident avoided at an SRS is broadly equivalent to sustaining a healthy life of a resident for an additional year. In order to ‘break even’ under this analysis, the Regulations would need to avoid at least 7 incidents per year (or prevent at least 1 avoidable death). The department considers that a realistic outcome of the proposed Regulations will be to prevent around 10 serious incidents per year. This is based on the department’s experience under the current arrangements, case studies undertaken by the department on the causes of selected incidents to date, and analysis of breaches data. Currently, there are around 30 very serious incidents made known to the department each year,¹ and the changes in the Regulations have specifically responded to gaps identified through audits, complaints, community visitors and feedback from the legislation review.

However, this RIS relied on a multi-criteria analysis (MCA) as the decision rule, recognising that such break-even analysis is very sensitive to assumptions and it is difficult to directly attribute cause and effect in most cases. The MCA analysis therefore focuses on whether or not the proposed Regulations provide an effective safety net for residents.

Why other approaches are not appropriate

The proposed Regulations were assessed against identified feasible alternatives in each of the main areas. In each case, the proposed Regulations were considered to be superior, either because:

- the quantifiable net benefits (or net cost savings) were higher, where such benefits were calculated, or
- the proposed Regulations received a higher overall score when assessed against an MCA, which assists comparing options where costs and benefits are not able to be fully calculated (see Attachment C).

The proposed Regulations give effect and detail to the new regulatory framework established in the SRS Act. Higher level regulatory options relating to the overall regulation of SRS were considered as part of the development of the Act. Therefore this RIS does not assess options already considered in those processes, such as negative licensing instead of registration, or education campaigns instead of listing rules.

Self-regulation (or voluntary codes of practice or standards) was considered, however, not pursued. The major disadvantage associated with voluntary codes is the absence of a mechanism to ensure compliance and enforcement. Disciplinary processes, where they exist, may not be transparent, fair or consistently applied. Self-regulation is typically suitable for cases where the problem to be addressed is a low-risk event, or an event of low impact.

¹ The department considers that, under the current framework, only a small percentage of incidents are made known to the department. It is noted that each year there are more than 500 breaches related to resident care and staffing, and up to 10 unexpected deaths. These breaches are identified from a range of monitoring activities including complaints to the department, inspections and audits.

Purpose of changes from current Regulations

The proposed Regulations contain enhancements to the current regulatory approach. Key changes, and the rationale for these, are shown in the following summary table.

Area of regulation	Key changes from current Regulations
Specifying information to be included in an application	Clarified and expanded the information to be included to reduce the need for requests for additional information and prevent delays in decision making.
Specifying the information to be included in a registration statement	Registration statements are new under the SRS Act and require proprietors to re-confirm their registration and suitability details, on request. Currently, checking of registration details for all SRS occurs as part of the regular renewal of registration; this process has been removed in the new scheme.
Specifying the information to be provided to residents and prospective residents	Expanded the information to be provided to ensure prospective and existing residents are made aware of their rights under the Act and to promote informed decision making through the provision of detailed information about the SRS.
Specifying elements of a complaints system	Clarified and expanded required elements of the complaints system to reflect the principles of the SRS Act and key elements of good compliant handling systems.
Specifying records to be kept, the manner of maintaining them and events that should be reported.	Expanded the types of information to be recorded to manage risks to residents in a timely way, and assist with investigations of incidents.
Specifying accommodation and personal support standards and medication requirements	Similar minimum standards as now but expressed as resident-focussed standards to promote a more flexible approach to meeting the needs of individual residents.
Specifying minimum staffing requirements	Expanded the range of qualifications considered suitable for a personal support coordinator and expanded the minimum requirements to include a qualified staff member on duty at weekends, a qualified first aid staff member on duty every day, and, for the personal support coordinator, ongoing training requirements. These changes respond to an identified need to build staff capability and provide better protection for the safety and wellbeing of residents.

Fees

The proposed Regulations set fees for applications to register an SRS, variation of registration, and appointment of directors, managers and legal personal representatives (LPR). Fees are imposed in recognition that the department incurs costs in processing these applications.

Partial cost recovery was assessed as being superior to zero cost recovery and full cost recovery. The proportion of total processing costs to be recovered from applicants ranges from 13 per cent to 23 per cent, as shown in the table below. In setting fees, it was considered that any increase in fees may have an effect on entry to the market, particularly to the pension-level market. In most cases, fees were set to maintain current levels as far as possible.

The table below presents the fee unit equivalent of these costs for each activity, with comparisons to the current fee units charged for each activity, the fee units proposed in the Regulations, and the fee units if costs were fully cost recovered.

Activity	Current fee units	Full cost recovery fee units	Proposed fee units	Change from current fees	Proportion of costs recovered
Registration	48.2	315		-0.4	15%
Registration (change of ownership)*	42.2	212	48	13.7	23%
Variation to registration	14	87	14	0	16%
Alterations/extensions	21	165	21	0	13%
New director	-	63	14	n/a	22%
Appointment of an LPR	-	63	14	n/a	22%
Approval of a manager	-	63	14	n/a	22%

* Registrations for change of ownership currently attract a separate fee. Under the SRS Act, change of ownership is no longer a different application, and so attracts the same fee as a new registration.

The current value of a fee unit is \$12.22 (from 1 July 2011). As a result of the proposed fee structure, total revenue collected from fees from these particular SRS applications is estimated to be \$18,188 per year (or \$151,262 over 10 years, in 2011–12 dollars). This is an increase of 21 per cent above had the current fees continued for these applications, or an increase of \$18 per SRS.

However, the above table does not show fees that have been discontinued under the new regulatory arrangements, which were taken into account in developing the new Act. Under the new arrangements, the current approval-in-principle applications will no longer be required (21.1 fee units), there will no longer be an annual fee charged (12 fee units) and no need to renew registration (33.1 fee units). Therefore, for a new SRS registering in 'Year 0', the department estimates there will be a saving of 273.5 fee units over 10 years, or \$3,342 using today's fee unit value.

Consultation points

In developing this RIS, there has been ongoing consultation with stakeholders. In particular, the views of proprietors have been sought on key changes to the Regulations. Stakeholder views and concerns are summarised in chapter 10. While this feedback has been helpful in identifying requirements that parallel 'business as usual' activities, the quantification of additional costs of the proposed Regulations is largely based on departmental assumptions where stakeholders have not been able to quantify the cost impacts.

A primary function of the RIS process is to inform members of the public and seek comment on the proposed Regulations before they are finalised. While comments on any aspect of the proposed Regulations are welcome, stakeholders may wish to comment on the following consultation points.

- The proposed Regulations aim to clarify what proprietors are expected to do to meet the requirements under the Act. Do the proposed Regulations give sufficient clarity to proprietors? If not, in relation to which part of the Act or Regulations would greater clarity be useful?
- The proposed Regulations set limits in respect of handling residents' money and for transactions between residents and proprietors.
 - Are the proposed limits for control of resident's money reasonable?
 - Are the proposed thresholds for prohibited transactions between a resident and proprietor reasonable?
- The proposed Regulations express the standards for accommodation and personal support as resident-focussed standards to promote flexibility in meeting residents' needs. Are there likely to be incremental costs of the proposed accommodation and personal support standards against current practices? If so, what level of costs and in what areas? Do the standards provide sufficient clarity to proprietors about what they need to provide? If not, what other areas or details should the standards cover?
- The proposed Regulations change the requirements for a personal support coordinator (PSC). Is it reasonable for the PSC to work 7.6 hours between 7am and 7pm weekdays instead of the current requirement of 38 hours per week? Is 40 hours of training over 3 years appropriate?
 - Some comments were made by some proprietors in regard to the reduced flexibility of requiring the PSC to be on duty for 7.6 hours between 7am and 7pm on weekdays, and that some PSCs currently worked at nights or on weekends. Noting that an SRS will be able to nominate multiple PSCs under the proposed Regulations, allowing existing daytime staff with equivalent qualifications, to fulfil this requirement, are there other costs for individual SRS in meeting this requirement that are not reflected in this RIS?
- The proposed Regulations set additional minimum staffing requirements, particularly in relation to having staff with first aid qualifications and qualified staff present on weekends.
 - Is it reasonable to assume that most, if not all, SRS already employ staff with first aid qualifications during the day? Do these staff generally renew their first aid certificates every three years and update their CPR certificate every year?

- The proposed Regulations aim to provide flexibility by requiring staff with first aid qualifications to be on duty only during 'core' hours. Outside these hours, staff on duty at night and weekends need only be able to respond to first aid and emergency issues (e.g. by ensuring that these staff know agreed procedures and emergency contacts). Do staff who work these hours generally have first aid qualifications anyway? Is flexibility in this area important for proprietors?
- Concerns were raised by some proprietors about the costs associated with additional staff at weekends. As well, some proprietors raised concerns about the rigidity of requiring the qualified weekend staff member to work 7.6 hours between 7am and 7pm, suggesting that more flexibility would allow them to use qualified staff when they had activities or outings planned on the weekend. Is it reasonable to assume most SRS already employ a qualified (i.e. Certificate III) person on both days of the weekend. What level of cost increases are likely to be experienced in your business as a result of this regulation? Would extended core hours on weekends, for example 7am–10pm, provide sufficient flexibility to cater for social activities?
- The proposed Regulations set out detailed information and documentation requirements for each type of application. Is it reasonable to assume that most of this information would already be held by the proprietor or otherwise readily accessible? Are there particular items listed in these requirements that are unnecessary? Are the estimated time costs to provide this information realistic? Do proprietors agree that more clearly specifying the required information in regulations provides a means to reduce the time and cost associated with current application practices?
- The proposed Regulations require SRS proprietors to notify the Secretary of various events within a certain time period, for example, notification of a reportable incident (1 business day), notification that certain notices to vacate had been given to a resident (1 business day), notification of cessation of a PSC (7 days). Are these time periods reasonable?
- The department considers that the improvements in the Regulations related to adequate staffing, accommodation standards, effective complaints management, records and storage of medications will result in prevention of at least 10 serious incidents per year (compared with an absence of regulations). Is this realistic?
- Overall, are there any practical difficulties in meeting any of the requirements set out in the regulations?
- Overall, are there any transitional or implementation issues associated with the proposed Regulations that the department should be aware of?

1 INTRODUCTION

1.1 Purpose of this Regulatory Impact Statement

This Regulatory Impact Statement (RIS) formally assesses the proposed Regulations against the requirements in the *Subordinate Legislation Act 1994* and the *Victorian Guide to Regulation incorporating: Guidelines made under the Subordinate Legislation Act 1994*.

The Victorian Government's stated principles in relation to regulations are to:

- ensure that regulations are well targeted, effective and appropriate
- reduce the regulatory burden on business and not-for-profit organisations.

The proposed Regulations have been assessed in the context of these principles.

The assessment framework of this RIS:

- examines the nature and extent of the problem to be addressed
- outlines the objectives of the proposed Regulations
- explains the effects of the proposed Regulations on various stakeholders
- assesses the costs and benefits of the proposed Regulations.

Feasible alternatives to the proposed Regulations are also considered and assessed. The RIS considers if there is any net change in the regulatory burden imposed on business that arises from the proposed Regulations. It also examines potential impacts on small business and competition.

The proposed Regulations include fees for a range of registration-related applications required under the Act. Fees are levied in recognition that the regulation of businesses involves costs to government, and therefore taxpayers. The assessment of fee arrangements has been undertaken in accordance with the *Cost Recovery Guidelines*, which set out the policy principles underpinning cost-recovery arrangements in Victoria.

A primary function of the RIS process is to allow members of the public to comment on the proposed Regulations before they are finalised. Public input provides valuable information and perspectives and improves the overall quality of regulations. Accordingly, the Department of Health, which is responsible for administering the Act and its Regulations, is circulating the proposed Regulations to stakeholders and welcomes and encourages feedback.

1.2 Regulation of supported residential services

Supported residential services (SRS) have been subject to sector-specific regulation for almost 25 years. In 1973 specific legislation was established that recognised 'special accommodation houses' as boarding houses accommodating the over-60s and those with physical and psychiatric disabilities.

While SRS have continued to cater for similar clients, over time the regulatory approach has evolved from one based on the characteristics or needs of the residents to one based on the types of services provided. In 1988 these facilities became regulated under the *Health Services Act 1988* and the *Health Services (Supported Residential Services) Regulations 2001*.²

Since that time, the Victorian Government has made various amendments to the Act to improve protections for residents and, in August 2010, new stand-alone legislation for the SRS industry – the *Supported Residential Services (Private Proprietors) Act 2010* – received Royal Assent. This legislation was developed following an extensive review of SRS regulation, which ran from 2008 to 2010.³

The Act, once commenced, will establish a regulatory framework for SRS that includes:

- the objectives of the Act and principles governing residents' rights
- a clearer definition of an SRS to provide certainty on application of the legislative framework
- a system for the registration of an SRS: upon approval of application, the registration continues indefinitely until revoked (the Act sets out processes for the variation, alteration and cancellation of registration, changes in directors and officers, maintenance and inspection of the SRS register)
- ability for the Secretary of the Department of Health to request additional information in order to determine whether an application should be approved
- information to be provided to prospective residents, and included in residential and services agreements, and provision of support plans
- general provisions in health and support standards, medication, staffing, complaints, reporting and records
- regulation of the SRS's management of money and property of residents
- processes for notices to vacate
- monitoring and enforcement of the Act and Regulations
- the role and functions of community visitors.

The proposed Regulations would support operation of the *Supported Residential Services (Private Proprietors) Act 2010* ('the SRS Act'). The Regulations are made under section 207 of the SRS Act.

² Attachment A provides a summary of the current regulatory framework.

³ Attachment B provides details regarding the review leading to the new legislation. Further information can be found at www.health.vic.gov.au/srs

2 THE REASONS FOR REGULATION

2.1 Background – what are SRS?

SRS are privately owned facilities operated as businesses that provide a combination of accommodation and personal support to residents.

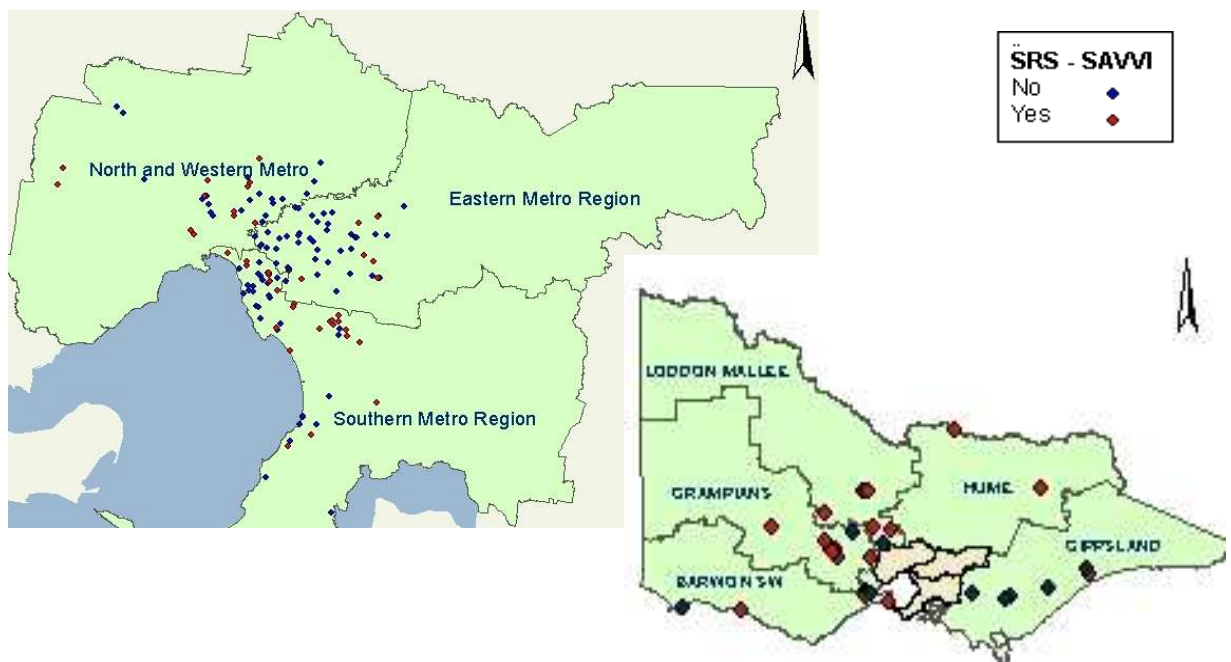
In June 2011 there were 175 SRS providing services to more than 6,000 Victorians who required support with activities of daily living such as showering, personal hygiene, toileting, dressing, eating, medication, and/or physical or emotional support.

SRS facilities operate in the community in purpose-built facilities or in modified buildings, providing a home-like environment for residents. A census of the SRS sector in 2008 (available at www.health.vic.gov.au/srs) found that almost three-quarters of SRS are purpose-built facilities; however, it was also noted that 'above-pension' facilities were significantly more likely to be purpose built when compared with 'pension-level' facilities. Pension-level facilities are also, on average, 23 years older than their counterparts. The rest of SRS facilities are converted homes.

SRS facilities are owned by a person or a company ('the proprietor'), who must be registered by the Department of Health to operate the SRS. SRS are required to meet minimum standards for both the accommodation and support they provide to residents to keep their registration. While SRS proprietors are not required to directly meet all a resident's needs, they are required to ensure arrangements are in place to meet these (for example, access to general practitioners and specialist services where required) and must not keep residents if their support needs are greater than can be met by the SRS.

There are SRS located in both metropolitan and rural Victoria. Figure 2.1 shows that the majority (around 76 per cent) are in metropolitan areas.

Figure 2.1: Location of SRS in Victoria at June 2011



SRS vary in size, from small facilities accommodating as few as five people, to larger facilities with up to 90 residents. The average number of residents in a facility is 28.

As they are private businesses, decisions about who will be accommodated in the SRS rest with the SRS proprietor. There is no standardised system for assessment of residents; however, factors such as whether there is a bed available, whether the needs of the resident can be met, and whether the resident is able to pay the ongoing fees are usually significant considerations.

How do SRS differ from other accommodation options?

SRS proprietors are responsible for providing both accommodation and personal support. This sets SRS apart from options such as public or private housing and rooming houses.

There is a range of other supported accommodation options where the operator does provide both the accommodation and some support: some of these are exempted from being SRS as other arrangements are in place to protect the interests of the residents. These include:

- nursing homes and hostels receiving Commonwealth Government residential aged funding
- homes known as community residential units for people with a disability and who are deemed eligible under the *Disability Act 2006*
- services that provide residential treatment and/or rehabilitation services for people with a mental disorder funded under the *Mental Health Act 1986*
- out-of-home care arrangements under the *Children Youth and Families Act 2005* when a child or young person is placed away from their parents
- premises in which accommodation and personal support is provided to all residents under a funding and service agreement with the State or the Commonwealth, or a public body where that agreement specifies requirements or standards for the provision of care
- premises that are registered as retirement villages under the *Retirement Villages Act 1986*.⁴

The SRS industry also differs from most of these in that government does not directly fund the services provided, and there is not a common client group. The only thing common to all SRS is that they provide a combination of accommodation and personal support and that supported accommodation provided is not subject to other government regulation or funding controls.

SRS are sometimes compared to nursing homes and hostels or rooming houses; however, there are some significant differences between these service types. Table 2.1 (overleaf) summarises these.

⁴ A number of SRS are registered jointly as a retirement village and an SRS. When the SRS Act comes into force, jointly registered SRS will have two years to decide which legislative scheme best suits their business arrangements.

Table 2.1: Distinguishing features of SRS

	SRS	Residential aged care	Rooming houses
Ownership	Private (SRS proprietor operates the facility as a business)	Public and private	Public and private
Funding	Resident	Commonwealth Government (with possible co-payments)	Resident
Regulation	State	Commonwealth	State
Services provided	Accommodation and support. Level of both varies significantly across the sector according to resident capacity to pay and the range of services the operator chooses to provide	Accommodation and care, ranging from low to high care. Level of care provided is based on assessment of need and subsequent Commonwealth funding. Services provided must comply with Commonwealth requirements	Accommodation only
Assurance mechanisms	SRS must meet all legislative requirements under the Act and Regulations including the minimum standards for accommodation and personal support as defined by SRS regulatory scheme	Services undergo periodic accreditation and ongoing visits to assess compliance with accreditation standards	State government establishes minimum standards. Rooming houses must adhere to legislative requirements under the <i>Residential Tenancies Act 1997</i> , Health (Prescribed Accommodation) Regulations and building standards under the <i>Building Act 1993</i> , Building Regulations (2006) and the Building Code of Australia
Planning/ market control	Nil. Private market, government does not plan or regulate size or distribution of sector	Commonwealth Government. Controls number and distribution of places	Nil

Running an SRS requires not only skills in providing personal support services that meet a diversity of resident needs but also skills in management and business. These challenges are set against a backdrop of changing community expectations and risk appetite. It is therefore not surprising that regulation has grown in this area, as a mechanism to balance the rights and needs of both residents, who should have access to a minimum standard of accommodation and support, and proprietors, who have a right to run a business and make a reasonable return.

Regulating SRS is also a challenge for government. While setting standards and rules to protect the safety and wellbeing of residents, the government has an interest in the ongoing viability of the SRS sector. The Victorian Government recognises that the existence of SRS is an important element of the suite of options available to vulnerable Victorians. For many residents, SRS provide a preferred balance of support and independence compared with more intensive aged care facilities.

Who lives in SRS?

SRS cater for people who can no longer (or choose not to) live independently at home. SRS facilities generally cater for people who are usually mobile but require assistance or supervision with daily tasks such as bathing, dressing and eating.

A 2008 industry-wide census⁵ estimated 58 per cent of residents living in SRS were female. At that time, the length of stay varied from less than 1 month to 41 years. The main source of referrals is from public hospitals and mental health services.

SRS facilities are often classified as 'pension level' or 'above pension level', based on the fees residents pay for their accommodation and support, and the resident profile varies between these two sectors of the industry:

- Pension-level SRS are those in which 80 per cent of beds are provided for a fee not exceeding the pension plus Commonwealth Rent Assistance. Residents of these SRS have little or no disposable income after paying SRS fees, one-third have no contact with family or friends, nearly half are under 60 years of age and over 60 per cent have some form of psychiatric disability. In June 2011 there were 66 pension-level facilities operating 1,876 beds.
- Above pension-level facilities are those charging higher fees, which can vary from \$330 to more than \$1,000 per week, the most common fee level being \$451–\$600 per week. Residents in these services are mainly older people (70+ years), and age-related frailty is the most common condition reported amongst this population. Residents typically have more connections to family and friends. In June 2011 there were 109 above pension-level facilities operating 4,275 beds.

Changing profile of the sector

The industry overall is declining in size. Over the past 22 years, the sector has experienced a 45 per cent decline in the number of SRS registered, from 305 in 1989 to 175 in 2011. There have been other significant changes in the industry:

- The composition of the industry has shifted over time, from a majority of pension-level SRS to a majority of above pension-level SRS.
- The rate of SRS closures across the industry has also changed, along with their underlying causes. For example, over the period 1999–2005, there were 30 pension-level SRS closures attributed to financial viability issues. Since 2006 there have been 10 pension-level closures, none of which were attributed to financial viability issues.
- There have been changes in the ownership arrangements of some SRS. The sector is beginning to attract larger, corporate investors that operate through a diverse range of company structures and have varying levels of involvement in the operation of their SRS. In some instances, directors of these corporations may have no involvement in the day-to-day operation of their facilities, which is a big change within a sector that, in the past, mainly comprised small business owners who worked and lived in the SRS that they operated.
- The mix of services provided in some SRS has evolved over time, particularly in above pension-level SRS. Traditionally, SRS facilities provided supported accommodation for older or frail people. However, as the service system and population have changed, so too has the range of services some SRS may provide, with some SRS now providing forms of respite, transitional care or post-hospital recuperation type services.

⁵ The Social Research Centre, 2009, *Supported Residential Services Census 2008*, Prepared for the Department of Human Services, March 2009; available at www.health.vic.gov.au/srs.

Box 1: Pressures on SRS operations

As identified through the 2008 review and subsequent stakeholder consultation, there are ongoing pressures on SRS operators that have impacts on the ability of the sector to support the number of residents to an appropriate quality of service into the future.

SRS, particularly pension-level SRS, operate on very thin profit margins, where it is common for proprietors to work long hours for low income. Over recent years, cost pressures have increased for many businesses including SRS, such as OH&S requirements, impacts of the *Fair Work Act 2009* in changing award rates, and rising energy prices.

Many SRS operate at leased premises, where rents have increased faster than pension amounts. However, a number of SRS own freehold property – the low increases in pensions and rapidly rising land values has increased the opportunity cost of operating an SRS. Following the financial sector's response to the Global Financial Crisis, some SRS are experiencing new difficulties in accessing finance to invest in their facilities.

These concerns lay outside the scope of the SRS Act and the proposed Regulations; however, it is important to appreciate this context in setting appropriate regulatory requirements. It is also illustrative that the proposed Regulations cannot be viewed in isolation. Over the past several years, reliance on the Supporting Accommodation for Vulnerable Victorians Initiative (SAVVI) has been critical for the continuation of some SRS.

2.2 Rationale for government intervention

The motivation for government intervention in the SRS sector recognises that:

- many residents are more vulnerable than the general population, and hence their interests (particularly their safety and wellbeing) need to be protected
- there are benefits to the broader community in ensuring this type of accommodation option remains available to current and prospective residents who require the combination of accommodation and some assistance with activities of daily living
- there are market failures that warrant intervention.

Common types of 'market failure', where there is a case for the government to intervene, relevant to SRS are:

- *Addressing public health and safety.* As many people with a disability or the elderly are vulnerable to abuse and exploitation, appropriate regulation is essential to ensure the provision of quality accommodation and personal support. If quality accommodation is not provided, it will be to the detriment of the potential SRS resident, and may subsequently result in increased demands being placed on the public health and community services system.
- *Addressing 'power asymmetries'.* Due to the dependency of residents on proprietors, and the particular vulnerability of residents, there may be poor protection of residents' rights and interests if left to manage between proprietors and residents.
- *Addressing inadequate information for residents.* A person with special needs may not have the ability to make an informed decision on whether a particular SRS will satisfy all

his or her needs while ensuring a safe and protected environment. This information imbalance, sometimes referred to as 'information asymmetry', between providers and potential residents justifies regulatory intervention. This imbalance is exacerbated by the fact that residents may be vulnerable and in need of guardianship or protection, and residents may be 'locked in' to a particular provider as there are few alternatives for this population.

In relation to aged care, which has some common characteristics with SRS, the Productivity Commission recently⁶ pointed out 'a number of areas where the market for aged care lacks features of an ideal market', which included:

- lack of adequate information or expertise to accurately judge the quality of aged care, and decisions made at short notice during times of emotional upheaval
- providers may have less incentive to compete on quality where it is difficult to move between providers
- elderly and frail people may be vulnerable to exploitation and need protection.

The commission also noted that the pursuit of equity is a key reason for government involvement in aged care. Intervention seeks to ensure that all people have access to affordable support and care at a standard that is in line with community expectations.

Government intervention in the SRS sector may be justified in the pursuit of social and equity objectives, such as protecting human rights, protecting the vulnerable and disadvantaged, and relieving geographic and social isolation (e.g. by ensuring adequate community facilities and the appropriate provision of infrastructure). The *Victorian Guide to Regulation* specifically lists SRS as an example of where regulation of minimum quality standards may be justified to achieve social outcomes.

There are several broad types of concerns that have been identified in relation to the provision of SRS services.

- *Vulnerability of residents.* Most SRS residents have some form of illness or 1 or more disabilities that make them more vulnerable to harm or exploitation than the general population, and some have low disposable incomes. These factors, and the limited availability of alternative, affordable supported accommodation may make them less willing or able to complain and/or relocate if they are not happy with the services provided at the SRS.
- *Heavy reliance on proprietors.* SRS residents rely on proprietors for both accommodation and support, which increases their level of vulnerability beyond, for example, people receiving accommodation services only. This may further limit their ability to complain about services if they are unhappy, for fear of retribution.
- *Potential for harm.* There are a range of risks associated with the services provided which, if not mitigated, could result in harm to residents and/or impacts for the broader community. This includes risks that building and/or living standards fall below community expectations.

⁶ Productivity Commission, 2011, *Caring for Older Australians*, Inquiry Report, Canberra, p. 76.

While any member of the general public receiving accommodation and/or personal support could be at potential risk of such harm, the risks are amplified in SRS as multiple people are housed in each premises, and may share a range of common and other areas. Most people live in SRS because they need additional assistance, and the nature of the resident profile means that many of them may not be able to protect their own interests in the same way as a member of the general public.

The SRS legislation review identified two main concerns with the existing regulatory scheme: an excessive regulatory burden on proprietors, and inadequate protections for residents in some areas. Specific issues identified through the extensive stakeholder consultations included:

- no statutory tenancy rights (unlike some other accommodation markets)
- lack of clarity and certainty about what payments can be charged and confusion about the protection of residents' money
- variable staff skills, particularly in relation to managing more complex clients
- inadequate complaint handling procedures
- burdensome registration processes.

Many of these were addressed in development of the new Act; however, new regulations to support operation of that Act are required to complete the process. In some instances, the Act provides a framework only, or a general obligation, and the rationale for the Regulations is to improve the efficiency and effectiveness of those parts of the Act, for example, through lowering compliance burdens by clearly specifying the information to be provided when making applications for registration.

The Department of Health is also proposing various non-regulatory responses, including education and culture change initiatives, to address these issues.

The proposed Regulations deal with information SRS must provide to the government and to residents, minimum requirements for complaints management and record keeping, handling of medications, staffing, accommodation and personal support standards. They also deal with some financial transactions between SRS and residents, and specify time periods within which certain things must be done.

Many of these issues are the basis of reforms already formally included in provisions of the Act. The proposed Regulations must therefore be considered in terms of the additional burden they impose on SRS incremental to the Act, and what additional benefits they seek to achieve.

The nature and extent of the problems being addressed has been separated into the following areas, based on the content of the proposed Regulations:

- information provision
- complaints system and records management
- accommodation and personal support standards and management of medications
- staffing requirements.

Each of these is discussed in chapters 3–6, where the nature and extent of the problems particular to those areas are discussed. The rationale for other parts of the proposed Regulations, which have a low burden, are set out in chapter 7.

2.3 Objectives of government intervention

The objective of the SRS Act is to protect the safety and wellbeing of residents living in private SRS. Within this context, there are some key outcomes that are sought through intervention in the SRS industry, including:

- the physical premises from which these services are provided are safe, properly maintained and provide a home-like environment
- resident care and support is safe and effective, and provided in a timely and respectful manner
- staff members are competent to deliver personal support
- proprietors and staff of SRS are aware of their responsibilities and are accountable for the services they provide
- individual resident's rights are protected
- residents' finances are not misused or abused.

Aside from the legislative review of SRS, there have also been broader changes that have impacted the SRS industry and influence future approaches to SRS regulation, such as initiatives aimed at improving the financial viability of pension-level SRS.

The primary objective for government intervention considered in this RIS is:

To protect the safety and wellbeing of residents living in private SRS.

This objective recognises that the quality of services provided by SRS is critical, and that the regulation of SRS must consider the standard of accommodation and personal support afforded to individual residents. In order to protect residents' safety and wellbeing as a group (both existing and future residents), this objective embeds a subsidiary goal to ensure the SRS sector overall remains viable.⁷

The objectives of particular elements of the proposed Regulations are discussed in the following chapters.

2.4 Scope of regulations considered

In identifying alternative options in each of these areas, it was noted that the proposed Regulations give effect and detail to the new regulatory framework established in the Act. Higher level regulatory options relating to the overall regulation of SRS were considered as part of the development of the Act. Therefore, this RIS does not assess options already

⁷ The viability of the sector was a factor considered in the development of reforms included in the new Act. The proposed Regulations are not designed to specifically address SRS viability; however, they have been designed in regard to the need to minimise the regulatory burden on SRS and preserve the benefits anticipated to be achieved when the new Act commences.

considered in those processes, such as negative licensing instead of registration, or education campaigns instead of listing rules.

In each area, consideration was also given to arrangements in other Australian jurisdictions. SRS share a similar accommodation and support structure to other jurisdictions but differ in scope, type of service and broad type of residents. All of these accommodation types set minimum standards for accommodation, support for residents, staffing levels and requirements about a complaints or grievance process in place. However, the characteristics are not directly comparable across all states due to differences in size, target group, market, government funding and administrative structure, which make it difficult to draw parallels or identify initiatives from other jurisdictions that may be able to be implemented in Victoria. In general, no 'less onerous' regime exists in other states as all the other jurisdictions have accreditation standards or funding agreements in place as a means to regulate services.

Section 207(2) of the SRS Act states the regulations may be of general or limited application, and may differ according to differences in time, place or circumstances. The department has not identified a basis, either evidentiary or on policy grounds, to discriminate between SRS in relation to the proposed Regulations. In fact, a system that encoded different standards of care for residents based on location or financial position would compromise equity objectives. The department notes that the standards in the proposed Regulations are *minimum standards*, which act as a safety net, and consideration has been given to ensure that all SRS are able to meet them.

Self-regulation (or voluntary codes of practice or standards) was considered but not pursued as the major disadvantage associated with voluntary codes is the absence of a mechanism to ensure compliance and enforcement. Disciplinary processes, where they exist, may not be transparent, fair or consistently applied. Self-regulation is typically suitable for cases where the problem to be addressed is a low-risk event, or an event of low impact.

3 PROVISION OF INFORMATION

3.1 The nature and extent of the problem to be addressed

3.1.1 Consideration of applications by the Secretary

Intervention is needed to improve the clarity and specificity of the information provided with applications, in order to reduce costs on both SRS and government.

Under the SRS Act, applications are required to be made in relation to registration of SRS, variation of registration, alteration of premises, appointment of director or officers, approval of a legal personal representative and approval of the manager. The arrangements under the Act were a response to the 2008 review, which sought to streamline and simplify the regulatory arrangements for SRS (see Attachment B) and ensure that the person who is the manager of the SRS on a day-to-day basis, if it is not the proprietor, is 'fit and proper' to do so.

The Act requires the Secretary to make a decision on each application based on certain matters that must be considered. The Act requires that in deciding whether to approve an application, the Secretary must consider (depending on the type of application):

- whether the building and site are suitable for use as an SRS
- whether the applicant has obtained the appropriate permits
- whether the applicant, or each director and other officer of an applicant which is a body corporate who exercises control over the body corporate, has the relevant skills and knowledge to operate an SRS
- whether the applicant has the financial capacity to operate an SRS
- whether the applicant has the relevant arrangements in place to operate an SRS
- whether or not the applicant is, or each director and other officer of an applicant that is a body corporate who exercises control over the body corporate are, otherwise a suitable person to carry on, exercise control over or manage an SRS.

The Act does not set out what information must be provided with an application but provides that regulations can set out these requirements.

Given the factors that the Secretary must consider, the department considers it is unlikely that an unsuitable application will be approved. The Act provides, similar to the current arrangements, that the Secretary may request additional information from an applicant in considering an application.

Section 14 of the Act provides the mechanism for a proprietor to seek registration. Section 14 must be read with section 15, which sets out the criteria the Secretary must consider in deciding the application. In the absence of specifying prescribed information in regulations, the Secretary would have difficulty deciding an application in the affirmative, which would lead to a decision to refuse the application. It is not possible for the Secretary to approve any application that does not provide sufficient information to demonstrate acceptability against the criteria in the Act.

It was never intended that the Secretary would need to rely exclusively on section 41 to request all relevant information for an application. In drafting the Act, it was clearly intended that application information would be prescribed in regulations, with section 41 used only if needed. However, in the absence of regulations, the Secretary would necessarily need to invoke section 41 to request the relevant information in order to consider the application in accordance with the Act.

However, currently, the time and resources used in making and responding to requests for additional information is substantial.

The problems associated with this scenario can be characterised as the problem of regulatory uncertainty for SRS, and costs (and inefficiencies) for the department.

For SRS, an absence of clear requirements increases uncertainty around both their planning for approvals under that Act, and decision making by government agencies. For government, the absence of clear requirements would mean that the department must support the Secretary's approval of applications through more intensive interaction with applicants and more time to review information provided.

Further, without clearly specified requirements, an applicant may 'over invest' in the information provided with their application due to a lack of understanding about what information the department requires for its assessment. This effectively imposes additional costs on SRS through over-compliance, and on the department through receiving unnecessary information. However, based on experience with the current Regulations, the frequency of this is low.

The current Regulations aim to avoid delays, inconsistency and lack of transparency in decision making regarding registration. In the absence of the regulations, there would be an impact on entry, commencement and continuation of businesses. Specifying the detailed information to be included in an application increases the likelihood that the right information will be provided the first time, thus reducing potential negative impacts on businesses.

Under the current Regulations, the department routinely asks for additional information from applicants in order to properly determine an application. This adds time and cost to both the SRS and the department. For example, the time to decision by the Secretary for registration applications in 2010–11 ranged from 20 days to 91 days and, for transfers of registration, from 34 days to 200 days. These extensive time periods reflect the department's approach to rarely refuse an application but to work with prospective proprietors until they either meet the criteria or decide not to proceed.

Under the current Regulations, the department estimated that the costs to the SRS sector of complying with requests for additional information is \$7,130 per year (\$59,294 over 10 years, present value). The additional costs to the department from this process is estimated at around the same level.

Without any regulations, this inefficiency is likely to be worse; however, as the sector has always had relevant regulatory requirements in place, the department considers it is difficult to quantify the extent of the problem in the absence of any regulations.

3.1.2 Registration statements

Under the SRS Act, the Secretary may request the proprietor to provide a registration statement. The Act does not define what a registration statement must include.

Registration statements are a new feature of the SRS Act, and have been introduced to assist the Secretary in determining whether the registration of an SRS should remain in force. This may occur following an audit or inspection, or complaints. The rationale for the introduction of the registration statement is to allow the department to verify that the proprietor continues to be the holder of the certificate of registration who has been assessed by the department as suitable. This was considered a necessary measure to enhance enforcement since re-registration will no longer be required under the SRS Act.

The reason for registration statements is to give the Secretary the power to require a proprietor to provide information to the Secretary for the purposes of considering whether the registration of an SRS should remain in force. While a proprietor will also provide an undertaking to inform the department of any change to the suitability information in respect of themselves or the manager (if one is appointed), proprietors may not honour this commitment and the department needs a capacity to request and enforce a response from proprietors.

The proposed Regulations specify the content of a registration statement and limit it to information relating to proprietorship and suitability to manage an SRS. There is a practical purpose to prescribing the content for a registration statement, as this is likely to provide the most efficient way for the department to ascertain current information about an SRS. In this respect, the nature of the problem is the same as the information required for applications – to improve the clarity and specificity of the information contained in regulations to reduce costs on proprietors and government.

The extent of the problem cannot be readily quantified, given that registration statements are not part of the current regulatory arrangements.

3.1.3 Information for residents

The SRS Act provides for information to be given to prospective residents (section 44), and that the proprietor prepares a written agreement containing the prescribed information of the nature of services to be provided to a resident in the SRS (section 47). The Act does not specify the information to be included in these documents, deferring such specificity to the Regulations.

SRS do not operate in a highly competitive market. A key factor in choosing an SRS is location, and SRS are generally sparse within a local area. Also, the sector is very diverse, many operate only to recover costs and do not tend to actively compete for residents, especially for pension-level SRS. There is generally excess demand for SRS vacancies, and consequently there is little incentive for an SRS to voluntarily provide sufficient information to prospective residents.

A person with special needs may have difficulty accessing sufficient information to make an informed decision on whether a particular SRS will satisfy all his or her needs and will provide a safe environment. This information asymmetry between providers and potential

residents justifies regulatory intervention. This imbalance is exacerbated by the fact that residents may be vulnerable and in need of guardianship or protection, and residents may feel 'locked in' by a particular SRS.

'Lock in' may be because of factors such a lack of alternative options that allow them to maintain their connections to both social and support networks and there may be practical barriers to people moving to other SRS. A significant number of SRS residents have lived in the same SRS for extended periods of time (the common length of residency at a single SRS in between 2 and 5 years), and disruptions to routines and established practices may adversely impact on their overall health and wellbeing.

Provision of information substantially reduces the 'search costs' that residents or their representatives would otherwise incur in assessing alternative accommodation options to make an informed choice, and would address inadequate information for residents.

The information to be included in proposed Regulation should only be a minimum standard, or a safety net. It does not need to provide every detail about the SRS, and does not preclude SRS from providing additional information should they wish.

3.2 Objectives of government intervention

The objectives of intervention in these areas are:

- By specifying information to be included in an application, **to reduce the costs to applicants and government of making and approving applications.**
- By specifying the information to be included in a registration statement, **to reduce the costs to SRS and government of making a registration statement and providing information.**
- By specifying the information to be provided to residents and prospective residents, **to enhance better decision making, reduce search costs, and enable residents to better enforce their rights.**

3.3 Assessing the costs and benefits of the proposed Regulations and alternatives

3.3.1 Information to be provided by applicants

Table 3.1 describes the information required under the current Regulations and the proposed Regulations.

The additional information included in the proposed Regulations relates specifically to the criteria that the Secretary must consider in deciding each application. These criteria are stated in full above; in summary, they require the Secretary to assess the suitability of the building, the proprietor and the business arrangements in place to operate an SRS.

Under the proposed Regulations, the information requirements are tailored to the type of application. For example, an application for registration of a new SRS requires the full list of documentation; an application for registration for an existing SRS does not require the building information because the department has this on file. An application to approve a

manager does not require building or business information but requires suitability information about that person. Where the same information and documentation is required for more than 1 application lodged at the same time, it need only be provided once.

Information and documents relating to building information and permit approvals, evidence of right to occupy, financial statements, etc, would ordinarily be created and held by an SRS as part of normal business practices and in compliance with other regulatory obligations. The proposed Regulations do not seek to require the creation of new information, and largely rely on copies of existing information.

Under the proposed Regulations, many applications must also include two signed documents: an undertaking to advise the Secretary in 7 days after becoming aware of any change to the suitability information previously provided for the applicant and the manager, if one is employed; and an authority permitting the Secretary to make enquiries to establish the truthfulness of the information provided and to seek any other material the Secretary considers necessary for the purposes of making a decision on the application.

Table 3.1: Application information required under the current and proposed Regulations

Information required	Applications	
	Current Regulations	Proposed Regulations
Name and contact details of applicant, contact person, SRS, landlord (if applicable)	All applications	All applications
Body corporate information	Limited information for approval in principle, registration, transfer of registration	Registration
Suitability information	Limited information for approval in principle, registration, transfer, and approval of new director	Registration, approval of new director/officer/ manage/ legal personal representative
Applicant's undertaking and/or authority to the Secretary	✘	All applications
Premises information	Basic information for approval in principle, registration, transfer, variation to alter	Registration, variation (increase bed numbers), alternations and extensions
Staff qualifications and training arrangements, staff roster, projected additional staffing arrangements (if applicable)	✘	Registration, increase in bed numbers, alterations and extensions
Copies of information for prospective residents, a template residential and services agreement, a template support plan, a template resident transfer form	✘	Registration
Business/financial information	✘	Registration
Certificate of registration/other prior approvals	✘	Increase bed numbers, vary conditions, alterations and extensions
Date on which the cancellation becomes effective, the reasons for the cancellation, how the proprietor proposes to satisfy the proprietor's obligations under the Act regarding notification, the name, address and contact details of the new proprietor (if any)	✘	Cancellation

Note: Under the current framework, changes to registration conditions and increases in bed numbers are both treated as a 'variation of registration', for which an application is required.

The current Regulations prescribe information for approvals-in-principle, which are required prior to registration and some variations. Approval in principle will no longer exist under the SRS Act, and therefore, for the purposes of assessing the costs of the current Regulations (as an alternative to the proposed Regulations), this relevant information had been added to each of the other applications as appropriate.

Costs and benefits of the proposed Regulations

The proposed Regulations impose an administrative cost on applicants, commonly known as 'red tape'. The direct additional costs are shown in Table 3.2. (The costs represent total costs to the sector, based on the number of applications set out in Attachment C. Costs per application are shown in Table 3.3.)

Table 3.2: Regulatory costs of information requirements (costs to SRS)

Requirement	Cost per annum	10-year present value
Application for registration (new SRS)	\$547	\$4,553
Application for registration (change of ownership)	\$4,824	\$40,122
Application for variation (increase beds)	\$1,095	\$9,106
Applications for variation (condition)	\$245	\$2,038
Application for alternations or extensions	\$1,095	\$9,106
Applications for new director or officer	\$273	\$2,270
Application for legal personal representative	\$7	\$57
Application for approval of manager	\$512	\$4,261
Cancellation of registration	\$908	\$7,553
TOTAL	\$9,507	\$79,064

See Attachment C for details on calculations of costs. The total cost represents around **\$450 per SRS over 10 years** (present value) if averaged over all SRS, although the actual cost will be higher for new SRS and lower for existing SRS. The average cost per SRS undertaking each type of activity is shown in Table 3.3.

Table 3.3: Average costs of information requirements

Requirement	Cost per SRS
Application for registration (new SRS)	\$274
Application for registration (change of ownership)	\$210
Application for variation (increase beds)	\$274
Applications for variation (condition)	\$245
Application for alternations or extensions	\$274
Applications for new director or officer	\$68
Application for legal personal representative	\$68
Application for approval of manager	\$102
Cancellation of registration	\$34

Against these costs, the proposed Regulations have been designed to streamline the information required to be provided, and to improve clarity as to what information and documents must be included. The intent is to ensure that proprietors submit applications that are as complete as possible to improve the efficiency of the application process. By helping proprietors get it right first time, delays in approval times through repeated requests for further information will be reduced. As such, relative to a base case (no regulations), there is expected to be a reduction in the number of requests for further information under the Act, and where such requests continue to be needed, less time burden on applicants. This request process can impose a high burden on applicants and additional costs for government.

The department estimates that under the proposed Regulations, the cost savings against the base case (no regulations) from improved clarity of information requirements equate to the following.

- *Around \$10,136 per annum, or \$84,290 over 10 years, for applicants (see Attachment C).* This represents a cost saving of \$58 per annum per SRS, and \$482 per SRS over 10 years, if averaged over all SRS. Averaged over the total number of applications in any year, it is a cost saving of \$235 per application.
- *Around \$8,807 per year for government (\$73,244 over 10 years).* While these savings accrue initially to the department, they may flow through to SRS via the ability to set application fees at a lower level, and generally to the community.

This equates to a total cost saving for the proposed Regulations of \$157,534 over (10 years). Given the estimated compliance cost of \$79,064, the proposed Regulations therefore represent a net cost saving of around \$78,470 over the life of the Regulations (in real terms).

Costs and benefits of alternative options

A specific non-regulatory option has not been identified, given that the base case already provides a mechanism to provide guidance to applicants and broad power of the Secretary to request additional information.

A feasible alternative to the proposed Regulations is to continue the requirements of the current Regulations. These are similar to the proposed Regulations; however, the information requirements are generally less.

Continuation of the current Regulations (adapted to be consistent with the SRS Act) has a slightly lower regulatory burden on proprietors. The expected costs of the information requirements in this alternative are shown in Table 3.4 (overleaf).

Table 3.4: Regulatory costs of information requirements

Requirement	Cost per annum	10-year present value
Application for registration (new SRS)	\$517	\$4,299
Application for registration (change of ownership)	\$4,765	\$39,632
Application for variation (increase beds)	\$1,044	\$8,679
Applications for variation (condition)	\$164	\$1,363
Application for alternations or extensions	\$842	\$7,007
Applications for new director or officer	\$272	\$2,263
Application for legal personal representative	\$7	\$57
Application for approval of manager	\$479	\$3,986
Cancellation of registration	\$610	\$5,076
TOTAL	\$8,701	\$72,361

See Attachment C for details on calculations of costs, including notes and assumptions. The total cost represents around **\$415 per SRS over 10 years** (present value) if averaged over all SRS, although the actual cost will be higher for new SRS seeking registration and lower for existing SRS, the majority of which only infrequently apply for variations or for approvals to alter the premises. The average cost per SRS actually undertaking each type of activity is shown in Table 3.5.

Table 3.5: Average costs of information requirements

Requirement	Cost per SRS
Application for registration (new SRS)	\$258
Application for registration (change of ownership)	\$207
Application for variation (increase beds)	\$261
Applications for variation (condition)	\$164
Application for alternations or extensions	\$211
Applications for new director or officer	\$68
Application for legal personal representative	\$68
Application for approval of manager	\$96
Cancellation of registration	\$23

Against these direct costs, the current Regulations would continue to reduce the need for requests for additional information. Compared with a base case of no regulations, the current Regulations are estimated to reduce these costs by the following amounts.

- *Around \$5,452 per annum, or \$45,342 over 10 years, for applicants (see Attachment C).* This represents a cost saving of \$31 per annum per SRS, and \$259 per SRS over 10 years, if averaged over all SRS. Averaged over the total number of applications in any year, it is a cost saving of \$126 per application.
- *Around \$5,388 per year for government (\$44,809 over 10 years).*

This gives an overall net cost saving of the continuing the current Regulations, in relation to applicant information, of \$17,790 over 10 years. This compares to a net cost saving of \$78,470 for the proposed Regulations.

This demonstrates that the current Regulations, while addressing some of the uncertainty for applicants, are inadequate in effectively resolving the problem as the additional burden of the Regulations does not sufficiently offset the cost savings achieved.

3.3.2 Registration statement

As the registration statements are a new tool to assist in the monitoring and administration of the SRS sector, and that the Act requires the content of the registration statements to be set out in the Regulations, the proposed Regulations have sought to:

- only prescribe minimum information necessary for the department to identify key changes at the SRS
- limit the information to information and documents that the SRS would already have at hand.

The proposed prescribed information for a registration statement is a narrow subset of the information required for registration applications, limited to:

- the name, address and contact details of the SRS
- the name, address and contact details of the proprietor and the name of the manager (if any)
- the name of the personal support coordinator
- the name and address of the owner or lessee of the premises
- in relation to the proprietor and directors, a health statement, a financial statement, a charges and convictions statement, a professional standards statement, a corporate solvency declaration, applicant's undertaking, and authority to the Secretary
- for a body corporate only, the name, address and contact details of each director, and any other officer empowered to exercise control over the body corporate, and the name, role and level of involvement of each director in the management and operation of the SRS.

The department anticipates that there will be 3–4 registration statements required each year, as they will be requested in response to a trigger such as a report that there's a new

proprietor at an SRS. On this basis, the costs to the SRS sector of providing registration statements are \$191 per year, or \$1,590 over 10 years (about \$55 per statement; see Attachment C).

However, if this information was not prescribed in regulations (i.e. the department would have to write to each SRS requesting specific information), the department estimates that the costs of obtaining this information will be higher because SRS will not know in advance what information will be sought. And, because such requests are not enforceable under the Act as registration statements are, the department considers it is likely to take longer to obtain the same information in this way. The costs of this approach (which represents the 'base case') is shown in Table 3.6, together with the overall benefits of the proposed Regulations.

Table 3.6: Net cost saving of proposed information requirements

Option	Cost per annum	10-year present value
Cost of completing a registration statement with the information prescribed in the Regulations	\$191	\$1,590
Cost of obtaining the same information on a case-by-case basis from each SRS (not specified in the Regulations)	\$227	\$1,888
<i>Net cost saving of proposed Regulations</i>	<i>\$36</i>	<i>\$298</i>

An alternative approach, in terms of different level of information required, has not been assessed. The information prescribed in the proposed Regulations is considered to be the minimum information the department needs to meet the purpose of the registration statement, which is to confirm the SRS is still operated by the holder of the registration certificate who has been assessed as suitable. The information requested should already be available at the SRS. It is possible that additional information may be required in registration statements in the future, but as these are a new instrument under the SRS Act, the department proposes to review their effectiveness based on these minimum requirements before determining whether there is benefit in expanding the information required.

3.3.3 Information to residents

Table 3.7 sets out the required information to be provided to prospective residents under the current and proposed Regulations.

The rationale for the new items to be provided to prospective residents is largely to incorporate information about new protections included in other parts of the Act. Examples are information about the role of a nominated person, information about the types and amounts of payments that residents may be asked to pay, information about notices to vacate and the right to apply to VCAT for disputes about notices or refunds of monies, and information about how the Residential and Services Agreement (RSA) can be changed. The information provided to prospective residents needs to be sufficient to ensure the resident is aware of the basis of their stay in the SRS if they decide to move in. The information also alerts residents to the fact that the SRS is regulated under a state law and provides an independent source of information about what they can expect from an SRS.

Table 3.7: Current and proposed Regulations for information to prospective residents

Information required to be provided	Current Regulations	Proposed Regulations
The type of service being conducted	✓	n/a
The objectives and philosophies of management	✓	✗
The number of residents cared for at the service	✓	✗
Name of the proprietor of the service and number of beds as registered		✓
List of the items and services provided by the service and the fee, charge or other amount payable by a resident	✓	✓
The mechanisms by which residents are informed of any changes to the fees or services to be provided	✓	✓
The health and community services available to residents from outside the service	✓	✓
The times of routines affecting residents of the service	✓	✓
The procedures for receiving and handling complaints, including the external avenues of complaint available to residents	✓	✓
The options for ongoing management of the resident's financial and legal affairs	✓	✗
A statement that the service is an SRS regulated by the department and that the service is consistent with the principles set out in the Act	✗	✓
Any terms and conditions with respect to refunds and a statement that a resident has the right to apply to VCAT to settle disputes about refunds	✗	✓
A statement about the maximum amount of money that can be managed	✗	✓
How personal support services are planned and reviewed, and who may be consulted in the process	✗	✓
The role of a resident's nominated person		✓
A statement about how an RSA may be ended or changed, including notice periods	✗	✓
A statement explaining when notices to vacate may be given, including the grounds and minimum periods of notice and that the resident has a right to apply to VCAT if they disagree	✗	✓

The new elements to be included in the statements, as indicated in the bottom section of Table 3.7, are to ensure that proprietors inform prospective residents about the new rights and protections under the SRS Act. This information is considered necessary to provide to prospective residents before they move into the SRS so they are informed about the regulations governing an SRS and all of the terms and conditions that will apply to their residency, should they move in. Prospective residents considering moving into an SRS are often assessing other types of supported accommodation, and may know little about the area or the facility. They are unlikely to know that the SRS is regulated under state law and

some SRS do not identify themselves as such. If this information is not provided upfront, residents may move into an SRS not being fully informed, with the result that the SRS may not be able to meet their needs or the resident may be unhappy and have to relocate which will, in turn, cost the resident time and money. The department considers it critical that prospective residents know the SRS is regulated under state law and administered by the department, which provides an independent source of information about the rules that apply to an SRS.

The following table sets out the required information to be provided to residents in an RSA.

Table 3.8: Current and proposed Regulations for information in RSAs

Current Regulations	Proposed Regulations
<p>The same information listed in Table 3.7 plus any conditions of the resident’s tenure or stay at the service, which may include:</p> <ul style="list-style-type: none"> • the grounds for eviction or ejection of the resident from the service and the period within which a notice of eviction or ejection must be given to the resident • if the resident wishes to leave the service, the period within which the resident must give notice to the service of his or her intention to leave. 	<p>The same information listed in Table 3.7 plus:</p> <ul style="list-style-type: none"> • the name and contact details of the proprietor and day-to-day manager • the name of the resident, and contact details of the resident’s guardian, administrator and nominated person • the commencement date and duration of the RSA • the room number, and list of furniture in the room • a list of assets belonging to the resident brought into the SRS.

The proposed Regulations impose a compliance cost on SRS proprietors. This is a once-off cost associated with reviewing the information currently provided to prospective residents and included in residential agreements, to ensure it includes the required information. This is expected to take on average 1 hour per SRS: many SRS would already have detailed statements that contain most of the required information. While the requirements for an RSA apply only to new agreements, existing residents have the same rights under the Act and, for efficiency and clarity, the department will expect proprietors to amend/append existing residential statements to include the new information.

The total cost to the sector of transitioning to the new requirements is a once-off cost of \$11,352. Spread over the life of the Regulations, this is \$1,135 per year in real terms for the sector as a whole. This cost would not be incurred if the current Regulations were continued.

The proposed Regulations also require that a copy of the Act and Regulations to be available at each SRS. The rationale is to ensure residents and their families have easy access to the regulations covering the SRS. This will enable them to ask questions, to negotiate about fees or standards of service and to make more informed complaints, and ultimately provides residents with an independent source of information about the regulation of SRS. If it is not provided to residents, the risk is that residents may receive substandard accommodation or personal support and mistakenly believe that there are no laws covering SRS through which they can seek to have their concerns redressed. This is expected to cost the SRS sector a once-off cost (within the life of the Regulations) of \$5,400 (or \$540 per year spread over 10 years). SRS are already required, under the current Regulations, to make available a copy of the Act and Regulations; however, as there is a new Act and Regulations, this cost would be incurred anyway.

As the benefits are not able to be quantified, an MCA was undertaken to assess whether the imposition of these costs are justified. The criteria and weightings used for the assessment are set out in Table 3.9.

Table 3.9: Multi-criteria analysis criteria and weightings

Criterion	Weighting (%)
Enhance better decision making and reduce search costs, enable residents to better enforce their rights	50
Costs to proprietors	50

The base case for this analysis is that without regulations, there would be no requirements for providing particular information in RSAs or to prospective residents. Even though some SRS will nevertheless provide a high level of information, most SRS will not provide a high level of information as a matter of course. Residents and prospective residents will need to undertake their own investigations and inquiries to discover relevant information, and there would be no requirement for proprietors to respond to these inquiries.

Assessment of proposed Regulations

The minimum information requirements contained in the proposed Regulations reflect a theme underlying the SRS Act, being to give due weight to the rights of residents, raise awareness of those rights, and empower and assist residents to enforce those rights. Including the proposed information in RSA and information for prospective residents greatly enhances this objective. The RSA is a binding agreement between the proprietor and a resident and ensures there is a basis on which future changes to services or fees can be negotiated. It will also assist in reducing search costs for existing and prospective residents about their rights, and assist prospective residents to decide on the suitability of the SRS for their needs. The proposed Regulations were therefore scored +8 against the first criterion.

The costs of the proposed Regulations represent a once-off cost of around \$96 per SRS. This is considered a low impact and as such is scored only a small negative (-2) against the cost criterion.

Table 3.10: Multi-criteria analysis scored for the proposed Regulations

Criterion	Weighting	Score	Weighted score
Enhance better decision making and reduce search costs, enable residents to better enforce their rights	50	+8	+4
Costs to proprietors	50	-2	-1
TOTAL	100		+3

Assessment of alternative approach

An alternative approach would be to recreate the requirements of the current Regulations, which provides less information and would not require updating these statements. Also, an

alternative approach would be to remove the current requirement to make available a copy of the Act and Regulations at each SRS. Therefore, overall, the alternative approach has no costs to proprietors but can be compared to the proposed Regulations in terms of how well it would address the objectives as embodied in the MCA assessment.

While the current requirements include a medium level of information, prospective residents would need to undertake additional inquiries to find out about the suitability of the SRS, or otherwise may make decisions based on incomplete information. Further, residents are unlikely to be fully aware of their rights or of the standards that should apply to an SRS; they may also be less empowered to pursue those rights. Therefore, while the current Regulations offer some benefit, this option was scored +4 against the first criterion.

Table 3.11: Multi-criteria analysis scored for the alternative option

Criterion	Weighting	Score	Weighted score
Enhance better decision making and reduce search costs, enable residents to better enforce their rights	50	+4	+2
Costs to proprietors	50	0	0
TOTAL	100		+2

3.4 The preferred approach

Based on this analysis, the department considers that the proposed Regulations are preferable to the other options assessed.

Application information

In relation to prescribing the information required in applications, the proposed Regulations provide an overall net cost saving against the base case, while continuing the current Regulations would result in a net cost.

Table 3.12: Net cost saving of regulations for application information (10-year present value)

	Proposed Regulations	Current Regulations
Additional compliance burden	-\$79,064	-\$72,361
Cost savings to applicants	\$84,290	\$45,342
Cost savings to government	\$73,244	\$44,809
NET COST SAVING	\$78,470	\$17,790

Information in registration statements

Registration statements will be used infrequently. The proposed Regulations related to prescribing the information to be included in registration statements was estimated to give a small cost saving to the SRS sector of \$36 per year, or \$298 over 10 years.

Information to residents

Assessed against the ability to enhance decision making, reduce search costs, and enable residents to enforce their rights, the proposed Regulations were scored higher than the base case, and higher than the current Regulations, as shown Table 3.13. The importance of protecting residents' rights is a fundamental theme in the new Act, and the department therefore considers that the benefits of the proposed Regulations justify the costs.

Table 3.13: Multi-criteria analysis scores for information to residents

Option	MCA score
Proposed Regulations	+3
Continue current Regulations	+2

4 HANDLING OF COMPLAINTS AND KEEPING RECORDS

4.1 The nature and extent of the problem to be addressed

Under the first 'principle' in the Act, SRS residents should have the same rights as other members of the community and should be empowered to exercise those rights and responsibilities. These rights include the right to make a complaint and to have complaints dealt with promptly, safely and confidentially. An effective complaints system needs to enable residents to use the system with confidence and without fear, and to expect their complaints to be addressed in a timely way.

Residents have expressed concern that, given their reliance on the proprietor for both accommodation and support, if they complain about one element of service received, they will be subject to retribution that has the potential to influence the availability or quality of all elements of the services they require.

The review of SRS legislation found that 28 per cent of respondents were concerned about the current complaints handling process, citing residents as 'afraid' to complain because they do not understand the complaint process and fear possible retribution from a proprietor or staff. This is despite the current Regulations setting out minimum requirements, and a relative small incidence of identified breaches of these requirements.

Section 75 of the SRS Act requires that an SRS proprietor must, in accordance with the Regulations, institute and operate a system to receive and deal with complaints from residents or complaints made on behalf of residents. The Act does not set out any particular characteristics of the complaints system, as it was intended that the Regulations be used to set out minimum requirements.

The problem to be addressed is to ensure that the complaints system used at SRS empowers residents to effectively exercise their right to make complaints, in a way that reflects equity with community expectations of the rights of residents.

Each year, the department receives an average of 342 complaints from a range of sources – residents, families, friends, community visitors, the public and external agencies. This suggests that an effective complaints system is necessary, but the level of concern about the current arrangements suggests systems could be improved. The department considers it likely that in the absence of any regulations, the practices at SRS to receive and respond to resident complaints would be worse than at present. The Act alone does provide sufficient safeguards for residents to make complaints.

Effective record keeping has benefits for both residents and proprietors. It:

- enables patterns of incidents at a particular SRS to be recognised by the proprietor and action taken
- enables patterns of incidents for a particular resident to be identified and addressed
- assists with providing support services appropriate to the needs of particular residents, particularly where there are new staff, or a new resident moves into an SRS

- facilitates effective investigation by the authorised officers in response to serious incidents, complaints and enables verification of compliance with requirements under the Act such as evidence of qualifications of staff or that a police check has been undertaken.

In each of these areas, the primary purpose is to enhance the protection to resident safety and wellbeing both directly in terms of the services provided to residents and indirectly, in terms of the appropriately qualified staff providing the services.

Over time, the Community Visitors Program has raised concerns regarding variations in how matters such as incidents are recorded at SRS, which in some instances have made it difficult for them to gain a full understanding of what had occurred at the SRS. A survey of 106 SRS undertaken by the Community Visitors Health Services Board in 2008 reported that in 40 per cent of these, staff had difficulty either locating or providing access to incident reports.

Case study 1

A resident was admitted to hospital following an apparent seizure. Upon examination, it was revealed that the patient had a number of poorly healed fractures. A senior member of the medical staff concluded that the fractures were likely due to means other than the patient falling. In response to questioning from hospital staff, the staff at the SRS indicated that the resident was a 'high falls risk' and this was the cause of the fractures. Community visitors reported that they were unable to find any documentation regarding the alleged incident or reports concerning the resident's history of falls.

The *Community Visitors Annual Report 2009–2010* recommended that the state government ensure proprietors maintain a central record of incidents and injuries involving residents, and promote the use of the record to identify patterns of risk and better management of those risks.

One of the areas with the highest number of breaches in each of the past three years has been record keeping. This is consistent with research by First Principles that concluded that over the period 1993–2006 breaches of record-keeping obligations comprised 26 per cent of all breaches.⁸ The First Principles review identified the level of noncompliance by regulation type, as shown below.

Table 4.1: Level of regulatory noncompliance between 1993 and 2006

Regulation area (by type)	Per cent of total breaches (1993–2006)
Standard of care of residents	47.39
Record keeping obligations	25.87
Facilities standards	16.74
Other responsibilities of SRS proprietors	3.48
Staff standards	1.09

Section 76 of the SRS Act requires a proprietor to maintain a range of accurate and up-to-date records: prescribed incidents; prescribed resident information; prescribed staff information; and staff rosters. They must include the prescribed particulars, and be kept in the prescribed manner. It was left for the Regulations to prescribe each of these elements.

⁸ First Principles (Australia) 2009, *Review of Regulatory Burden in Supported Residential Services*, (unpublished internal document) prepared for the Department of Human Services, Melbourne, p. 31.

The risks sought to be addressed by the proposed Regulations are that complaints are not resolved appropriately or in a timely manner, and that information relevant to the safety and wellbeing of residents is not appropriately documented to ensure that they are not put at risk. In both cases, there is also a risk that incomplete or non-transparent documentation diminishes residents’ rights should there be an inspection or investigation of an SRS. A risk assessment is shown in Table 4.2.

Table 4.2: Risk ratings – complaints and records

Risk	Likelihood	Consequence	Overall rating
Inadequate complaints system	Low	Moderate	Medium
Inadequate record of incidents	Low	Moderate	Medium

In the absence of regulation, there is no safeguard of residents’ rights to have complaints heard and addressed in a timely manner, and limited ability for a third party to investigate how an SRS has addressed complaints.

The department recognises that many SRS would have effective complaints and records systems in place already. This may be due to the existing Regulations, or normal practice by the SRS to provide effective services. This RIS therefore recognises that the likelihood of inadequate complaint systems and records systems is expected to be low, with the problems identified limited to a small number of cases. Nevertheless, the consequences are potentially significant where inadequate systems fail to identify a risk that affects the safety or wellbeing of a resident. Overall, the risk of non-intervention is medium.

4.2 Objectives

The primary objective of the Regulations, to protect the safety and wellbeing of residents living in SRS, is achieved in relation to complaints and records system by:

- a system that safeguards the rights of residents to make complaints, and empowers residents to exercise that right when needed
- a system that effectively records information to facilitate identification of risks and investigation of complaints and incidents.

4.3 Interstate arrangements

As shown in Table 4.3, systems in other states include similar requirements.

Table 4.3: Complaints requirements in other states

New South Wales	Queensland	South Australia
Complaints to be dealt with ‘fairly, promptly and confidentially’ Detailed prescribed information to be maintained by licensee	Level 1 accreditation requires a registered provider to have a grievance mechanism in place for residents to raise any complaint or dispute	Complaints will be dealt with by the licensed authority (i.e. local government)

4.4 Identification of options

The current and proposed Regulations are shown in the following table.

Table 4.4: Current and proposed Regulations for complaints system and record keeping

Elements of required system	Current Regulations	Proposed Regulations
Complaints system		
Nominate/appoint person to manage complaints	✓	✓
Inform the Secretary of the name of the complaints person within 7 days	✓	✗
Time for dealing with complaints	<i>Promptly</i>	<i>Commence within 2 business days</i>
Ensure awareness of complaints procedure	✓	✓
Keep written records of complaints including outcome	✓	✓
Inform complainant of actions taken and outcome	✓	✓
Complaints are treated confidentially	✓	✓
Inform complainant of progress in resolving complaint and reasons for decision	✗	✓
Record keeping		
Records must be in English	✓	✓
Records must be readily accessible	✓	✓
Records must be stored in a secure location	✗	✓
Records to be kept are details of residents (personal details, medical details, history), staff, resident transfer, and visits by community visitors	✓	✓
Records must include the resident's RSA, the resident's personal support plan, records relating to the administration of medication, any documents prepared in relation to the taking or retaining of a security deposit, a fee in advance, a reservation fee or an establishment fee, or in relation to money managed or controlled on behalf of the resident; staff rosters must also be recorded	✗	✓
Resident records must be kept for 7 years after discharge if the resident is over 18 years, or if the resident is under 18 years of age until the resident or former resident is 25 years of age; staff records must be retained for 7 years from the date of termination of employment of that staff member	✓	✗ [#]

[#] Note that the SRS Act requires records to be kept for 7 years (see section 78), and as such this requirement is no longer in the Regulations.

The proposed Regulations require that records must be made for 'any event that threatens the safety of a resident or staff' (a prescribed incident), and that any serious event such as an unexpected death, serious injury, fire or other emergency, or alleged serious assault (prescribed reportable incident) should be reported to the department within 1 business day. The required details to be recorded include a description of the event and action taken. This compares with the less prescriptive current requirement, under the Health Services Act, that a proprietor must maintain an accurate record of the particulars of any injury to a resident or any risk taking behaviour by a resident that threatens the safety of the resident or other residents or staff (see section 108F). The proposed Regulations slightly broaden the definition of 'incidents' to include events potentially harmful to residents or staff that may be caused by things unrelated to the behaviour of residents and provide greater clarity to proprietors about what details should be recorded. This is to ensure that proprietors keep more complete records of events that may impact on the safety of residents and staff, which may in turn prevent future events or lead to service or system improvements. As well, the reporting of the most serious incidents to the department enables the department to promptly investigate whether has been a breach of the standards.

In relation to complaints the proposed Regulations expand on the current requirements to respond directly to the feedback provided through the legislative review, and are aimed at making residents feel more confident that their complaints will be appropriately dealt with.

A proprietor must ensure that the complaints system of the SRS is consistent with the principles set out in section 7 of the Act. In particular, the complaints system must:

- provide that the complaint is handled in a fair, reasonable, confidential and timely manner
- be described in a document, in clear, easy-to-read language, which is made available to residents and their families and friends and staff
- include an annual review of complaints received to identify the causes of serious or recurrent complaints and use reasonable endeavours to resolve recurrent issues.

Key elements of an effective complaints system have been identified by the department from an analysis of the Australian Standard *AS ISO 10002-2006 Customer Satisfaction – Guidelines for complaint handling in organisations* and other relevant literature. In the proposed Regulations, these elements have been expressed as principles that a proprietor must incorporate in any complaints system. The principles are further supported by retention of recording requirements in the current Regulations, combined with planned new non-regulatory measures such as a departmental pamphlet on residents' rights in the SRS and a project to develop resources for both residents and proprietors to improve handling of complaints.

In relation to record keeping, the information to be recorded about residents provides a consolidated list of records to be kept about the resident's stay at the SRS including personal details and records about support needs, the services be provided, any deterioration in health status as well as information and money management. The proposed Regulations ensure that key documentation relating to the safety and wellbeing of residents is maintained.

In respect of the records to be kept on staffing, the proposed Regulations consolidate and provide clear guidance about the information to be kept on staff that may be relevant either to subsequent investigations of incidents or to demonstrating compliance with the minimum

staffing requirements such as staff numbers, qualifications and whether a criminal record check was undertaken for new employees.

This RIS assesses two options for regulation: the proposed Regulations and the less onerous requirements in the current Regulations. It is noted that the Act specifically requires regulations to be operable.

4.5 Assessing the options

An MCA was used to assess the costs and benefits of the identified options. The criteria used, and their weightings, is shown in Table 4.5.

Table 4.5: Multi-criteria analysis criteria and weightings

Criterion	Weighting (%)
<i>Complaints</i>	
Empower residents to exercise right of complaint	50
Cost to SRS	50
<i>Records</i>	
Effective recording of information to facilitate identification of risks and investigation of incidents	50
Cost to SRS	50

These criteria reflect the objectives of the Regulations as they relate to addressing the problems identified in this RIS about complaints and record keeping. The weightings reflect the significance of each area (assessed as a medium risk in the above risk assessment) and the need to consider prescriptive requirements in the context of the burden on SRS.

4.5.1 Complaints system

Under the base case, where no regulations are made, SRS would not be required to have a formal complaints system as envisioned in the Act (i.e. section 75(1) would have no operation). However, the department understands that some SRS would have this as part of 'business as usual' practices, although the particular details of the systems would be at the initiative and discretion of the proprietor.

However, under section 75(2), a proprietor must take all reasonable steps to ensure a resident is not adversely affected because a complaint has been made by the resident or on behalf of the resident. This implies there would need to be a process to ensure that a resident can make a complaint safely. While most complaints would be expected to be resolved adequately, there is no effective protection for residents to make complaints, and to enforce their right that complaints be resolved.

Costs and benefits of the proposed Regulations

The benefits of the proposed Regulations are to ensure that the needs of residents are given primacy, that proprietors operate consistent with the principles of the Act, that complaints are resolved faster and more effectively, and that overall better information will assist with planning for residents' needs and responding to emerging issues. The proposed requirements of the complaints system empower residents to exercise their right to complain by providing safeguards and enforceable actions (i.e. a proprietor who fails to

follow the required complaints system may be prosecuted or have their registration cancelled). A greater use of the complaints system by residents should lead to better outcomes for residents, and an improvement in quality of SRS. Importantly, the proposed requirements establish a safety net to reduce the risk of serious concerns of residents being ignored. It is therefore scored +7 against the first MCA criterion.

Consultations with proprietors supported the view that, for many SRS, the proposed Regulations are consistent with business as usual practices and would not add any material additional costs. This is unlikely to be universal, given the number of complaints that are made to the department. For a small number of SRS, the proposed requirements are likely to require a higher level of attention to how complaints are received and managed. However, in practice, this should not impose any additional direct costs on SRS, as it will be managed by existing staff, and should be integrated into the existing routines of interaction with residents.

In the absence of regulations, some elements of the proposed complaints system are unlikely to be undertaken such as the annual review of complaints, the recording of complaints and appointment of a complaints officer (although the latter can be, and generally is de facto, a role assumed by the proprietor).

In relation to an annual review of complaints, the department estimates that this would take up to 1 hour per SRS per year. This is because the review does not involve reviewing outcomes or handling of complaints, but only to confirm that complaints are being resolved in a timely way and identifying any patterns of complaints in the SRS or with particular residents. At \$65 per hour of time spent on this review, this requirement will add incrementally to the SRS sector of around \$11,375 per year, or \$95,000 over 10 years. This is considered a small opportunity cost for each SRS. It is noted that this is a time cost, and not a direct financial cost.

A further opportunity cost is the time taken by SRS staff to make a record of complaints. The department estimates that the cost to the sector of recording complaints is \$6,321 per year (\$52,569.26 over 10 years). Assumptions are discussed in Attachment C.

Recognising that some minor costs may be involved for some SRS, this option was scored –3 against the cost criterion.

Table 4.6: Multi-criteria analysis scores for the proposed Regulations

Criterion	Weighting	Score	Weighted score
Empower residents to exercise right of complaint	50	+7	+3.5
Cost to SRS	50	–3	–1.5
TOTAL	100		+2.0

Costs and benefits of the alternative (current Regulations)

The current Regulations are somewhat effective in ensuring complaints are resolved faster and more effectively, and that overall better information will assist with planning for residents’ needs and responding to emerging issues. However, the system does not properly align with the objectives in the SRS Act, and in particular does not give prominence to the importance of the rights of residents to make complaints and for those complaints to be resolved according to the principles of the Act. As these principles reflect the agreed policy

position in relation to SRS residents having equal rights as the rest of the community, the current Regulations, while offering some safeguards, do not provide an effective safety net consistent with community expectations of how complaints should be resolved, and therefore may still discourage some residents from making complaints. In addition, the current Regulations do not encourage the proprietor or make improvements or reduce inefficiencies by requiring proprietors to review serious or recurrent complaints and address underlying causes. Overall, this option was scored +5 against the first MCA criterion.

Similar to the proposed Regulations, consultations with proprietors supported the view that, for most SRS, having a system for complaints is consistent with business-as-usual practices and would not add any material additional costs. Recognising that some minor costs may be involved for some SRS, this option was scored –2 against the cost criterion.

Table 4.7: Multi-criteria analysis scores for the current Regulations

Criterion	Weighting	Score	Weighted score
Empower residents to exercise right of complaint	50	+5	+2.5
Cost to SRS	50	–2	–1.0
TOTAL	100		+1.5

4.5.2 Record keeping

Under the base case, SRS are not required to keep any particular records, although feedback from proprietors indicates that a high level of information about residents is maintained. While this may in part be due to having operated under the current Regulations for some time, and thereby entrenching record keeping as a normal practice, feedback indicated that proprietors understand the value to the SRS of maintaining records, and would be likely to continue to do so in any case.

Costs and benefits of the proposed Regulations

The proposed requirements for record keeping follow extensive consultation with the sector, and recommendations from community visitors and authorised officers. The department considers that the proposed requirements provide a sufficient minimum standard to allow complaints and incidents to be effectively investigated, and for SRS to use the information to assist in identifying risks. It was therefore scored +7 against the first MCA criterion.

It was not possible to estimate the additional cost to SRS of the proposed requirements. Consultation with the sector, and specifically feedback from proprietors indicated that practically all SRS already have some record keeping system in place. The proposed Regulations go to the adequacy of information that is recorded, and as such should only have a marginal cost on SRS activities. Recognising that there may be a small additional compliance burden, this option was scored –2 against the cost criterion.

Table 4.8: Multi-criteria analysis scores for the proposed Regulations

Criterion	Weighting	Score	Weighted score
Effective recording of information to facilitate identification of risks and investigation of incidents	50	+7	+3.5
Cost to SRS	50	-2	-1.0
TOTAL	100		+2.5

Costs and benefits of the alternative (current Regulations)

The current Regulations are similar to the proposed Regulations, except that the quality of information to be recorded is somewhat less, and therefore is less effective in supporting investigation of incidents and complaints. This has consequences for the overall enforcement of the regulatory framework, for instance if RSAs, support plans, medication administration forms etc. are not required to be properly recorded. Given this relative effectiveness compared with the proposed Regulations, this option was scored +4 against the first criterion.

The costs of current Regulations are, like the proposed Regulations, likely to be small as most SRS would continue a record keeping system as part of its business as usual activities, albeit the types of information recorded may vary. Therefore this option was scored -2 against the cost criterion.

Table 4.9: Multi-criteria analysis scores for the current Regulations

Criterion	Weighting	Score	Weighted score
Effective recording of information to facilitate identification of risks and investigation of incidents	50	+4	+2.0
Cost to SRS	50	-2	-1.0
TOTAL	100		+1.0

4.6 The preferred approach

Based on this analysis, the department considers that the proposed Regulations are preferable to the other options assessed as shown in the tables below.

Table 4.10: Multi-criteria analysis scores for complaints system options

Option	MCA score
The proposed Regulations	+2.0
Continue the current Regulations	+1.5

Table 4.11: Multi-criteria analysis scores for record keeping options

Option	MCA score
The proposed Regulations	+2.5
Continue the current Regulations	+1.5

5 ACCOMMODATION AND PERSONAL SUPPORT STANDARDS AND MANAGEMENT OF RESIDENTS' MEDICATIONS

5.1 The nature and extent of the problem to be addressed

The 2008 SRS review found concerns regarding residents' privacy, dignity and other individual rights yielded a response of 28 per cent.

The kinds of risks SRS residents may face in relation to standards are associated with:

- the accommodation received, which would include potential physical risks posed by substandard premises, poor water quality or premises that pose fire hazards
- the personal support received, which would include potential risks to health and wellbeing posed by a poor standard of service, particularly if residents' medication is not handled safely or there is an absence of care
- impacts on individual rights, such as loss of privacy or dignity if residents are not accommodated in facilities that are appropriately designed or are not treated appropriately by staff.

The current standards are located in various parts of the regulatory framework and can be difficult and time consuming to understand. They are also very prescriptive in nature, for example, that the finger nails of each resident should be trimmed at least once a week. Such input-based prescriptive requirements are narrow and not appropriately linked to the needs and desires of individual residents or their overall wellbeing. Other standards are broad, giving providers little guidance and making it difficult to determine compliance.

Analysis of the data regarding identified breaches indicates that one of the areas with the highest number of breaches was standards of care. Common breaches in this area include failure to secure health care for sick residents; failure to administer medications as instructed or store medications safely; failure to maintain facilities in good repair; failure to provide clean bed linen; inadequate nutrition and failure to consider resident food choices and preferences; and failure to protect residents' dignity or protect from verbal abuse. Breaches were evenly spread across the pension and above-pension SRS. Of the 36 prosecutions the Department of Health has pursued since the Health Services Act commenced operation in 1988, the largest number of these has been for noncompliance with the standards of care.

An analysis of the data on breaches shows that breaches of the standards relating to facilities and fixtures and resident care are the most common of all breaches, accounting for two-thirds of all breaches every year. The two highest breaches of facilities and fixtures are failure to maintain in proper state of repair and failure to maintain in clean and sanitary condition. The specific breaches in these two categories include broken door handles, doors missing from cupboards, broken floor tiling, evidence of loose wiring, missing toilet doors, cracks and holes in plaster walls and ceilings, a manhole with no lid, dirty bathrooms, stained and sagging mattresses, and offensive waste not removed for a significant period of time. In resident care, the majority of breaches occur in care planning, medication management,

nutrition, and physical and verbal abuse. Breaches include no care plans or inadequate care planning. While some of these breaches are relatively minor, others directly affect the safety and wellbeing of residents, with some representing a significant risk.

Recent research by First Principles concluded that breaches of care standards were the most significant type of breach – around 47 per cent of all breaches over the period 1993–2006 (see Table 4.1).

Case study 2

Following an inspection of an SRS, an infestation of mice was found in a resident's mattress. The same proprietor had made their own electrical repairs and had attached the electrical wiring to the water pipes leading to residents' showers. The proprietor had not repaired a leaking pipe and the carpets in the hallway were growing mushrooms.

Case study 3

A resident developed serious pressure sores that had been treated inadequately by the proprietor. On transferring the resident to another facility, the wounds, which had become septic, were treated properly and healed.

A resident fell into the shower and suffered 3rd-degree burns to a significant proportion of his body from being scalded by hot water. The facility did not have a system for regulating the temperature of the water supply to residents' showers.

Such cases are considered serious breaches of the standards and the department has taken action to have these addressed, which in some cases has involved revocation of registration or prosecution.

The current policy, as embodied in the SRS Act, is to prescribe a set of minimum standards for accommodation and personal support, described as resident-focussed standards, and identifying the minimum requirements against which the proprietor will be assessed for compliance.

The Act does not specify the standards to be met in relation to accommodation and personal support, or handling of medications.

- Section 59 of the Act requires that the proprietor comply with the prescribed accommodation and personal support standards.
- Section 63 of the Act requires that a proprietor must, in accordance with the Regulations, take reasonable steps to maintain adequate standards of storage, distribution and administration of residents' medication.

In developing the SRS Act, the content of the standards was intentionally left to be prescribed by regulations – the risk of not prescribing standards by regulation is that proprietors will have no guidance in fulfilling their obligations and the department's capacity to give effect to the principles in section 7 of the Act will be severely limited.

The standards also need to consider meeting the expectations of the community: As noted in chapter 2, the rationale for intervention based on social equity grounds recognises that

appropriate intervention seeks to ensure that SRS residents have access to affordable accommodation and personal support to a standard that, as a minimum, provides for their safety and wellbeing and is in line with general standards in the community.

A risk assessment was undertaken on the residual risks (i.e. taking into account what is already addressed in the Act itself) in this area. The risks sought to be addressed by the proposed Regulations are that residents receive accommodation and personal support below an acceptable level, and that medications are not managed or stored safely.

In relation to accommodation and personal support standards, there is a moderate likelihood that in the absence of regulations SRS will provide accommodation and care at a level below that consistent with ensuring residents' safety and wellbeing are in line with the general standards in the community. This is based on the degree of noncompliance with current requirements – in the absence of specific requirements the quality of provision would be much lower than desired in general, although many SRS already provide, and would continue to provide, services above these standards, particularly if residents can afford to pay for higher standards, even in the absence of regulations.

Proprietors have previously acknowledged that a legislative framework is necessary to ensure unscrupulous operators do not provide services that fail to meet minimum standards. The need for regulation recognises the need for a 'safety net' to address a relatively small number of SRS that may not offer support and accommodation at the standard expected by the community, although this would have serious consequences for residents in these SRS.

The consequences of sub-standard care and accommodation impact directly on residents' health, safety and enjoyment, and can have critical impacts, including death. Overall, lack of government intervention represents a moderate risk.

In relation to the handling of medications within SRS, the rationale for intervention also extends to setting an appropriate safety net to protect residents.

While the likelihood of mismanagement of medications is low (some SRS would take appropriate steps in the absence of regulations as the Act requires reasonable steps to be taken), the consequences of mismanagement are very high as residents are often dependent on medications for their health and wellbeing, and the types of medications often present at SRS pose significant risks if incorrectly consumed. Death, or at least poisoning, is a real possibility of this unmitigated risk.

The risk assessments are shown in Table 5.1. Risk ratings reflect the residual risk after considering the provisions of the Act, not mitigated by any proposed Regulations.

Table 5.1: Risk ratings – accommodation and care, and handing of medications

Risk	Likelihood	Consequence	Overall rating
Inadequate accommodation and care provided to residents	Low	High	Moderate
Poor handling of medications	Low	Very high	High

5.2 Objectives

The primary objective of the Regulations, to protect the safety and wellbeing of residents living in SRS, is achieved in relation to accommodation and personal support standards and medications through the following objectives:

- *Protect the safety and wellbeing.* The physical premises at which these services are provided are safe, properly maintained and provide a home-like environment; resident support is provided in line with resident needs and provided in a timely and respectful manner.
- *Responsiveness.* The Regulations are flexible to particular situations and needs of residents and SRS.

5.3 Interstate arrangements

The following table shows that systems in other states include provisions to set a similar range of standards.

Table 5.2: Arrangements in other states for setting standards

New South Wales	Queensland	South Australia
Requirements for hygiene, sleeping arrangements, meals, medication, health and safety	Similar matters are required to be provided to achieve 'level 3' accreditation	Requirements for nutrition, hygiene, medication, notice of events included in the Regulations

5.4 Identification of options

The options assessed in this RIS are:

- **option C1** – the proposed Regulations
- **option C2** – more prescription-base regulations similar to the current Regulations
- **option C3** – no requirements contained in regulations; the department would provide information to assist SRS proprietors.

The following two tables summarise the requirement in the current and proposed Regulations as they relate to accommodation and personal support standards, and management of medications.

Table 5.3: Comparison of current and proposed *Accommodation and personal support standards* regulations

Current Regulations	Proposed Regulations
<p>The Regulations set out specific requirements in relation to resident privacy, dignity and security, participation in activities, personal hygiene of residents, nutrition, facilities and fixtures, heating and cooling, and lighting.</p> <p>Some <i>examples</i> of the types of requirements include:</p>	<p>The standards are expressed in a way that is resident focussed and deals with lifestyle, food and nutrition, health and wellbeing, and physical environment. To set a minimum 'safety net', the schedule refers to the minimum requirements that proprietors are expected to meet in order to be compliant with the standard. Many of the minimum requirements are the same or similar to the current Regulations.</p>

5: Accommodation and personal support standards and management of residents' medications

Current Regulations	Proposed Regulations
<ul style="list-style-type: none"> • Each resident bathes or showers, or is bathed or showered, at least every second day and his or her hair is washed at least every 7 days. • The finger nails of each resident are trimmed at least once each week, his or her toe nails trimmed as required and at least once every 6 weeks and that professional foot care is sought if any sign appears of foot complications. • The teeth of each resident are cleaned at least once each day, each resident has a dental check by a dentist or other dental care provider at least every 2 years and that any necessary assistance is provided for a resident in caring for and storing his or her dentures. • Grab rails are provided in each toilet, shower room and bathroom for the safety of residents. • Every resident has access to a bedside light in addition to the general room lighting. 	<p>Prescriptive requirements (like the examples given on the left) have been replaced with minimum steps that allow for better tailoring of the needs of the resident. For example, the proposed Regulations require that:</p> <ul style="list-style-type: none"> • The frequency and timing of assistance in relation to personal support, including hygiene, toileting, dressing, eating, medication, mobility, requirements for accessing health care and emotional support are provided as set out in residents' support plans. • <i>If appropriate</i>, grab rails are provided in each toilet, shower room and bathroom.

Table 5.4: Comparison of current and proposed *Management of medications* regulations

Elements of required system	Current Regulations	Proposed Regulations
<p>The reasonable steps to maintain adequate standards of storage, distribution and administration of residents' medication include:</p> <ul style="list-style-type: none"> • medication is administered in accordance with the instructions of the person who prescribed the medication • no alteration is made to any label affixed to a container supplied by the person who dispensed the prescribed medication • records on the medications of residents including required dosages, frequency • written reports on maladministration or failure • medication is not kept at the SRS if the resident leaves or no longer requires medication 	<p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p>	<p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p>
<ul style="list-style-type: none"> • medications are obtained promptly • medical advice is obtained in the event of maladministration or failure to administer medications • medical advice or the advice of a person who dispenses prescribed medication is obtained prior to administration of a non-prescribed medication to a resident to ensure that the medication is appropriate for the treatment of the resident, taking into account the prescribed medication that the resident is already taking 	<p>✓</p> <p>✓</p> <p>✓</p>	<p>✗</p> <p>✗</p> <p>✗</p>
<ul style="list-style-type: none"> • the relevant health practitioner is notified of any failure of administration, whether due to refusal or otherwise, and any error in medication administration • medications are kept in a lockable storage facility and kept under the direct supervision of an authorised staff member when unlocked • any medication required to be stored at or below a particular temperature is stored at the appropriate temperature • medications are not kept at the SRS if the expiry date for the medication has passed • before administering or supervising the administration of medication to a resident, the staff member confirms that the medication is being provided to the correct resident, at the correct dose, by the correct route, at the correct frequency and at the correct time. 	<p>✗</p> <p>✗</p> <p>✗</p> <p>✗</p> <p>✗</p>	<p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p>

5.5 Assessing the options

An MCA was used to assess the costs and benefits of the identified options. The criteria used, and their weightings, is shown in Table 5.5.

Table 5.5: Multi-criteria analysis criteria and weightings

Criterion	Weighting (%)
Protect the safety and wellbeing of residents	30
Responsiveness and flexibility	20
Cost to SRS	50

These criteria reflect the objectives of the Regulations as they relate to addressing the problems identified in this RIS about care and accommodation standards and medications. As protecting the safety and wellbeing of residents is the primary objective of the SRS and the Regulations as a whole, it is accorded the weighting of 30 per cent. Regulatory responsiveness and minimising regulatory costs are also desired; responsiveness is weighted at 20 per cent (being less important than the safety and wellbeing of residents), while costs are weighted at 50 per cent to ensure that costs and benefits are given balanced consideration in the analysis.

5.5.1 The 'base case'

Under the base case, there would be no specified standards of accommodation and personal support or standards in respect of the management of residents' medication with which SRS were required to comply. However, in the absence of any regulations or operation of the Act, there would be general standards that impact on SRS from other sources. This may include contract law, where a certain level of standard is stated or presumed in a contract between proprietor and resident (whether written or not), a standard of care relevant to avoiding negligence in cases where a duty of care exists at common law between proprietor and resident, or regulation under trade practices legislation.

5.5.2 The proposed Regulations

The proposed accommodation and personal support standards, and management of medications, is central to the needs of residents. In particular, the proposed standards provide a level of protection (a safety net) of residents' safety and wellbeing through promoting better and more tailored practices, while including a legislative basis for the department to monitor and enforce the meeting of those standards. The re-organisation of the standards should also facilitate a better understanding of the requirements by SRS, reducing the number of breaches due to lack of understanding.

There is limited information to determine the cost to SRS of the proposed Regulations. Views expressed by proprietors through the consultation indicate that the proposed Regulations are consistent with a 'business as usual' approach, unlikely to lead to significant cost increases because they are minimum requirements that most SRS already meet and many exceed these standards.

The department has also been unable to quantify the relative benefit of expressing the standards as resident-focussed outcome-based standards rather than more prescriptive activities. While there is no data available to demonstrate that more prescriptive regulatory

approaches may actually hinder responding to the needs of residents, there is extensive data to illustrate the diversity of the resident cohort living in SRS. Resident-focused standards will provide greater orientation to the needs of residents and greater flexibility for proprietors to take into account the diversity of residents' needs. For example, under an existing standard, each resident is required to be bathed or showered at least every second day; under the new outcomes-based standard, each resident will have their hygiene routine developed in line with their needs and documented in their support plan; it will vary from one resident to another. Hence a resident who has incontinence may be bathed more frequently than someone who does not have this condition.

The department considers that the proposed Regulations will lead to at least some changed practices in most SRS as residents and proprietor take advantage of the change in the language and flexibility to tailor the services provided more to individual needs and that, in many cases, this need not involve any additional costs (and may involve cost savings compared with current requirements).

The intent of proposed regulations 30–32 is to explain the 'reasonable steps to maintain adequate standards of storage, distribution and administration of residents' medication' that proprietors must take in order to comply with section 63 of the Act, which is an indictable offence with a penalty of 600 penalty units or 5 years' imprisonment. It is considered therefore that the Regulations assist proprietors in meeting their legislative obligations by clearly articulating what is expected under the Act. The Regulations do not seek to impose a standard beyond that anticipated in the Act.

There is no additional net cost to government associated with the proposed Regulations relating to standards. The Act requires the practices to be monitored and enforced against standards, which would occur irrespective of the content of the standards.

Multi-criteria analysis scores

The proposed standards represent an effective minimum standards regime, and provide substantial protection to the safety and wellbeing of residents. While many SRS would already meet the standards in the proposed Regulations, their effect is to provide a safety net. The proposed Regulations were scored +9 on the first MCA criterion.

The proposed Regulations include flexibility in relation to accommodation and personal support standards, by describing outcomes against which SRS can determine how to most effectively and efficiently meet them in light of the specific needs of their residents. This means that SRS actions can vary across individual SRS and individual residents. On the other hand, because of the risks involved, the regulations on the handling of medications remain relatively prescriptive. Overall, the proposed Regulations were scored +5 in terms of responsiveness.

It was difficult to quantify the costs of the proposed Regulations, either in terms of the additional activities (if any) that SRS might need to do to meet the Regulations, or the costs of these activities. Feedback from a sample of proprietors indicated that the proposed Regulations largely reflected their 'business as usual', that they would meet even in the absence of the regulations. The costs therefore of providing this safety net to residents would be small, related to a small number of SRS that may need to make a small number of improvements to meet the standards.

The prescriptive regulations related to records of medications would be an additional cost attributable to the Regulations. The department estimates that the time to record the administration of medications would amount to 20 hours per year per SRS (on average). While this cost would be met within existing staffing costs, the time cost represents an opportunity cost that staff could be otherwise providing support to residents. Based on a standard hourly rate of \$18.06 per hour (see Attachment C), this time opportunity cost would be around \$366 per SRS per year, or around \$64,087 for all SRS (\$532,993 over 10 years). However, as noted, this is an opportunity cost only, and would not reflect an incremental financial cost to SRS.

In order to comply with the proposed Regulations, SRS will need to ensure medications are in a lockable storage facility. A new dedicated secure medicine cabinet can be purchased for around \$99, although the department expects that many SRS would already have an existing facility that may only require a lock. Assuming that the new requirement results in half of all SRS purchasing a new secure cabinet, and half purchasing a new lock for an existing cabinet at \$50 (ignoring the likelihood that many SRS may already have a lockable cabinet), the additional cost for all SRS would be in the order of \$13,000 as a once-off cost. Spread over the life of the Regulations, this represents a cost per annum of around \$1,550, or \$9 per SRS per year.

Overall, the Regulations are expected to impose a small additional cost on SRS as a group, and as such were scored –1 in the MCA assessment.

Overall, the proposed Regulations were scored +3.2 in total, as shown in Table 5.6.

Table 5.6: Multi-criteria analysis scores for the proposed Regulations

Criterion	Weighting	Score	Weighted score
Protect the safety and wellbeing of residents	30	+9	+2.7
Responsiveness	20	+5	+1.0
Costs	50	–1	–0.5
TOTAL	100		+3.2

5.5.3 More prescriptive Regulations (remake the current Regulations)

An alternative option is to continue, under the SRS Act, regulations substantially similar to the current Regulations, as set out in Table 5.3. One advantage of this approach is that all SRS should already meet these requirements, and the Regulations have been considered to be relatively effective in protecting the safety and wellbeing of residents.

However, by being prescriptive, the Regulations are relatively blunt. This means they are, in many instances, a 'one size fits all' approach, and impose requirements on SRS that may not be relevant for particular residents. Importantly, because the requirement is expressed in terms of doing a particular act rather than achieving a particular outcome for a resident, some resident needs may in fact be not met if they are not specifically anticipated in the Regulations. The current Regulations are also narrower in scope than the proposed Regulations.

Multi-criteria analysis scores

The current Regulations are considered highly effective in providing a safety net, although compared with the proposed Regulations are narrower in scope, and because of their prescriptive nature, may prescribe actions that do not best meet the needs of individual residents. Therefore, this option was scored +7 on the first MCA criterion.

The current Regulations are also less responsive than the proposed Regulations, although do provide some flexibility in a small number of areas. As such, this option was scored +4 on the second MCA criterion.

Like the proposed Regulations, the current Regulations are expected to represent only a small additional cost to SRS's business as usual. However, as they are prescriptive, the department expects that they are slightly more costly than the proposed Regulations (the proposed Regulations allow SRS to find more cost-effective ways of achieving the standards, which the current Regulations do not do). Therefore, this option was scored –2 on the cost criterion.

Overall, this alternative scored +1.9 in the MCA assessment, as shown in Table 5.7.

Table 5.7: Multi-criteria analysis scores for the current Regulations

Criterion	Weighting	Score	Weighted score
Protect the safety and wellbeing of residents	30	+7	+2.1
Responsiveness	20	+4	+0.8
Costs	50	–2	–1.0
TOTAL	100		+1.9

5.5.4 Education campaign to promote improvements to accommodation and care practices

Given that the Act requires SRS to tend to residents' care needs and take all reasonable steps in the management of medications, the key areas of difference between the base case, the proposed Regulations, and an information initiative to promote better practices are:

- additional costs involved in developing and implementing the information campaign
- the lack of response by SRS and enforcement powers to address identified failures to meet adequate levels of care and accommodation.

Research on regulatory compliance and the practical experience of regulators indicates that noncompliance with the requirements of regulations can be the result of ignorance rather than any intentional desire to flout the law. Where the problem to be addressed results from a lack of knowledge among consumers or participants in an industry, then an education program could be considered. This option could involve a multifaceted campaign to inform SRS proprietors about the standards of care and industry best practice.

An education campaign is likely to be successful where the target can be easily identified and reached economically, as is the case for SRS proprietors. An SRS education campaign could include specialist, suburban, regional and stakeholder forums, online communications via a campaign website, and/or targeted mail-outs.

As an indication of costs of this option, the department considers that a minimum level of activity would involve a total cost of at least \$225,000 per year, comprising:

- one additional departmental officer (VPS 5 equivalent) to oversee the communications and coordinate activities – \$190,000 (including on-costs and overheads)
- at least 10 forums/presentations throughout the year – venue hire (around \$20,000 in total) and likely reimbursement of proprietors' attendance (\$10,000)
- creation and distribution of guidance materials – up to \$5,000.

This represents a minimum cost of around \$1,300 per SRS per year. In addition, there would be costs borne by the SRS in reading and implementing any guidance material, and attending forums, albeit there would be no compulsion to do so. Overall, the department considers that the costs of this option would exceed the costs of SRS making sure that their practices were consistent with the proposed standards.

However, information campaigns may be less effective than other regulatory approaches as they rely on voluntary compliance rather than being supplemented by the element of coercion (such as the ability to impose penalties or sanctions). Information campaigns are suitable for use when the problem or noncompliance results from misinformation or a lack of information and when a light-handed approach would be more appropriate. Given that the issue proposed to be regulated in SRS management are of a serious nature (i.e. ensuring a minimum level of support for vulnerable persons), information campaigns may be less effective than other regulatory approaches as they rely on voluntary compliance rather than being supplemented by the element of coercion, and public interest may warrant further action than just education, particularly when the issue being regulated is of a serious nature.

A key disadvantage of a non-regulatory approach is that residents would not have an effective safety net on which to adequately enforce their rights.

The cost of education campaigns vary considerably, ranging from many millions of dollars (e.g. safe driving campaigns) to targeted mail-outs. It is worth noting that the Department of Health currently posts detailed information on its website (see 'Supported Residential Services': www.health.vic.gov.au/srs).

Multi-criteria analysis scores

This option has similar MCA scores to the proposed Regulations, but for the reasons just discussed, scored slightly lower on the wellbeing of residents, as the quality of the 'safety net' concept is less and it provides less power to residents. It also scored slightly lower on costs (being overall higher costs).

Table 5.8: Multi-criteria analysis scores for the non-regulatory approach

Criterion	Weighting	Score	Weighted score
Protect the safety and wellbeing of residents	30	+7	+2.1
Responsiveness	20	+7	+1.4
Costs	50	-3	-1.5
TOTAL	100		+2.0

5.6 The preferred approach

Based on this analysis, the department considers that the proposed Regulations are preferable to the other options assessed.

Table 5.9: Multi-criteria analysis scores for all options assessed

Option	MCA score
The proposed Regulations	+3.2
Continue the current Regulations	+1.9
Education campaign (non-regulatory)	+2.0

6 APPROPRIATE STAFFING OF SRS

6.1 The nature and extent of the problem to be addressed

As discussed in chapter 2, the pursuit of equity is a key reason for government involvement. Intervention seeks to ensure that all people have access to affordable accommodation and support at a standard that is in line with the needs of residents and general community expectations.

The number of staff at an SRS, their skills and qualifications are important factors in protecting the safety and wellbeing of residents. The review identified a number of areas where enhancements to current staffing were necessary to ensure the safety and wellbeing of residents. More than 30 per cent of respondents raised concerns about suitable staffing to meet the needs of residents. Specific comments were made in relation to staff qualifications, skills and attributes for the job. This included a lack of qualified staff on weekends, a lack of first aid trained staff, and the adequacy of the qualifications for the PSC.

Section 64(1) of the SRS Act requires the proprietor to ensure that an adequate number of appropriately trained staff are employed in accordance with the Regulations. Section 64(2) of the Act requires the proprietor to, in accordance with the Regulations, ensure that an adequate number of appropriately trained staff are on duty to ensure that the proprietor can comply with the personal support requirements under the Act. Section 64(3) of the Act requires the proprietor to ensure that an adequate number of appropriately trained ancillary staff are on duty to ensure that the staff employed to provide personal support to the residents are not unduly hindered in providing that support. These provisions are also requirements under the current Act.

'Adequate number' and 'appropriately trained' are not defined in the Act, and the intention was to provide further clarity of this requirement via regulations. The Act is therefore unclear, despite imposing high penalties for failure to comply with this requirement. Some SRS may even 'over comply' with the Act by employing more staff to avoid possible penalty. In the absence of regulations, there is uncertainty for SRS in how to comply with this requirement, and a residual risk that resident safety and wellbeing may fall short of community expectations prior to any inadequate staffing being identified.

Case study 4

A resident fell, vomited and had a convulsion. A member of staff on the night shift called 000. Ambulance officers arrived at the SRS and took the resident to hospital. The resident died due to lack of oxygen (hypoxic/ischaemic encephalopathy). The staff member who attended to the resident was undergoing training as a Div 2 nurse at the time of the incident. The coroner ruled that the staff member did not have adequate training and was unable to identify the problem. The coroner recommended that all staff (night and day) at SRS should have first aid training, specifically CPR.

The legislative review and stakeholder consultation identified specifically that the ability of staff to provide first aid was considered a missing element of the current arrangements. While many SRS already employ staff with first aid qualifications, it is not universal. This leaves a residual risk for residents at SRS where there is not readily available first aid.

Feedback from SRS indicated that employment of at least some staff qualified to Certificate III level in a relevant field, a care coordinator (usually the proprietor), and at least 1 staff member with first aid qualifications was considered ‘business as usual’ for most SRS. Previous regulations in relation to staffing have also established accepted common practice within the sector. Therefore, in the absence of any further regulations, most SRS are likely to employ some appropriately trained staff to adequately protect the safety and wellbeing of residents.

However, there are expected to be a small number of SRS that, in the absence of specific regulations, would employ either insufficient numbers or predominantly unqualified staff. This may be due to cost constraints, or a lack of clarity on what is considered ‘adequate’ and ‘appropriate’ for the purposes of complying with the Act. In many cases, proprietors entering the sector have had no prior experience in running an SRS or similar service, and for some it is also their first business venture. Proprietors are unlikely to have significant levels of knowledge or experience on which to draw to decide what is appropriate, adequate or common practice in the sector.

Departmental audits and reports from community visitors indicate that while there were generally sufficient staffing on weekdays, gaps were identified at weekends and nights. Given the complex needs of many SRS residents, there is a material potential for urgent needs of residents to be unmet where there is insufficient staff or inadequately trained staff.

The likelihood of an adverse outcome (safety and wellbeing falling below general community expectations) is therefore considered low across the sector, although the consequences of such an occurrence are moderate to high, considering that failure to respond to resident needs in a timely and correct manner can result in injury or loss of wellbeing, and in the worst case, death. Overall, the absence of specific regulations to ensure the Act provides a sufficient safety net and certainty to proprietors was assessed as medium, as shown in Table 6.1.

Table 6.1: Risk ratings – inadequate staffing and training

Risk	Likelihood	Consequence	Overall rating
Inadequate staff on duty with appropriate skills and training	Low	Moderate–high	Medium

6.2 Objectives

The primary objective of the Regulations, to protect the safety and wellbeing of residents living in SRS, is achieved in relation to SRS staffing through the following objectives:

- **Safety net:** to set minimum requirements for staffing numbers and qualifications in a way that takes into account the needs of the resident population in a particular SRS and ensures that residents’ safety and wellbeing are not jeopardised.
- **Certainty:** to provide clarity to SRS to assist them in meeting the requirements of the Act.

6.3 Interstate arrangements

Table 6.2 shows that systems in other states set standards for the qualifications of staff that are linked to the needs of residents.

Table 6.2: Staffing requirements in other states

New South Wales	Queensland	South Australia
Adequate staff on duty, adequate knowledge and skills, fit and proper persons. One staff on duty must have first aid qualifications.	Part of level 1 accreditation includes a requirement to have staff who are adequately trained to carry out duties.	Requires a register of staff and adequate staffing levels. If a facility provides nursing care, a registered nurse must be employed.

6.4 Identification of options

The current and proposed Regulations are shown in the following table.

Table 6.3: Current and proposed Regulations for SRS staffing

	Current Regulations	Proposed Regulations
Personal support coordinator	Must employ an appropriately qualified personal care coordinator full time for not less than 38 hours a week, or two part-time personal care coordinators whose combined hours of employment are not less than 38 hours per week.	A qualified and trained personal support coordinator must be on duty for at least 7.6 hours each weekday between 7am and 7pm (the role may be shared, not limited to two people).
First aid	No requirement.	At least 1 person must be on duty with sufficient first aid training between 7am and 7pm each day.
Other staff requirements	At least 1 special or personal care staff member employed and on duty for each 30 residents during the day. At night, at least 1 special or personal care staff member employed and available at the SRS to meet any special or personal care circumstance that a resident or residents may require. If necessary, additional special or personal care staff are employed to ensure that the special or personal care requirements of each resident are fully met in a timely manner.	At least 1 person to provide personal support to residents for every 30 residents or part thereof between 7am and 7pm everyday. At all other times, at least 1 staff on premises who can provide personal support and respond to first aid and emergency issues. At all times, additional staff on duty, if necessary, to meet the personal needs of residents. At least 1 qualified person on duty for at least 7.6 hours between 7am and 7pm on Saturday and Sunday. Staff performing any ancillary function must have an appropriate qualification or certificate for that function.

A change in the proposed Regulations is to move away from requirements based on 'day' and 'night' to more specific time periods. This is an existing requirement that has been modified to provide clearer guidance to proprietors and ensure staff are on duty at times when residents are normally active and likely to need assistance. The major difference between the day and night staffing requirements is that the 1:30 (or part thereof) ratio of support staff to residents does not apply at night. The current Regulations potentially allow proprietors to impose unusual routines to reduce 'daytime' hours. An example is serving dinner at 5pm. The proposed Regulations establish a norm for what is considered to be daytime when sufficient staff would be expected to be on duty to assist residents.

The proposed Regulations continue the current requirement for there to be at least 1 personal care staff on duty for every 30 residents during periods when the residents are normally active. This requirement has been in place for 10 years and is the minimum number of support staff who must be on duty. It does not represent an ideal or preferred or even most common number of support staff to be on duty; it is the absolute minimum and if the support needs of residents require more staff to be employed in order to meet their needs in a timely manner, the proprietor must ensure they are on duty. The minimum requirement is considered low as higher staffing numbers are employed at the majority of SRS.

In the review, some stakeholders considered that this ratio should be increased in line with the growing complexity of resident need. However, as proprietors are required to employ more support staff if necessary this requirement was considered to increase costs (that ultimately will be passed on to residents) without increasing resident protections. The sector has very diverse populations in terms of needs and expectations and higher staffing levels may be beyond what is required in some cases.

The proposed Regulations list the qualifications and training requirements necessary for a personal support coordinator (PSC, currently referred to as 'personal care coordinator').

*To perform the role of PSC a person must complete a minimum of 40 hours training every three years in priority areas to be approved by the Secretary and hold **either**:*

- *a Certificate III or higher in Aged Care, Certificate III or higher in Home and Community Care, Certificate III or higher in Disability, Certificate IV or higher in Mental Health, or Certificate IV or higher in Alcohol and Other Drugs, awarded by a registered training organisation or their successors (or a qualification assessed as being at least equivalent to one of these), **or***
- *have current registration with the Nursing and Midwifery Board of Australia or the Medical Board of Australia*

At least 1 staff member at weekends (7am to 7pm) must also have these qualifications (but not the training), who may or may not be the PSC.

All current regulations relating to the employment of a PSC are remade in the proposed Regulations with minor changes to clarify the hours of work and expand the list of appropriate qualifications to include disability work, alcohol and drugs, and mental health qualifications, which reflects the growing diversity of the SRS resident population.

The current requirement for a PSC to work 38 hours per week has also changed to require the PSC to be on duty for at least 7.6 hours each weekday. As the role of the PSC is to coordinate the support of residents, the department considers it important to have the PSC on duty during core hours throughout the working week when: other external community services operate; residents are available; and other support staff are on duty. However, in some SRS, the PSC is employed as an evening or overnight staff member and on weekends, with these hours counted towards meeting the PSC hourly requirement. The proposed Regulations clarify the hours the PSC should be on duty but do not increase the overall total number of hours to be worked.

Training for the PSC in high-priority areas is a new requirement to address the problem of ensuring the ongoing adequacy and appropriateness of staff skills in a small unique industry in which there are few training options relevant to the sector provided in the community. The rationale for the new training requirements is set out in the following box.

Box 2: Why have new PSC training requirements been introduced?

It is evident that some parts of the sector, particularly the pension-level sector, are catering for an increasingly diverse mix of residents with significant levels of mental health or psychiatric disability, as confirmed by census data.

In the review, some stakeholders suggested that the minimum qualifications for a PSC should be increased, from Certificate III to Certificate IV, to reflect the growing complexity of resident needs. The Community Visitor Annual Report often comments that staff in some SRS are untrained and unqualified to deal with challenging behaviours and that this compromises the safety of residents and staff. The review considered the evidence and impacts of these proposals to increase the qualification of staff including associated costs to proprietors to up-skilling PSCs.

However, parts of the sector have financial difficulties, and recruiting and retaining skilled staff is a concern for over a third of proprietors. Increasing the minimum to Certificate IV may exacerbate these problems. Certificate IV qualifications are in high demand in other funded sectors such as aged care and disability services, which typically pay higher wages.

To balance the needs and viability of the sector with the concerns raised by stakeholders regarding staff qualifications, the department has proposed reforms that are flexible and effective and will not create significant financial imposts on proprietors. Rather than increase the required PSC qualifications, it is proposed to focus reforms on building the skill set of staff over time, which is considered more practical, appropriate and a more financially viable option for the sector. To do this, PSCs will be required to complete 40 hours of approved training in specified areas every three years. The 40-hour criterion is based on the current attendance levels at training courses run by the department. It is equivalent to two 1-day courses per year. Some PSCs will meet this requirement through completing relevant courses provided by outside agencies.

Focusing training in this manner will ensure that PSCs receive training that is more tailored to the needs of the sector and will give residents ongoing access to staff with up-to-date knowledge and skills and a safer living environment.

SRS provide a 24-hour, 7-day-a-week service and require a sufficient number of appropriately qualified staff to cater for residents' support needs during the working week and on weekends. The proposed Regulations clarify that a proprietor's obligations includes weekends by requiring qualified staff to be on duty for a set number of hours on the weekends to provide personal support to residents. Like the PSC requirement, these hours reflect the intended role of the staff member. At a recent consultation with a sample of proprietors, some argued for more flexible hours for the qualified staff member to accommodate weekend activities or outings. The department is seeking specific feedback on this provision in terms of both the proposed hours and/or whether the role of the qualified weekend person should be more broadly defined to include a supervisory role in relation to activities and/or resident safety at the SRS. The department welcomes specific feedback on these issues and the additional cost impacts.

Staff with first aid training is a new requirement. Required qualifications in relation to first aid training are proposed to be:

- completion of Health Training Package HLTF301B or its successor, or higher, every three years, or a course assessed as being at least equivalent for the purposes of first aid administration by the Victorian Registration and Qualifications Authority
- completion of a CPR (HLTCPR201A) course annually in accordance with the CPR guidelines from the Australian Resuscitation Council.

A series of consultative forums were held to discuss the proposed reforms to SRS regulation in July and August 2009. The proposal for first aid training specified training in convulsions, poisoning, respiratory difficulties, injury and wound care, management of bleeding and cardiopulmonary resuscitation. Participants in the forums were consistently in favour of staff having first aid training, with many proprietors indicating that they already employed staff with first aid training and considered it standard across the industry because they were caring for people 24 hours, 7 days a week.

A stakeholders forum was also held in 2009 and stakeholders such as State Trustees, the Transport Accident Commission (TAC), the Metropolitan Fire and Emergency Services Board (MFB), the Disability Commissioners' office, the Health Services Commissioner and the Royal District Nursing Service (RDNS) responded favourably to the requirement to have a member of staff on duty at all times with first aid training.

SRS are busiest during the hours of 7am and 7pm, when the majority of personal support activities such as dining (breakfast, lunch, dinner), bathing, dressing, medication management and other activities occur. These are the times when residents are most active and therefore most likely to have an accident and require first aid assistance.

The options assessed in this RIS are:

- **option 1** – the proposed Regulations
- **option 2** – remake the requirements in the current Regulations.

Non-regulatory options were identified but not assessed, as the Act specifically requires staffing to be in accordance with regulations.

The department considered requiring SRS to display the name of the first aid officer on duty on a sign or notice within the SRS. However, feedback from proprietors indicated that such a measure was unlikely to have material benefit, would be burdensome to continually change, and may result in the unintended and undesired effect of 'institutionalising' SRS. The proposal was therefore not pursued.

6.5 Assessing the options

An MCA was used to assess the costs and benefits of the identified options. The criteria used, and their weightings, is shown in Table 6.4.

Table 6.4: Multi-criteria analysis criteria and weightings

Criterion	Weighting (%)
Protect the safety and wellbeing of residents through an effective safety net	30
Certainty for SRS to meet compliance with the Act	20
Cost to SRS	50

These criteria reflect the objectives of the Regulations as they relate to addressing the problems identified in this RIS about adequate staffing to meet residents' needs. As protecting the safety and wellbeing of residents is the primary objective of the SRS and the Regulations as a whole, it is accorded the highest weighting of 30 per cent. Certainty for SRS and minimising regulatory costs are also desired; certainty is weighted 20 (being less important than the safety and wellbeing of residents), while costs are weighted at 50 to ensure that costs and benefits are given balanced consideration in the analysis.

6.5.1 The base case

Under the base case, SRS must comply with the SRS Act, which requires the proprietor to ensure that an adequate number of appropriately trained staff are employed in accordance with the Regulations, and that an adequate number of appropriately trained staff are on duty to ensure that the proprietor can comply with the personal support requirements under the Act. The department estimates, based on its interaction with the sector and through consultation, that the majority of SRS would already meet most of the proposed Regulations. In particular, the department estimates that 80 per cent of SRS would employ at least 1 staff with first aid qualifications, and half of all SRS would employ at least 1 staff with relevant Certificate III or IV qualifications, without any regulations.

Under the base case, the department would provide guidance material to SRS, and well as a source of ongoing advice as needed, to assist SRS to better understand staffing requirements and staffing strategies to meet the needs of residents.

6.5.2 The proposed Regulations

The incremental costs of the proposed staffing requirements are shown in Table 6.5.

Table 6.5: Additional costs to SRS sector (proposed Regulations)

Requirement	Annual cost	10-year cost (present value)	Annual cost per SRS
Staff with first aid training	\$26,984	\$224,411	\$154
PSC qualifications	\$186,955	\$1,554,828	\$1,068
PSC training	\$227,462	\$1,891,714	\$1,300
Qualified weekend staff	\$111,860	\$930,293	\$639
TOTAL	\$553,261	\$4,601,246	\$3,161

The first aid requirement does not require employment of additional staff but may mean that an existing staff member may need to undertake the specified first aid training. If the cost of achieving these qualifications falls on the SRS proprietor, the total costs to the sector of meeting this requirement, including costs of backfilling staff while on training, would be \$134,918 per year, or \$1,122,057 10-year present value. The average cost per SRS would be \$771 per annum.⁹

However, only 20 per cent of this total cost has been attributed to the proposed Regulations. This is because SRS are already required to employ adequate staff with appropriate training under the Act, which may include first aid. Further, SRS proprietors are required under the *Occupational Health and Safety Act 2004* to have suitably trained first aid officers as part of their obligation to provide a safe working environment. This means SRS should already employ at least 1 member of staff who is trained in first aid. This requirement reduces the burden attributable to the SRS Regulations alone. Data is not available about the current numbers of staff employed with first aid qualifications. However, evidence from submissions to the 2008 review and subsequent consultations with a sample of proprietors for this RIS indicate that a significant proportion, if not all, SRS already employ staff with first aid qualifications. Consequently, the department expects that the proposed requirement will have only a small additional impact on the sector, in the order of \$26,984 per year.

The proposed Regulations require that, during weekdays, there is a qualified PSC on duty for at least 7.6 hours. The total employment costs to the sector would be in the order of \$7.6 million per annum. However, feedback from proprietors clearly indicates that all SRS would have a lead care provider in the absence of regulations (often the proprietor) and, given that the Act already requires staff with qualifications to meet the needs of residents, nearly all such persons would already satisfy the requirements of the proposed Regulations. The incremental costs attributable to the proposed Regulations are in the order of \$187,000 per annum – this reflects an estimate that half of all SRS would employ somebody with those qualifications in the absence of regulations and therefore no additional cost, and the

⁹ Assumptions used in costing all staffing requirements are set out in Attachment C.

remaining half of SRS would only face additional costs reflecting the difference in wage rates between Certificate II and Certificate III staff (currently around 6 per cent higher under the Health and Allied Services award).

The required 40 hours training over three years for a PSC is a new requirement in the proposed Regulations. The cost to the sector of obtaining this training is estimated to be \$227,462 per annum (\$1.9 million over 10 years), or \$1,300 per SRS. This includes direct training costs, and backfill of staff when the training is not done 'on the job' or outside working hours.

This is based on an average training cost of \$50 per hour, although there is scope to reduce this, for example, the department provides a range of relevant training courses free of charge that could be utilised for PSCs. Between 2008 and 2011, a total of 80 training courses have been provided with a total attendance of 1,051 people. This includes SRS staff and proprietors. Courses range from care planning and key practice issues, medication management and understanding mental illness. To mitigate financial barriers to attending these courses, no fees are charged and a contribution to backfill (\$50) is paid by the department to pension-level staff attending a course (typically a half-day duration).

The proposed Regulations require that a suitably qualified employee be on duty for 7.6 hours on weekend days. On the same basis as the cost of PSC qualifications, this requirement is expected to add to the 'business as usual' costs of the sector at \$111,860 per annum, or a 10-year present value of \$930,293. This represents an additional cost of \$639 per SRS per annum. However, this cost is based on an assumption that 50 per cent of SRS would already have suitably qualified weekend staff in the absence of regulations. Therefore the cost for each SRS that would not already meet this requirement would be \$1,278 per annum (\$10,632 over 10 years).

The proposed Regulations require, on weekdays, at least 1 staff on duty to provide personal support to residents for every 30 residents or part thereof (with additional staff to ensure any special or personal care requirements are met). As SRS are already required to employ adequate staff with appropriate training, feedback from consultations, in particular a forum held with proprietors in 2011, indicated that this ratio was already exceeded at most SRS. It therefore presents a safety net to ensure that no SRS falls below that level. The ratio is the same as the current Regulations, and the department has no data on whether staff numbers would fall below this ratio in the absence of regulations. Most SRS have fewer than 30 residents and would not be affected by this regulation (about 20 per cent of SRS in each of the pension-level and above pension-level sectors have more than 30 residents).

The costs linked to staffing are sensitive to the assumptions used, in particular related to the proportion of SRS that would meet the requirement as part of 'business as usual' activities. In the case where there would be zero compliance in the absence of regulations, the total additional cost of the proposed staffing requirements would be \$1.2 million per year for the sector (\$6,785 per SRS), or \$9.9 million over 10 years. However, this is an unrealistic extreme – the department is aware that many SRS would already satisfy the proposed requirements, either for other regulatory purposes (such as OH&S) or for normal business purposes. This has been confirmed through a forum with around 30 proprietors held in 2011. The department considers the assumptions used in Table 6.5 are reasonable but acknowledges the uncertainties. Equally, there may be already be higher than assumed compliance with the proposed requirements, which would lower the overall cost of the Regulations.

The proposed staffing requirements respond directly to areas of concern identified as part of the legislative review, and regularly noted in investigations by the department and reports from community visitors. While many SRS would already meet these staffing requirements, the Regulations serve to add considerable protection to the safety and wellbeing of residents.

The central aim of the regulation is therefore to provide a safety net to the interpretation of the Act, better define responsibilities within the SRS to ensure that the support needs of residents are appropriately coordinated, and to avoid doubt about the qualifications considered relevant to the role.

Multi-criteria analysis scores

The proposed Regulations reflect what is considered the minimum staffing requirements necessary to provide assurance that the safety and wellbeing of residents meets community expectations. It was therefore scored +9 against the safety net criterion.

The proposed Regulations are also highly specific as to the requirements that will satisfy the obligations in the Act. It was therefore scored +8 against the certainty criterion.

The additional annual costs to the SRS are in the order of \$550,000 per year. This is not an insignificant cost given other cost pressures facing SRS, but small compared with other costs. It was therefore scored –2 against the cost criterion.

Overall, the proposed staffing regulations scored +3.3 as shown in Table 6.6.

Table 6.6: Multi-criteria analysis scores for the proposed Regulations

Criterion	Weighting	Score	Weighted score
An effective safety net to protect the safety and wellbeing of residents	30	+9	+2.7
Certainty for SRS	20	+8	+1.6
Costs	50	–2	–1.0
TOTAL	100		+3.3

6.5.3 Continue the current staffing requirements

The current Regulations would not require PSC training or staff with first aid qualifications, and no specific qualifications for staff on weekends. Therefore, the additional cost of the current Regulations is only the cost related to PSC qualifications.

Table 6.7: Additional costs to SRS sector (current Regulations)

Requirement	Annual cost	10-year cost (present value)	Annual cost per SRS
PSC qualifications	\$186,955	\$1,554,828	\$1,068

While this cost represents the typical costs associated with obtaining a relevant qualification and staff backfill for the SRS, and is therefore the same as the proposed Regulations, the scope of relevant qualifications has been expanded under the proposed Regulations, allowing SRS to recruit from a larger pool of potential workers and better able to tailor their staff to the residents' needs mix. This may mean that actual costs under the proposed

Regulations are slightly less than under the current Regulations; however, there is insufficient data to estimate that impact.

Multi-criteria analysis scores

The current Regulations reflect what has been considered the minimum staffing requirements necessary to provide assurance that the safety and wellbeing of residents meets community expectations. However, it does not sufficiently address the gaps that have been identified above, which are known to have affected resident wellbeing in some cases. These examples demonstrate that the current Regulations are not as effective a safety net as they should be. It was therefore scored +5 against the safety net criterion.

The current Regulations are also highly specific as to the requirements that will satisfy the obligations in the Act. It was therefore scored +8 against the certainty criterion.

The additional annual costs to the SRS are in the order of \$200,000 per year. This is not an insignificant cost given other cost pressures facing SRS. In reference to the cost of the proposed Regulations, this option was scored –1 against the cost criterion.

Overall, the proposed staffing Regulations scored +2.6 as shown in Table 6.8.

Table 6.8: Multi-criteria analysis scores for the current Regulations

Criterion	Weighting	Score	Weighted score
An effective safety net to protect the safety and wellbeing of residents	30	+5	+1.5
Certainty for SRS	20	+8	+1.6
Costs	50	–1	–0.5
TOTAL	100		+2.6

6.6 The preferred approach

Based on this analysis, the department considers that the proposed Regulations are preferable to the other option assessed, as shown in Table 6.9.

Table 6.9: Multi-criteria analysis scores for all options assessed

Option	MCA score
The proposed Regulations	+3.3
Continue the current Regulations	+2.6

7 OTHER LOW-IMPACT REGULATIONS

The proposed Regulations also include the following provisions.

- Regulation 5 – by submitting the documents and information required for an application (see chapter 3), a proprietor undertakes to advise the Secretary within 7 days after becoming aware of any change to the information provided in relation to suitability.
- Regulation 35 – requires that if the PSC ceases to perform this role, the proprietor must notify the Secretary within 7 days and appoint an acting PSC until a permanent appointment is made. The proprietor must employ a new PSC as soon as practicable.
- Regulation 52 – requires a proprietor to notify the Secretary of a reportable incident within 1 business day of the incident occurring. Regulation 50 defines what constitutes a reportable incident.
- Regulation 55 – sets the thresholds below which a gift, or other transaction, between a resident and a proprietor is not prohibited and need not be in writing (above \$250) and need not obtain independent financial or legal advice (above \$850).
- Regulation 56 – sets the maximum amount of money that may be managed by a proprietor on behalf of a resident at any given time at the equivalent of the fee payable for a 1-month period.
- Regulation 58 – requires that a notice to vacate must be notified to the Secretary within 1 business day of it being given to the resident.

These regulations will prescribe matters to give practical operational effect to SRS Act. Under section 207(1) regulations may be made for, or with respect to:

- (r) prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.*

These regulations are considered to have a low cost to SRS proprietors and residents, and have not been subject to a full cost-benefit assessment in this RIS. This chapter outlines the rationale for why these regulations are needed, and the basis for the choice of the regulations proposed.

Further, the following regulations have not been included in this RIS as they impose no burden on SRS or residents.

- Regulation 59 prescribes the form of a receipt for seized samples or things taken from an SRS.
- Regulation 60 lists the offences that are infringement offences under the Act.
- Regulations 61–84 deal with the election of community visitors to the Community Visitors Board.

7.1 Regulation 5 – advising of changed information within 7 days

Regulation 5 requires a proprietor to advise the Secretary within 7 days of becoming aware of any changes to the information provided in relation to the suitability of the applicant or the manager.

The purpose of the proposed regulation is to clarify the proprietor's responsibility to maintain their suitability to run an SRS throughout the entire period of registration, not just at the point of registration. The proprietor's obligation (under regulation 5) to advise the Secretary within 7 days of becoming aware of any changes to their suitability (or the suitability of a manager, if one is appointed) limits any potential harm to residents and/or the continuity of services at the SRS if the applicant becomes no longer suitable to operate an SRS.

This is a new requirement. The department seeks feedback on whether this proposed time period is reasonable.

7.2 Regulation 35 – cessation of personal support coordinator (PSC)

The proposed Regulations require that if the PSC ceases to perform this role, the proprietor must notify the Secretary within 7 days and appoint an acting PSC until a permanent appointment is made. The proprietor must employ a new PSC as soon as practicable.

This requirement is because the PSC is critical to meeting the needs of residents, as discussed in chapter 6. Having a PSC in place is necessary to ensure the protection of residents' safety and wellbeing, and the absence of a PSC for a material length of time puts the residents' interests at risk.

The inclusion of this regulation in fact provides flexibility to the SRS, as without it, an SRS would otherwise be required to employ a PSC at all times. Recognising that staff may leave and there will be a period before a new PSC can be employed, this regulation protects residents by ensuring there is somebody acting in that capacity and that there is no undue delay in finding a permanent replacement.

The current requirement is that a PSC must be replaced within 12 weeks. The change recognises that the ability to employ a new PSC may depend on the particular situation and other factors beyond the control of the proprietor, and has therefore been made more flexible.

The proposed regulation also requires the proprietor to notify the Secretary within 7 days of the termination or resignation, the same as the current Regulations.

The PSC is the key position for coordinating support for residents and as such needs to be occupied on a continuous basis. The PSC may also be responsible for training and supervising other support staff. If there is no one performing that role at an SRS there is a high risk of inadequate support services, poor coordination of staff, and poor access to external health services. A period of 7 days is proposed to notify the Secretary to ensure residents' health and wellbeing is not unduly put at risk if the proprietor cannot coordinate the care they require in the absence of a PSC.

This provision remakes an existing requirement and allows proprietors time and flexibility to find someone suitable and, at the same time, limits the risk to residents of having an unqualified person or no one in place.

7.3 Regulation 52 – notification of a reportable incident

Section 77(3) of the SRS Act requires a proprietor to notify the Secretary of any prescribed reportable incident that occurs on the premises of, or in relation to, the SRS within the prescribed reporting time.

The proposed regulation requires notification to be made within 1 business day of the incident occurring. The rationale for prompt reporting of these incidents is to enable the department to investigate and respond to serious incidents and/or help with managing emergency events where residents may be at risk (i.e. displaced, injured, made homeless after a fire or emergency event).

If no regulation existed, proprietors could not meet the legal requirement. The required time period places no burden on proprietors other than the need to act quickly, which is considered a reasonable expectation based on the severity of the incidents to which the notification applies.

The setting of this time period has given consideration to protecting the interests of residents and the feasibility of SRS meeting these requirements.

Regulation 50 sets out the types of incidents considered to be reportable incidents. These include an unexpected death of a resident, a serious injury to the resident, a fire or other emergency and alleged sexual assault. The rationale for defining these in the Regulations is to provide clear guidance to proprietors who would otherwise have to decide what is meant by a reportable office. This regulation enhances both resident safety and the efficient operation of the Act.

7.4 Regulation 55 – thresholds for gifts or other transactions

The legislation review of SRS confirmed that protection of residents' financial interests remained a key concern.

Section 84 of the SRS Act provides that a proprietor, or a close associate of a proprietor, must not enter into a 'prohibited transaction' with a resident of the SRS.

Section 4 defines the prohibited transactions as:

- a) a gift from a resident above a prescribed amount
- b) a transfer, by way of sale or exchange, of real or personal property from a resident for less than market value
- c) a sale of real or personal property to a resident for more than market value
- d) other transactions with a resident, above a prescribed value, that is not evidenced in a written agreement signed by the parties
- e) other transactions with a resident, above a prescribed value, in relation to which the resident or the resident's administrator has not obtained independent financial or legal advice.

These sections operate to prohibit any sale or exchange of real or personal property that are not in the financial interests of a resident, and to require that all other transactions¹⁰ are in writing and obtain independent financial or legal advice. This is burdensome for the many small transactions that may occur between a resident and a proprietor. Therefore, the Act allows regulations to be made that set a range of transactions that do not require written agreements (transactions up to \$250) and that do not require independent advice (transactions up to \$850).

In the absence of the regulation specifying these thresholds, all transactions would require written agreements and independent financial or legal advice.

Limits were originally introduced into the Health Services Act to prevent unscrupulous proprietors from taking advantage of residents. The risks are elevated due to the dependency of residents on proprietors, their vulnerability and possible confusion over what monies need to be paid to the SRS.

The intention was not to prevent small gifts such as chocolates, flowers or a bottle of wine, but to prevent larger transactions without some protections being in place. There have been instances of residents being taken advantage in this area as the following examples show.

- A proprietor claimed that a resident had 'given' his car to a female relative of the proprietor as a thank-you gift. The resident did not agree he had given it as a gift and there was no evidence of any agreement.
- Occasionally, a resident's property is 'left behind' or considered 'a gift' when they move out of an SRS as in a case where an antique grandfather clock belonging to a resident was left behind when the resident moved out. The resident did not agree the clock was a gift and there was no evidence of any agreement.

In setting the monetary thresholds, consideration has been given to balancing the protection of residents' interests with the need to avoid unnecessary burden (written agreements and independent advice) for smaller transactions.

As the prohibited transactions are set out the Act, the only feasible options for the Regulations are to vary the thresholds for which the prohibitions apply. Other states' schemes have general money management protections but none have comparable prohibited transactions.

The current thresholds for gifts and transactions not requiring written agreements is \$100, and the current threshold for transactions not requiring independent financial or legal advice is \$500.

These were set in 2006, taking effect from 1 January 2007. In recognition that many small transactions may now fall below these thresholds, the thresholds have been increased in the proposed Regulations. The new thresholds, \$250 and \$850 respectively, are considered appropriate for the life of the Regulations.

The department has no information as to how frequent such transactions occur. It is therefore not able to directly assess the impacts of changing the thresholds.

¹⁰ Payments relating to services of the SRS are not affected by this section.

The department understands that transactions between proprietors and residents do take place, for genuine and reasonable purposes, but as a matter of principle, these should normally relate to small transactions. In some instances, assets of a resident may be offered or requested in lieu of fees or to pay for extra services or damage done to the SRS. As well, some residents may want to give a ‘thank-you’ gift to a proprietor.

Further, it is noted that the operation of the Act provides a benefit to proprietors, as written agreements and obtaining independent advice reduces the likelihood that genuine transactions will be challenged or disputed.

Stakeholder feedback to date has indicated the proposed thresholds are appropriate. The department welcomes additional feedback on the level of the proposed limits to test the reasonableness of the amounts and identify any possible unintended impacts.

7.5 Regulation 56 – amount of residents’ money that may be managed

Among the kinds of risks SRS residents may face are financial matters, which include risks such as inappropriate use of residents’ money. Better protection of residents’ money was a key issue identified in the legislation review.

Residents’ money managed by a proprietor has no security, and there may be limited accountability and transparency with respect to how that money is spent. The risks are elevated due to the dependency of residents on proprietors, their vulnerability and possible confusion over what monies need to be paid to the SRS.

Under section 79 of the SRS Act, a proprietor must not manage or control money of a resident without the written consent of the resident. This was designed to enhance the protection of residents.

The Act also anticipates the setting of a limit on the amount of money that may be managed at any one time. A proprietor who manages or controls money of a resident must not manage or control more than the prescribed amount of that money at any one time.

The Act does not specify a limit but allows the setting of a limit to be done by regulation, which allows the limit to be more easily varied over time.

Two case studies illustrate the risks associated with proprietors managing residents’ money.

Case study 5

A new proprietor of an SRS facility became aware, when reviewing the accounts of residents living in the SRS, that a resident’s finances had been mismanaged. It was established that the practice of the previous proprietor was to get the resident (who was illiterate and not capable of managing their own finances) to sign a bank withdrawal slip, which the proprietor would then use to withdraw money but would not give any money to the resident. Limited records were maintained, including no written consent to manage the resident’s finance.

Case study 6

During a departmental audit of an SRS, departmental officers discovered that a staff member of an SRS who was managing a resident's finances, would get the resident to sign a bank withdrawal slip and then withdraw money from the resident's account. Although petty cash records were maintained, inconsistencies were discovered and purchases could not be substantiated. No written consent to manage the resident's money was found.

There is no data available on the number of proprietors handling residents' money. There is already a limit of money that can be managed under the current Regulations (see current regulation 39A). This is the same amount as the proposed limit.

In the absence of a specific regulation, there would be no limit on the amount of money that can be controlled by a proprietor.

Allowing the control of some money is a desired outcome because some residents have trouble budgeting their money over the pay period, with the result that they put pressure on proprietors and/or other residents for small cash advances or loans and potentially incur a debt they cannot repay. By managing residents' money, proprietors support residents to budget their funds more effectively and prevent the accumulation of significant debts that the resident may be required to repay when they leave the facility.

Limiting the amount of money that can be controlled to the equivalent of 1 month's fees is considered reasonable. The proposed limit retains the same limit as the current Regulations, and allows the monetary amount to vary in proportion to the type of SRS (i.e. SRS with higher fees are able to control a larger amount of money, reflecting that such residents are likely to have a higher discretionary income that they may wish the proprietor to control.

The limit on the amount of money that can be controlled is also more flexible than arrangements in other states, which do not set a corresponding limit.

- In New South Wales, a resident must not be assisted by the facility or staff of the facility in operating their bank accounts or management of financial affairs.
- In Queensland, residents should manage their own financial affairs as much as possible or have external entities to help with financial decisions.
- In South Australia, any finances handled on behalf of resident must be kept in a special account.

There is no scope to introduce alternative approaches to protecting residents' money through the Regulations. Therefore, consideration of alternative options is limited to changing the amount of the limit.

Consultations with stakeholders since 2008 have indicated that the current limit is appropriate and no argument has been raised to either increase or lower the limit.

7.6 Regulation 58 – notice to vacate to be notified within 1 business day

Section 108(2) of the SRS Act requires the proprietor to notify the Secretary, within a prescribed time period, when certain types of notices to vacate have been given to a resident. The time period is to be set in the Regulations. It is proposed that the required time is within 1 business day of the notice being given to the resident.

The requirement to notify the Secretary is a new provision in the SRS Act. It is necessary to notify the Secretary for those notices to vacate with immediate or short periods of notice. This recognises that finding alternate accommodation may be difficult in some circumstances and allows the department to ensure the proprietor balances the interests of the resident concerned, as well as the rights of all of the residents. The department considers that 1 day is a reasonable period within which a proprietor can notify the Secretary while allowing time for the department to act, if necessary, before the resident vacates.

8 FEES

The proposed Regulations set fees for the following applications:

- registration of an SRS
- variation of registration by increasing bed numbers
- variation of registration by varying a condition of registration
- approval to alter or extend premises
- approval of a new director
- approval of a manager
- approval of a legal personal representative, executor, guardian or administrator.

These fees seek to recover part of the cost involved in the department administering the regulatory framework.

Cost recovery may be defined as the recuperation of the costs of government-provided or funded products, services or activities that, at least in part, provide private benefits to individuals, entities or groups, or reflect the costs imposed by their actions.

The *Cost Recovery Guidelines* set out principles underpinning cost-recovery arrangements. The guidelines establish a whole-of-government framework, thereby ensuring that cost-recovery arrangements in Victoria are transparent, efficient, effective and consistent with legislative requirements and government policy. These guidelines are based on the principle that properly designed cost-recovery arrangements can deliver both equity and efficiency benefits to the community.

Table 8.1 below summarises the benefits and costs associated with the proposed fees.

Table 8.1: Benefits and costs of regulatory fees

Benefits	Costs
<ul style="list-style-type: none"> • Costs are recovered directly from the beneficiaries of the regulation • Fee levels in line with government policy, and promotes efficiency and equity • Removes subsidies and cross-subsidies 	<ul style="list-style-type: none"> • Increased costs for consumers and businesses • Processing costs for the government • May potentially discourage some businesses and consumers

The *Cost Recovery Guidelines* set out 10 steps to consider when setting fees. These are set out in Attachment D, together with a summary of the department's consideration of each step in accordance with the guidelines.

The major economic impact of the proposed fees is that they add to the cost of operating SRS, and indirectly may result in higher costs, or lower provision of services, to residents. At the margin, this may deter potential SRS from participating in the sector. The key benefit of collecting fees is that they recover the cost from the direct beneficiary of the regulated activity.

8.1 Cost-recovery options

In relation to the setting of fees, the objective is to recover an appropriate amount of the costs of providing services, having regard to equity, efficiency and effectiveness.

When designed and implemented appropriately, the adoption of cost recovery has the potential to advance efficiency and equity objectives. However, the guidelines note that ‘efficiency and equity considerations may need to be balanced against each other in determining the appropriate form of cost recovery’.

Regulatory fees and user charges should generally be set on a full cost-recovery basis; however, if it is determined that full cost recovery is not consistent with other policy objectives, then it may not be appropriate to introduce a full cost-recovery regime. Consideration may be given to a regime of partial cost recovery (if it can be demonstrated that a lower than full cost recovery does not jeopardise other objectives) and/or to rely on other funding sources (e.g. general taxation) to finance the government activity.

Accordingly, where social policy or equity considerations are considered to outweigh the efficiency objectives associated with full cost recovery, and/or where full cost recovery might adversely affect the achievement of other government policy objectives, partial or zero cost recovery is to be considered. Therefore proposed feasible fees options were considered:

- option A – full cost recovery (relevant fee based on 100 per cent of the average costs, both direct and indirect)
- option B – partial cost recovery (assessed at 13–23 per cent cost recovery)
- option C – zero cost recovery (this option is effectively the ‘base case’ because if the proposed fee regulations are not remade then no fees would be prescribed).

The partial cost recovery option (option B) represents the proposed fees. In setting the proposed fees, it was considered that any increase in fees from current levels may have an effect on the quality and availability of SRS services. Fees for applications subsequent to registration (e.g. for variations, alterations or appointment of a manager) encourage exit from the market, or discourage improvements to the premises that would improve the profitability of the business or the quality of the service provided, particularly for the pension-level market. This would undermine the government’s objective to retain a sustainable and viable SRS sector, and may discourage compliance with the regulatory scheme. Consistent with partial cost recovery, the proposed fees were set to maintain current levels as far as possible.

MCA was used to assess the preferred fee option. Reflecting the *Cost Recovery Guidelines*, the criteria used were:

- efficiency – fees set at a level to promote the efficient allocation of resources
- effectiveness – fees set at a level to achieve the government’s policy objective
- equity – fees set at a level to promote the sharing of costs and benefits across society.

Accordingly, the ‘efficiency’, ‘effectiveness’ and ‘equity’ criteria were each assigned a weighting of 33 per cent, reflecting their overall importance in achieving the government’s policy objectives in relation to fee setting.

Partial cost recovery was assessed as being superior to the base case (i.e. zero cost recovery), and full cost recovery as shown in the following table.

Table 8.2: Summary of multi-criteria analysis of fee options

Regulatory proposal	MCA assessment
Option A: Full cost recovery	+2.0
Option B: Partial cost recovery	+2.3
Option C: Zero cost recovery (<i>default base case</i>)	0.0

See Attachment D for the analysis behind these outcomes.

8.2 The proposed fees

The cost base for the purposes of assessing recovery is based on the incremental costs associated with the Department of Health administering the Act as it relates to processing applications and other information provided by SRS proprietors. An activity-based costing method was used to determine the fee for each individual activity.

The amounts in Table 8.3 below were calculated on an activity-based assessment of costs in relation to processing the applications (see Attachment D for further breakdown). These tasks were examined and the cost of staff time (plus overheads) in undertaking these activities was established, as shown in Table 8.3.

Table 8.3: Costs of activities to government

Application	Hours	Cost to government
Registration of new premises	40	\$3,836
Registration (change of ownership)	27	\$2,956
Variation to registration	11	\$1,058
Alterations/extensions	21	\$2,019
New directors	8	\$769
Appointment of a legal personal representative	8	\$769
Approval of a manager	8	\$769

Table 8.4 presents the fee unit equivalent of these costs for each activity, with comparisons to the current fee units charged for each activity and the fee units proposed in the Regulations. This is based on the current value for a fee unit of \$12.22 (from 1 July 2011).

Table 8.4: Current fee units, proposed fee units and fee units if costs were fully recovered

Application	Current fee units	Full cost recovery fee units	Proposed fee units	Change from current fees	Proportion of costs recovered
Registration	48.2	315	48	-0.4	15%
Registration (change of ownership)*	42.2	212		13.7	23%
Variation to registration	14	87	14	0	16%
Alterations/extensions	21	165	21	0	13%
New director	–	63	14	n/a	22%
Appointment of an LPR	–	63	14	n/a	22%
Approval of manager	–	63	14	n/a	22%

* Registrations for change of ownership currently attract a separate fee. Under the SRS Act, change of ownership is no longer a different application, and so attracts the same fee as a new registration.

For 2011–12, the proposed fees range from \$171.10 to \$586.55. As a result of the proposed fee structure, total revenue collected from fees from these particular applications is estimated to be \$18,188 per year (or \$151,262 over 10 years, in 2011–12 dollars). This is an increase of 21 per cent above that had the current fees continued for these applications, or an increase of \$18 per SRS.

However, Table 8.4 does not show fees that have been discontinued under the new regulatory arrangements, which were taken into account in developing the new Act. Under the new arrangements, the current approval in principle will no longer be required (21.1 fee units), there will no longer be an annual fee charged (12 fee units) and no need to renew registration (33.1 fee units). Therefore, for a new SRS registering in 'Year 0', the department estimates there will be an overall **saving of fees of 273.5 fee units over 10 years, or \$3,342 using today's fee unit value.**

In setting the fees, consideration was given to whether the applicable fee could be varied based on the size of the SRS or the nature of the service provided. On an activity-based assessment of costs, there is no reliable basis for concluding that larger SRS impose a higher administrative cost on the department than a smaller SRS. Larger SRS may have more information to be assessed by the department, but they tend to require fewer follow-up inquiries, reflecting more sophisticated business systems. This tends to balance out the cost in assessing different types of applications.

Pension-level SRS tend to require more resources from the department (in relation to some applications) and on pure efficiency grounds would otherwise warrant higher fees. However, on the equity and effectiveness grounds as discussed above, these SRS should face lower fees, reflecting their ability to pay and risk of exiting the sector. On balance, it is proposed that all SRS face the same fees regardless of type.

In addition, other than the number of beds, there is no clear basis on which different fees could practically be structured. The classification of SRS as 'pension-level' or 'above-pension' are not formally defined under the Act or as part of the registration process, and there is no clear rationale as to why the department should introduce a new formal separation in the conditions of registration. To do so, even for the purpose of effecting different registration fees, would have unintended consequences in terms of de facto price regulation and new barriers on competition.

9 IMPACTS OF THE PROPOSED REGULATIONS

The analysis in this RIS has concluded that, based on the information available to the department, that the proposed Regulations meet the objectives better than the base case and the assessed alternative approaches.

9.1 Groups affected

Groups affected by the proposed Regulations, or their alternatives, include SRS proprietors, their staff and their residents. Indirectly, other groups may be affected if SRS fail to meet the needs of residents through improper care or business failure; these are residents' families and other service providers that may be called upon to support residents, including public health services.

9.1.1 Impact on small business

The *Victorian Guide to Regulation* provides a definitive guide to developing regulations in Victoria within the context of the government's vision of well-targeted, effective and appropriate regulations. In particular, it is important to examine the impact on small business because the compliance burden of regulation often falls disproportionately on that sector of the economy.

The impact of the proposed Regulations falls on SRS. Most of the measures contained in the proposed Regulations are scalable to the number of residents, and are therefore proportionate to SRS size. However, some requirements are not based on SRS size, such as the need to register the SRS and establish a complaints system, which theoretically impose a disproportional cost on smaller SRS. Further, some provisions may have particular costs for smaller SRS; for example, the requirement to employ at least 1 person to provide personal support to residents for every 30 residents has a relatively higher cost for SRS with fewer residents.

That said, nearly all SRS can be considered small. Almost two-thirds (64 per cent) of SRS have fewer than 30 residents. Almost half (48 per cent) of SRS have between 10 and 19 staff, another 40 per cent employ fewer than 10 staff.

Importantly, the impact on small business should be considered from the combination of the new Act and the proposed Regulations. Overall, the new regulatory framework streamlines the registration processes and provides clearer information to SRS proprietors to understand their responsibilities. These improvements will be enjoyed more by smaller SRS that have scarcer resources to devote to administrative processes.

Finally, given that broadly similar regulations have been in place for over 10 years, the department does not expect that the proposed Regulations will raise any implementation issues or cause unintended consequences for smaller SRS.

9.1.2 Assessment of impact on competition

The guiding principle in assessing competition impacts is that the Regulations should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweighs the costs, and that the objectives of the Regulations can

only be achieved by restricting competition. The National Competition Policy (NCP) 'competition test' was used to assess the proposed Regulations against any possible restrictions on competition. The test asks whether the proposed Regulations:

- allow only 1 participant to supply a product or service
- require producers to sell to a single participant
- limit the number of producers of goods and services to fewer than 4
- limit the output of an industry or individual producers
- discourage entry by new persons into an occupation or prompt exit by existing providers
- impose restrictions on firms entering or exiting a market
- introduce controls that reduce the number of participants in a market
- affect the ability of businesses to innovate, adopt new technology, or respond to the changing demands of consumers
- impose higher costs on a particular class or type of products or services
- lock consumers into particular service providers, or make it more difficult for them to move between service providers, and/or
- impose restrictions that reduce range or price or service quality options that are available in the marketplace.

Assessed against this test, the new regulatory arrangements impose restrictions on firms entering or exiting a market by requiring registration approval and, in the case of cancellation of registration, certain steps to notify residents.

However, in this context, it is noted that the restrictions are imposed by the principle Act, with the proposed Regulations providing some detail to the regulatory requirements. The cost of complying with the proposed Regulations is considered to be justified by the benefits achieved by the Regulations, and not materially greater than the costs associated with the base case (in which case the Secretary would need to request further information from SRS in order to make a decision if not volunteered in the application). It is also noted that the Regulations give effect to the new regulatory framework, which overall is expected to deliver net savings to the sector compared with the current arrangements (as determined by the Business Impact Assessment, which also gave consideration to competition impacts).

It is noted that the new regulatory arrangements are unlikely to affect market structure (compared with current arrangements, the new framework could be expected to increase the number of SRS) and, with the removal of approval in principle and streamlining and clarifying other applications, it will be easier to enter the market than at present. The removal of fees associated with approval in principle, removal of annual fees and renewal fees, also reduce the costs of participating in the market.

The regulatory framework that will apply to SRS is considered proportionate to the nature of SRS in relation to other types of care/support-based accommodation including retirement villages, nursing homes, community housing, hospital standards and psychiatric and acute care. Taking into account differences in the intensity of personal support services and the typical needs of residents at each type of accommodation, the proposed Regulations are not considered to affect a relative competitive disadvantage or advantage on SRS.

The proposed Regulations apply equally to all businesses and consumers and do not impose dissimilar requirements compared with other jurisdictions. Therefore, the proposed Regulations are considered to meet the NCP 'competition test' as set out in the *Victorian Guide to Regulation*.

9.2 Implementation and enforcement issues

The proposed Regulations are intended to commence on 1 July 2012 in conjunction with the proclamation of the commencement of the SRS Act. The SRS Act contains transition provisions that ensure that existing registrations at the time of commencement (made under the Health Services Act) will be deemed to be registered under the new Act, and any finite period of registration indicated on the registration will be taken as indefinite (section 209(1)). In other words, existing SRS will not need to re-register and will no longer need to renew their existing registration.

In respect of other applications that have been made but not decided before the commencement of the Act, transitional arrangements allow for these to be decided under the new scheme, with a small number of exceptions. The exceptions relate to applications where there is no corresponding process in the new scheme. For example, applications for approval in principle or for a variation involving a change of use will be decided under the existing scheme. This may mean that an SRS that applies for registration just before the commencement of the Act may be required to provide additional information to the department to allow a decision to be made under the new Act. The department will provide information to prospective applicants closer to the time of commencement to assist during this period. (It is noted that registration of new SRS is a relatively infrequent event, so transition costs will be small.)

To assist stakeholders to understand the changes to the new scheme, the department is planning a range of communication and implementation activities. Information on these will be provided closer to the time through the department's website, direct correspondence or the SRS newsletter.

Under the new scheme, the Department of Health will continue to be responsible for the regulation of SRS, and undertake a range of monitoring and enforcement activities to ensure proprietors meet their obligations under the Act.

The key enforcement activities relate predominantly to compliance with obligations under the Act, as opposed to the Regulations. The Act contains all but one of the offences under the new scheme, this one is contained in the Regulations and refers to the failure of a proprietor to make available a copy of the Act and Regulations.

The current scheme contains a range of enforcement measures, such as suspension of admissions, revocation of registration, censure of a proprietor in parliament, appointment of an administrator, or prosecution. In the current legislation, there are a number of prosecutable offences, but these are mainly taken as a last resort. New enforcement measures were introduced in the SRS Act to provide a graduated range of responses to noncompliance. The new measures are:

- infringement notices for clearly defined, minor breaches of the law
- powers for proprietors and the department to enter undertakings

- powers for compliance notices to be issued where there are more serious breaches of the law.

These measures offer a fair and proportionate range of compliance measures, which aim to educate proprietors and support them in making positive changes to their business and services offered to residents.

Authorised officers monitor and enforce compliance with the Act, the Regulations and conditions of registration by:

- regular and random physical inspections, either announced or unannounced. These include care audits (focussing on resident care and documentation issues) and facility audits (focussing on construction/conditions of premises)
- prompt and thorough complaint investigation involving announced or unannounced inspections that may, depending on risk analysis, lead to a care and/or facility audit
- issuing action plans to proprietors to rectify issues of noncompliance where identified and conduct of follow-up inspections (refer to the action plans section below)
- imposition of sanctions for continued noncompliance, including refusal of an application for renewal of registration, revocation of registration and prosecution for breaches of the Act or Regulations.

Authorised officers can assist proprietors to understand and implement changes to procedures, practices and documents to ensure compliance with the legislation. This occurs both during inspections and as part of the department's SRS seminar and training program. In addition, departmental officers provide education through specific projects to assist proprietors in either:

- complying with the legislation, or
- developing better practices.

Community visitors are volunteers appointed by the Governor-in-Council to undertake visits to SRS. Community visitors have the legal authority to visit the premises of a registered SRS to look at any part of the premises during their visit and ask questions of any resident or employee relating to the admission and care of residents. Community visitors may also look at any records that are required by the Act to be kept on the premises, but not a resident's medical records or personnel records without the relevant person's consent. Community visitors can make scheduled or unscheduled visits and for such periods as required in the circumstances. A resident, or a person on behalf of a resident, may request and arrange to be seen by a community visitor. The Minister may also direct a visit to an SRS.

The Secretary may accept an undertaking given by a proprietor if he/she believes that the proprietor has contravened a provision of the Act or the Regulations. The Secretary may issue a compliance notice requiring a proprietor to remedy a matter specified in the compliance notice if the Secretary believes, on reasonable grounds, that the proprietor has contravened or is contravening a provision of the Act or the Regulations. The Secretary may also issue a compliance notice to a proprietor requiring the proprietor to remedy a matter specified in the compliance notice if the Secretary believes, on reasonable grounds, that the proprietor has contravened an undertaking.

If the Minister is satisfied that the proprietor has failed to carry on the SRS in accordance with the Act, the Regulations or any condition of registration, the Minister may censure the proprietor in accordance with the Act. If the Minister is satisfied that the proprietor has failed to carry on the SRS in accordance with the Act, the Regulations or any condition of registration, the Minister may revoke the registration of the SRS in accordance with the Act.

In addition, the department may prosecute a proprietor and has successfully prosecuted 36 cases over 20 years. In most cases, the department works with SRS to remedy any problems.

9.3 Evaluation strategy

The *Subordinate Legislation Act 1994* revokes statutory rules following 10 years of operation. This allows the government to examine whether there is still a problem that requires government intervention, and to take account of any changes or developments since the regulation was implemented. When regulations are remade, the government assesses whether the objectives of the regulation are being met, whether practical experience suggests ways in which they can be improved, or whether a different regulatory approach is warranted. Final development of the Regulations is informed by public input through the RIS process.

Given that the proposed Regulations will expire after 10 years, prompting further detailed assessment, the department does not anticipate that the proposed Regulations will require further formal review once they are in place.

The department plans to evaluate the new legislative framework at around 5 years following the commencement of the Act. The evaluation strategy will assess the effectiveness of the legislation, with particular regard to the accommodation and personal support standards, security of tenure protections, and the new money protections. The program does not have existing key performance indicators.

SRS regulation performance measures are reported annually by the department and will be reviewed to improve the evidence base for this evaluation. These measures will likely include compliance rates, number of inspections, number and nature of SRS complaints, the number and type of infringement penalties issued, costs to government of administering the legislation, and process times for applications.

10 STAKEHOLDER CONSULTATION

Two periods of statewide consultation were held over 2008 and 2009. During that time more than 80 written responses were received from stakeholders on the review of SRS regulation, and more than 700 people participated in statewide forums and meetings.

The key stakeholders who have provided input into the review to date include:

- SRS proprietors
- SRS residents
- SRS residents' families, guardians, medical/health care practitioner(s) and other people who may have a relationship with a resident
- organisations such as (but not limited to) the Office of the Public Advocate, Tenants Union of Victoria, Health Services Commissioner, Disability Services Commissioner, VCOSS, State Trustees, the RDNS, VICSERV and the Law Institute of Victoria.

The outcome of this process was to identify further opportunities for clarifying and streamlining the registration process, clarifying standards for accommodation and support, improving residents' rights, increasing staff training and availability of qualified staff, and enhancing enforcement measures and penalties. The process also drew on the experience of the department in administering the legislation and monitoring SRS.

The discussion paper *Review of the Regulation of Supported Residential Services in Victoria (May 2008)* posed 20 questions about issues such as the scope of SRS regulation, protections for residents, staffing, and operation of the regulatory scheme.

The consultation process included written submissions, consultation meetings in each departmental region, telephone reviews and ongoing consultation and discussion with key stakeholder groups.

Three key themes emerged from the consultation:

- definition of an SRS
- protection for residents' wellbeing and rights
- operation of the current scheme.

Of the written submissions, more than 20 per cent responded to questions regarding the current definition of an SRS and what types of accommodation should be excluded from an SRS.

A quarter responded to the question of whether smaller facilities needed the same level of regulation as larger facilities. The response was that smaller facilities need the same regulation as larger facilities.

Protections for residents made up the main body of responses from written submissions. One-third (32 per cent) of stakeholders were concerned about general protections for residents. Issues raised included:

- resident statements
- resident monies
- security of tenure
- complaints handling.

More than 30 per cent of respondents raised concerns about suitable staffing to meet complex needs of residents. Suggestions were made regarding the level of training and the number of staff required by regulation. Comments made were in relation to the staff–resident ratio of 1:30 not supporting the needs of SRS residents, as well as staff level of qualifications, skills and attributes for the work.

About 28 per cent of respondents were concerned about the current complaints handling processes, citing some residents as ‘afraid’ to complain because they do not understand the complaints process and/or fear possible retribution from a proprietor and/or staff.

Around 27 per cent of respondents raised concerns over resident care plans, specifically that they are not detailed enough or reviewed as often as necessary. Residents’ privacy, dignity and other individual rights yielded a response of 27.7 per cent.

Concerns and comments were made about occupancy rights and the need for greater tenancy rights. Suggestions were made that the *Residential Tenancies Act 1997* should apply to residents of SRS facilities, and that residential statements should explain tenancy rights.

The operation of the current regulatory scheme – that is: assessment and suitability of proprietors; day-to-day responsibilities for running an SRS; building and design; and administrator appointments – accounted for 83 per cent of responses to the 20 questions.

Suitability of proprietors and those who run facilities was of concern to respondents, particularly around those proprietors who have no day-to-day involvement with SRS facilities, raising questions about who provides the care and if they are qualified to do so.

The following points summarise the analysis of both the written submissions and public forum results:

- respondents considered access to SRS as relatively easy and uncomplicated
- SRS provide support (e.g. assistance with medications) that is not available in other situations
- funding from SAVVI has improved the viability and conditions of many pension-level facilities
- inspections by authorised officers, visits by community visitors and the principles in section 10 of the *Health Services Act 1988* are all important safeguards.

In response to these matters, discussion papers on suggested reforms were released in August 2009 for further consultation with stakeholders.

Eleven discussion sheets were developed that covered proposed reforms in the following areas:

- objectives and principles of SRS legislation
- scope of SRS legislation
- resident protections – residential statements
- resident protections – money
- resident protections – complaints and incident reporting
- resident protections – security of tenure
- accommodation and personal care standards
- staffing requirements
- monitoring and enforcement
- registration changes
- record keeping.

The department also held focus groups with proprietors, residents and community visitors about the proposed changes. The further consultation confirmed general support for the proposed reforms. Stakeholders were in favour of proposals that: increase staff training and availability of staff; introduce clear, focussed standards for accommodation and personal care; and protect residents' security of tenure and money.

Resident forums: Five per cent of the SRS resident population was targeted (198 residents), with a mix of pension and above-pension facilities. A total of 8 SRS facilities were visited in July 2009 to discuss the proposed reforms. Residents were supportive of the key proposed reforms for occupancy rights, new financial protections, complaints handling, accommodation and support standards and staffing. Some residents already assumed that all staff who worked at facilities had nursing qualifications and first aid training.

Stakeholder forum: At a stakeholder forum in August 2009, a mix of organisations such as TAC, the Victorian Council of Social Service (VCOSS), MFB, State Trustees, Health Services Commissioner, RDNS and private individuals made comments on the proposed reforms. Stakeholders were supportive of registration changes, the introduction of police checks and assessment of day-to-day managers. Updating the standards was seen as a positive step, with a request that more individual emphasis is placed on care plans (and that they be reviewed every three months). Stakeholders also agreed that it was important for staff to have a first aid qualification.

In terms of resident protections (money), stakeholders were supportive of the proposal and stated that residents should give consent for a proprietor to control a resident's finances. Proposals for occupancy rights were supported and some stakeholders thought that assistance should be given to residents to relocate (even if they are violent). A stakeholder from NorthWestern Mental Health stated that there may be underlying reasons for bad behaviour that need to be identified and dealt with rather than evicting people from SRS.

For complaints reforms, some stakeholders suggested that an independent complaints system should be considered, while others suggested more training on how to handle complaints and better information to residents about how to make complaints. These

options were analysed and it was decided that a combination of regulatory and non-regulatory approaches would be more cost-effective in resolving the issues raised by residents.

For staffing reforms some stakeholders suggested a qualified person should be on duty at night and staff ratios should be revisited. Extra training for PCCs was considered a worthwhile action.

All parties (proprietors, residents and stakeholders) mentioned the need for clear and simple information to be provided on the new changes to SRS regulation.

As part of the broader communications strategy for the SRS legislative review a number of targeted mail-outs have occurred over the past two years for SRS proprietors, residents, stakeholders and interested members of the public who have responded to the consultation. In 2009 up to 7 mail-outs were completed, including the delivery of: the set of fact sheets on proposed reforms; letters to residents, proprietors and stakeholders; and quarterly SRS newsletters. In 2010, 6 mail-outs occurred including: SRS information sheets on reforms; letters regarding the Bill and passing of the Act; and quarterly newsletters. In 2011 newsletters and statewide information sessions on the new SRS legislation have been provided.

A 1800 free-call number was set up in May 2008 as well as a dedicated regulatory email address to allow stakeholders to contact the department to ask any questions regarding the legislative review.

A proprietors' forum was held in May 2011 to gain feedback on an earlier draft of the proposed Regulations. The forum was attended by 17 SRS, representing both pension-level and above pension-level, and a range of sizes and locations. Feedback from this forum informed the cost-benefit analysis documented in this RIS. In particular, the proprietors attending the forum:

- confirmed the department's assumption of the cost of proprietors' time for undertaking administrative activities
- were provided with an overview of the continuing and new key elements of the proposed Regulations and indicated that most of the staffing requirements, complaints and record system elements, and handling of medicines, represented business as usual activities for all attendees
- confirmed that clearer statements about the information to be included in applications would save time, but were unable to quantify this
- confirmed that moving to outcome-based standards for personal care and accommodation would, over time, allow some costs savings, but these could not be quantified
- raised concern about the additional costs associated with the new staffing requirement related to qualified staff at weekends, and possible inflexibility in defining 'core' times.

The preparation of this RIS has taken account of these consultations.

The *Subordinate Legislation Act 1994* requires that the public be given at least 28 days to provide comments or submissions regarding the proposed Regulations. Written comments for this RIS are required no later than 5.00pm 30 January 2012.

ATTACHMENTS

Attachment A

EXISTING REGULATORY ARRANGEMENTS: THE *HEALTH SERVICES ACT 1988* AND HEALTH SERVICES (SUPPORTED RESIDENTIAL SERVICES) REGULATIONS 2001

SRS are currently regulated under Part 4 of *Health Services Act 1988* (referred to as 'the Act' in this attachment), which set out provisions targeted at 'health service establishments' including SRS, day procedure centres and private hospitals (s. 3(1)). A 'supported residential service' means premises that provides or offers accommodation and special or personal care for persons other than family members of the proprietor for a fee or reward, but does not include a residential care service or a state-funded residential care service (s. 3(1)). 'Special or personal care' means assistance with bathing, showering or personal hygiene, toileting, dressing or undressing, eating meals, physical assistance for persons with mobility problems, assistance for persons who are mobile but require some form of supervision or assistance, assistance or supervision in administering medicine, or the provision of substantial emotional support (s. 3(1)).

Approval in principle of premises for a supported residential service

A person may apply to the Secretary for approval in principle of the use of particular land or premises as an SRS, premises proposed to be constructed for use as an SRS, alterations or extensions to premises used or proposed to be used as an SRS, or variation of the registration of an SRS for an alteration in the number of beds (s. 70).

An application must be in the prescribed form and must be accompanied by the prescribed fee. An applicant must provide the Secretary with any further information relating to the application that the Secretary requests including information about any proposed proprietor of and, if the proposed proprietor is a body corporate, any director or officer of the body corporate who may exercise control over the health service establishment to which the application relates, and any design sketches and construction drawings, plans or specifications relating to the premises proposed to be constructed, altered or extended that the Secretary requests.

The Act sets out the criteria for deciding whether to grant the approval in principle. The Secretary must not grant approval in principle (for the use of land or premises as an SRS or for the variation of the registration of an SRS) if the Secretary considers that the person who is or is likely to be the proprietor of the SRS (or, if the person is a body corporate, any director or other officer of the body corporate who exercises or may exercise control over the SRS) is not a fit and proper person to be such a proprietor, or is not likely to have, or to continue to have, the financial capacity to operate the SRS.

The Act sets out steps related to the transfer, variation and revocation of an approval-in-principle certificate.

Registration of a supported residential service

A person who intends to be the proprietor of an SRS must apply to the Secretary for registration of premises as a health service establishment of a particular kind. An application must be in the prescribed form and must be accompanied by the prescribed fee. An applicant for registration must give the Secretary any further information relating to the application that the Secretary requests (s. 82).

The Act sets out the criteria for approving registration. The Secretary must not refuse to register premises as a health service establishment on any ground that is inconsistent with any approval in principle in force (s. 83).

If the Secretary decides to register premises, he or she issues a certificate of registration that sets out, *inter alia*, any conditions to which the registration is subject, and the period for which the registration is granted (being two years or, if the Secretary considers it appropriate that the period be longer or shorter, the period specified by the Secretary) (s. 85).

The proprietor of a registered SRS must pay to the Secretary the prescribed annual fee payable. If the payment is not made on time, the SRS must also pay an additional fee of one half of the prescribed annual fee (s. 87).

The proprietor of an SRS may apply to the Secretary for the renewal of the registration of the establishment before the expiration of the registration. An application for renewal must be in the prescribed form and must be accompanied by the prescribed fee (or the prescribed fee and an additional fee of one half of the prescribed fee if the application is made within three months of expiration). The proprietor must give to the Secretary any further information relating to the application that the Secretary requests (s. 88).

The Act sets out criteria for renewal of registration (s. 89).

The proprietor of an SRS may apply to the Secretary for the variation of the registration of the establishment. An application must be in the prescribed form and must be accompanied by the prescribed fee. The proprietor must give to the Secretary any further information relating to the application that the Secretary requests (s. 92).

If a person ceases to be, or is appointed as, a director of (or other officer having control of) a proprietor that is a body corporate, the proprietor must within 30 days after the change occurs give the Secretary particulars of the change (s. 86).

If a proprietor of an SRS dies, a person who is, or persons who are, named as, or intends or intend to make application to become the legal personal representative or representatives of the proprietor, may, within 28 days after the death or such longer period as the Secretary allows, make application to the Secretary to carry on the establishment until the expiration of the period of 1 year after the death (s. 97).

The Act sets out provisions allowing the Minister to censure an SRS (ss. 100–102). The Act also sets out steps for the appointment of an administrator of an SRS (s. 103).

Substantial compliance burden

A person making an application for approval in principle, renewal or variation must, at the time of the application, give notice in writing of the application to any other person who has an interest in the land as owner or lessee (ss. 70, 88, 92).

The Secretary may in writing direct the proprietor of an SRS to comply with a prescribed standard relating to establishments of that kind or to the type of health care provided in the establishment. The proprietor of an SRS to whom a direction applies must comply with the direction (s. 105).

The proprietor of an SRS must provide prospective residents who seek information about the service with a document containing information in respect of prescribed matters (s. 106B).

The proprietor of an SRS must cause to be prepared in consultation with the resident and where appropriate, his or her relative or the resident's guardian or the resident's administrator, a written statement in an appropriate language of the nature of health services to be provided to that resident in the service, including nursing care, personal care and rehabilitation and other programs. The statement must include the prescribed information. The statement must be given to the resident within 48 hours after he or she becomes a resident and, if appropriate, to any relative of the resident or the resident's guardian or the resident's administrator or to any other person having an interest in the care of the resident. The statement must be signed by the proprietor as soon as practicable and signed and returned to the proprietor as soon as practicable after the statement is received by the resident (s. 106).

Within 48 hours after a person becomes a resident of an SRS, the proprietor of the service must cause to be prepared in relation to the resident a written document to be called the resident's interim care plan that includes the immediate health and special or personal care needs of the resident, and the services to be provided to the resident to assist with those needs (s. 106A).

Within 30 days after a person becomes a resident, the proprietor, in consultation with the resident and, if appropriate, a relative of the resident or the resident's guardian, must cause the resident's interim care plan to be reviewed and expanded into a written document to be called the resident's ongoing care plan that includes the ongoing health and special or personal care needs of the resident and the services to be provided to the resident to assist with those needs (s. 106A).

The proprietor must cause a resident's ongoing care plan to be reviewed and updated at least once every 6 months. If the resident's health and special or personal care needs change, the ongoing care plan must be reviewed and changed as necessary to meet those changed needs of the resident. The proprietor must ensure that any change to a resident's ongoing care plan is prepared in consultation with the resident and, if appropriate, a relative of the resident or the resident's guardian (s. 106A).

When so requested, the proprietor must cause a resident's interim care plan, ongoing care plan and any changes made to either plan to be available to the resident, the resident's guardian, staff at the SRS, or the resident's health service providers (s. 106A).

If the proprietor of an SRS is, or ought reasonably to be, aware that a resident of the service is in need of more health care than can be provided at the service, the proprietor must take all reasonable steps to ensure that the appropriate health care is provided to the resident (s. 107).

The proprietor of an SRS must, in accordance with the Regulations, take reasonable steps to ensure that residents are treated with dignity and respect and with regard to their entitlement to privacy. The proprietor must not accommodate a resident in any room of the service other than a bedroom (s. 108A).

The proprietor of an SRS must, in accordance with the Regulations, take reasonable steps to ensure that the personal hygiene of all residents is maintained at the best practicable level. The proprietor must ensure that all residents who require services or assistance to maintain personal hygiene are provided with an adequate range of services and assistance for that purpose (s. 108B).

The proprietor of an SRS, in accordance with the Regulations, must take reasonable steps to maintain adequate standards of storage, distribution and administration of residents' medication (s. 108C).

The proprietor of an SRS must ensure that food and beverages of adequate nutritional value and variety are supplied to residents in a form appropriate to the individual health needs of residents and in accordance with the Regulations (s. 108D).

The proprietor of an SRS must take reasonable steps to provide any assistance that is required to facilitate mobility and sensory function of residents. The proprietor must also take reasonable steps to ensure that any equipment used to facilitate mobility and sensory function of residents is maintained in good working order (s. 108E).

The Act sets out a number of matters that require a proprietor to notify a resident's next of kin (s. 108F).

The proprietor of an SRS must institute and operate a system, in accordance with the Regulations, to receive and deal with complaints from residents or complaints made on behalf of residents (s. 108G).

The proprietor of an SRS may manage or control an amount of money of a resident, being not greater than the prescribed amount, if the proprietor has written consent to do so from the resident or the resident's administrator. If the proprietor of an SRS manages or controls the money of a resident, the proprietor must keep a copy of the consent for that management or control, maintain an accurate and up-to-date record of any money that the proprietor manages or controls and any expenditure by the proprietor of any money on behalf of the resident, and ensure that records individually itemise each transaction made (s. 108H).

The proprietor of an SRS must keep the premises, facilities, furniture, fittings and equipment of the service in a proper state of repair, in good working order, in a clean and sanitary condition, and in accordance with the Regulations. The proprietor of an SRS must ensure that cleaning materials, disinfectants, flammable, poisonous and other deleterious substances are securely stored and clearly labelled (s. 108I).

The proprietor of an SRS must ensure that an electronic communications system to enable residents and staff to summon assistance is provided in the service in accordance with the Regulations (s. 108J).

The proprietor of an SRS must ensure that an adequate and safe supply of hot and cold water is provided in the service in accordance with the Regulations (s. 108K).

The proprietor must also ensure that adequate and appropriately trained staff are employed in the service in accordance with the Regulations. The proprietor must not appoint or continue to employ a person as a member of staff who is engaged in the special or personal

care needs of residents if that person has not attained the age of 16 years, is not a fit and proper person (having regard to guidelines issued by the Secretary in relation to the employment of persons in an SRS), or is not physically or intellectually capable of adequately performing the work required of him or her (s. 108L).

The proprietor of an SRS must cause to be kept in the prescribed manner and to be retained for the prescribed period the prescribed particulars of persons who receive care in the SRS and the type of care received, and staff employed in the SRS. A person must not during the prescribed period destroy or damage any record kept for these purposes. The proprietor of an SRS must cause to be kept a list of current residents and corresponding room numbers and a current staff roster. Any record kept must be in a format that is readily accessible for inspection by an authorised officer or a community (residential services) visitor (s. 109).

The Health Services (Supported Residential Services) Regulations 2001 set out the prescribed forms, fees and other matters relevant for the regulation of SRS under the Health Services Act. Under the Regulations the proprietor must:

- display the current certificate of registration and any conditions to which the registration is subject in a prominent position within the SRS (r. 12)
- ensure that at least 1 up-to-date copy of the Act and the Regulations are kept in that service and that they are readily available for the use of staff, residents and visitors at all times (r. 13)
- take reasonable steps to ensure that a resident has access to his or her choice of health service providers (r. 14)
- take reasonable steps to provide personnel and facilities to enable residents to engage in a range of activities designed to maintain a reasonable quality of life or arrange and coordinate the provision of those activities for residents; and give all residents the opportunity and assistance necessary to participate in those activities (r.16)
- take all reasonable steps to provide a home-like environment for residents (r. 22)
- maintain the temperature of the service premises at a level that provides reasonable comfort to residents (r. 23)
- provide and operate sufficient lighting in passages, stairways, bathrooms, shower rooms and toilets to allow residents and staff to move safely around the service premises (r. 24)
- provide and maintain a first aid kit for use at the service (r. 25)
- ensure that grab rails are provided in each toilet, shower room and bathroom for the safety of residents (r. 26)
- ensure that every resident has access to a bedside light in addition to the general room lighting (r. 27)
- ensure that every bedroom is equipped with sufficient general purpose power outlets to accommodate electrical appliances and to obviate the need for extension leads (r. 28)
- ensure that a sketch plan of the service building is located in an accessible position and clearly indicates the position of all rooms, the number designated to each bedroom and the name of the persons that are accommodated in each bedroom, and is amended to reflect any relevant changes (r. 29(1))

- ensure that each bedroom in the service building is clearly marked with a number corresponding to the designated number on the sketch plan (r. 29(2))
- ensure the communications system enables calls to be made from each bedroom, toilet, shower room and bathroom of the service and be operational at all times (r. 31)
- ensure that resident's choices in relation to food and beverages are taken into consideration in menu planning, meals are provided at appropriate intervals allowing adequate time for meals and between meals, meals are adequate in quantity and taste, and residents have ready access to adequate supplies of potable water and other appropriate beverages (r. 21).

The Regulations also set out further particulars that are required to satisfy the legislative requirements in relation to maintenance and cleanliness of SRS (r. 30), privacy, dignity and security of residents (r. 17), personal hygiene of residents (r. 18), medication prescribed for residents (r. 19), complaint procedures (r. 37), information for prospective residents and other interested persons (r. 38), residential statements (r. 39), resident records (r. 40), and staff records (r. 41).

The current Regulations impose compulsive and prohibitive obligations on SRS in relation to employees:

- An SRS must employ a person in the position of personal care coordinator who, on behalf of or in coordination with the proprietor, is to be responsible for the coordination and continuity of the special or personal care provided in the service. A personal care coordinator must have been awarded a Certificate III in Community Services (Aged Care Work) by a TAFE college or other institution in Australia, or have been awarded a Certificate III in Community and Health Services, Personal Carer by a TAFE college or other institution in Australia, or hold a qualification that has been certified as equivalent to either of these certificates. The personal care coordinator must be employed full time for not less than 38 hours a week (or two part-time personal care coordinators whose combined hours of employment are not less than 38 hours per week). A registered medical practitioner or nurse may be the personal care coordinator, as may be the proprietor if appropriately qualified (r. 33).
- A proprietor must ensure that during the day at least 1 special or personal care staff member, who may also be the person who is employed as the personal care coordinator, is employed and on duty for each 30 residents or fraction of 30 at the service, and if necessary, additional special or personal care staff are employed to ensure that the special or personal care requirements of each resident are fully met in a timely manner (r. 35).
- A proprietor must ensure that at night at least 1 special or personal care staff member is employed and available at the service to meet any special or personal care circumstance that a resident or residents may require, if necessary, additional special or personal care staff are employed to enable the premises to be inspected as often as is required to ensure the safety of the residents of the service (r. 35).
- If necessary, the proprietor must ensure that additional support staff are employed to assist in the proper functioning of the service and to ensure that the special and personal care staff are not unduly hindered in their provision of the timely and individual care needs of each resident (r. 35).

If the employment of a personal care coordinator is terminated or a personal care coordinator resigns, the proprietor of an SRS must notify the Secretary within 7 days and employ a new personal care coordinator within 12 weeks. The proprietor of an SRS must employ an acting personal care coordinator during any period when there is a vacancy in the position of personal care coordinator, or a personal care coordinator is on leave or unable to perform adequately the physical or intellectual work required of a personal care coordinator (r. 34).

The Act sets out certain offences in relation to SRS.

The Act also establishes a statutory role for the community visitors in visiting SRS, inquiring into matters regarding the services provided and also investigating complaints (Part 5 of the Act), and establishes administrative arrangements for the monitoring and enforcement of the regulatory scheme (Part 7, Division 3 of the Act).

An SRS is also subject to a range of other legislation including food and safety, occupational health and safety and others including the *Food Act 1984*; *Health Records Act 2001*; *Drugs, Poisons and Controlled Substances Act 1981*; Health (Infectious Diseases) (Notification) Regulations 1998; *Information Privacy Act 2000*; *Occupational Health and Safety Act 2004*; *Building Act 1993*, and Building Regulations 2006.

Attachment B

REVIEW OF THE CURRENT REGULATORY FRAMEWORK

SRS have been subject to regulation in a general form since 1973, as ‘special accommodation housing’ – boarding houses accommodating those aged 60 years and over with physical and psychiatric disabilities. The current regulatory focus has evolved from a focus on the characteristics and needs of residents to the services they provide. Since 1988 SRS have been defined and regulated in accordance with the *Health Services Act 1988* (‘the Act’).

The current model of SRS regulation is based on a broad definition of SRS and a set of principles guiding how those services are provided, coupled with more detailed minimum requirements for those services. The same provisions apply to all services, regardless of their size, clientele, revenue or location. The current regulatory scheme requires SRS proprietors to be registered, sets minimum standards regarding physical premises, staffing and care provision, and establishes mechanisms for monitoring, investigation of complaints and enforcement of regulation. In regulating SRS, the Act:

- sets out requirements for SRS proprietors to register the premises, and to satisfy certain criteria about their personal and financial suitability to operate an SRS, with registration generally for a two-year period, after which it must be renewed, satisfying the same requirements
- sets out requirements regarding the physical premises, staffing, financial management, provision of certain services and protection of certain personal rights (e.g. privacy, dignity and security).

The Health Services (Supported Residential Services) Regulations 2001 set out the prescribed forms, fees and other matters relevant for the regulation of SRS under the Act.

The Act also establishes a statutory role for the community visitors in visiting SRS, inquiring into matters regarding the services provided and also investigating complaints, and establishes administrative arrangements for the monitoring and enforcement of the regulatory scheme. The Act sets out certain offences in relation to SRS.

SRS are also subject to a range of other legislation including food and safety, occupational health and safety and others including *Food Act 1984*; *Health Records Act 2001*; *Drugs, Poisons and Controlled Substances Act 1981*; Health (Infectious Diseases) (Notification) Regulations 1998; *Information Privacy Act 2000*; *Occupational Health and Safety Act 2004*; *Building Act 1993*, and Building Regulations 2006.

New regulatory framework

As SRS regulation is to protect the wellbeing of SRS residents, while supporting the viability and sustainability of the SRS sector, consultation was a critical element of the review process. In May 2008, in view of the evolving nature of the sector, the Minister for Community Services released a discussion paper to highlight key issues with the current SRS regulatory scheme and to seek input from stakeholders. Feedback was provided by residents of SRS, their families, SRS staff and proprietors. The Department of Health also ran a number of public consultation forums across Victoria.

Five main principles guided the review: effectiveness, fairness, accessibility, flexibility and efficiency.

The review of the SRS sector reassessed the types of facilities that should be subject to SRS regulation, and how the regulatory scheme could be made clearer and more flexible to accommodate emerging trends. Areas of review included:

- the regulation of residents who own their own room or premises compared with those who rely on a proprietor for both their accommodation and support
- the broad nature of the definition of SRS, and whether a wide range of supported accommodation could be defined under the Act
- the scope of activities that should be subject to SRS regulation, in particular those governing the provision of care
- the parity between residents in SRS and other tenants in the community.

The review also sought to make sure SRS regulation is compatible with other government policy and legislation, including the *Victorian Charter of Human Rights and Responsibilities* and the Reducing the Regulatory Burden initiative.

The information gathered through the review process was collated and analysed and led to the new regulatory regime set out in the *Supported Residential Services (Private Proprietors) Act 2010*. The new Act streamlines the administration and regulation of SRS, makes it easier to use and understand, strengthens occupancy rights, strengthens financial protections, promotes staff capability, introduces outcome-based standards, strengthens reporting of serious incidents and introduces new enforcement mechanisms.

As part of the preparation of the new Act, a detailed cost-benefit analysis was undertaken in accordance with the *Victorian Guide to Regulation*. The analysis concluded that, against the criteria of effectiveness and cost, the preferred option was to streamline administrative processes for proprietors while enhancing resident protections and information. The new Act reflects this conclusion.

Following the legislative review of SRS in 2008, the *Supported Residential Services (Private Proprietors) Act 2010* was developed. The new Act will remove the regulation of SRS from the Health Services Act. It was given Royal Assent on 24 August 2010. The Act has not yet been proclaimed to commence operation; however, if not proclaimed beforehand, it will commence operation on 1 July 2012. Once commenced as an Act, it will establish a regulatory framework for SRS in its own legislation. The Act will set out:

- a clearer definition of an SRS to provide certainty on application of the legislative framework
- a system for the registration of SRS: upon approval of application, the registration continues indefinitely until revoked (the Act sets out processes for the variation, alternation and cancellation of registration, changes in directors and officers, maintenance and inspection of the SRS register)
- information to be provided to prospective residents, and included in residential and services agreements
- general provisions in health and support standards, medication, staffing, complaints, reporting and records

- regulation of the SRS's management of money and property of residents
- processes for notices to vacate
- monitoring and enforcement of the Act and Regulations
- the role and functions of community visitors.

Compared with the existing Act's provisions, the new Act will:

- remove the need to seek approval in principle
- clarify the definition of an SRS
- provide that registration continues indefinitely, removing the need for renewals (including renewal fees)
- remove of the annual fee paid by SRS
- clarify and make small additions to the information SRS must provide to prospective residents and include in residents' agreements
- streamline the requirements in relation to health and support standards and medication management, including moving to a performance-based approach
- provide greater direction on required elements of the complaints system
- introduce new requirements for reporting of incidents, notices to vacate, and new limitations on requesting and accepting payment from residents in relation to establishment fees, reservation fees, fees in advance, and security deposit
- create a new registration statement to be used in certain situations
- require new information in relation to an application to cancel a registration
- require employment of a manager if the proprietor is not ordinarily on site to undertake day-to-day operations (the Secretary must approve appointments of a manager, and has the power to cancel an appointment)
- require the proprietor to ensure that a criminal record check is undertaken for all employed staff.

The provisions of the new Act were subject to a Business Impact Assessment that concluded that the new Act would result in a net cost saving to proprietors and government (compared with the existing Act), while at the same time delivering enhanced resident protections.

The Department of Health is responsible for monitoring compliance of SRS providers within the SRS regulatory scheme. Each regional office has authorised officers, whose role is to inspect SRS and ensure compliance with all requirements of the legislation and Regulations. The department is also allowed to investigate and prosecute serious breaches of the Act, and impose restrictions on the condition of registration of an SRS to ensure compliance with the Act and Regulations. Community visitors are also allowed, under the Act, to undertake an inquiry role. These volunteers are appointed to inquire into the standard of facilities and care provided by SRS to residents, and to receive complaints from residents and follow these up.

Attachment C

METHODOLOGIES AND COST ASSUMPTIONS

Approach to assessing the proposed Regulations

The decision criteria implied by the *Subordinate Legislation Act 1994* is that the benefits of a proposal should outweigh the costs, and that the preferred option is that which results in the largest net benefit.

Every effort was made to identify and quantify the costs and benefits imposed by the proposed Regulations. As far as possible, likely costs were identified and a present value of the costs was calculated. This allows future costs and benefits to be examined in terms of today's dollar value.

Given the difficulty in measuring the intangible and tangible costs and benefits associated with the options, this RIS uses a number of methodologies to inform its assessment of viable options. The present value discounted cash-flow technique is used to measure the likely administrative costs; however, the benefits of the proposals proved difficult to quantify. The department recognises that the benefits of the proposed Regulations relate to the protection of people, including their privacy and integrity, amenity and safety. The value placed on these benefits is inherently subjective. Whether the achievement of the intended benefits justifies the costs of the Regulations therefore requires policy judgement.

To assist this, the multi-criteria analysis (MCA) assessment tool has been used to compare the costs and benefits of the viable options. MCA involves identifying assessment criteria relevant to the intervention objectives, weighting these criteria, and scoring alternative options against these criteria. An overall score is derived by multiplying the score assigned to each measure by its weighting and then summing the result. The option with the highest score represents the preferred approach.

The weightings used in the MCA method reflect the 'value' placed on each criterion. In cases of regulation based on desired social and equity outcomes, there is no objective basis for determining the extent of benefits and whether the benefits outweigh the costs. It is a matter of policy that governments, through consultation with the community, assign a value to the achievement of certain social outcomes. These values are necessarily subjective.

The proposed Regulations and identified alternative approaches are scored relative to a 'base case', which is scored zero. A score of plus 10 (+10) means that the option fully achieves the objectives; a score of minus 10 (-10) means that the proposal does not achieve any of the objectives. The 'base case' describes the legislative and regulatory position that would exist in the absence of the proposed Regulations. While the base case is not an alternative, it is necessary to establish this position in order to make a considered assessment of the incremental costs and benefits of the proposed Regulations and identified alternatives.

General assumption

The real discount rate used in this RIS is 3.5 per cent. In doing so, the RIS adopts the rate published in the *Victorian Guide to Regulation* (Appendix C, p. 19). The discount rate of 3.5 per cent was used over a 10-year period (i.e. the life of the Regulations in Victoria). Cash flows are discounted to a 'Year 0', being the commencement of the proposed Regulations

(which will coincide with the proclamation of the Act). However, as current values of time costs and other costs are used in calculations, the present value numbers presented represent effective 2011 equivalent values.

For all projections, the number of SRS and the number of residents is assumed to remain stable over the next 10 years.

Assumptions for information obligations

The RIS has made assumptions about the time requirements (in hours) of complying with the proposed Regulations and alternative options, based on departmental experience and an activity-based approach to each type of application. The estimated time cost of each activity is estimated as follows:

Activity	Estimated time (hours)	
	Proposed Regulations	Current Regulations
Provide SRS/applicant information	0.15	0.1
Provide manager declaration	0.08	–
Provide body corporate details	0.08	0.05
Provide suitability information	0.65	0.25
Provide details of any sanctions, conditions or restrictions imposed, or external administration	0.15	0.15
Provide business information such as business experience, evidence of right to occupy, copy of agreement*	0.85	0.5
Provide business plan, balance sheet, income statements, cashflow statements, staff roster [#]	0.85	0.5
ASIC extract, registered business office, financial/director's report	0.15	0.1
Provide copy of building drawings, planning permits, building and occupancy permits, declaration by surveyor	0.65	0.50
Authority to secretary/statutory declaration	0.08	–
Cancellation information	0.50	0.33
* For list, see Schedule 1 part 3 of proposed Regulations		
[#] For list, see Schedule 1 part 5 of the proposed Regulations		

The times indicated in the above table are departmental estimates based on experience in dealing with the sector since regulation of the sector began. These have not been verified with proprietors. While the requirements of the proposed Regulations are different to current arrangements, proprietors and other stakeholders are invited to comment on these assumed values. The department has assumed that the documents to be provided with

applications already exist for other purposes (e.g. to meet other regulatory requirements, such as building, planning and occupancy permits or could be expected to be part of normal business operations for an SRS, irrespective of size), and therefore the costs relate primarily to collating this information. Even a proprietor of a small SRS with 20 residents would be expected to have documentary evidence of the right to occupy a building such as a lease or contract of sale, and be expected to have undertaken some business planning such as research about the needs of the target group and the types of services to be provided, the type of staff required to provide those services and a projected budget over at least 2 years, in order to satisfy himself/herself that the business was a going concern. The unique nature of an SRS business in providing residential support to a mix of vulnerable residents on a 24-hour basis, means several staff would need to be employed to cover the time period and some way of documenting who was working at what time and what services were to be provided would have to be in place, if only to ensure that staff knew what they were expected to provide to particular residents. However, there are very few SRS of this size given the economies of scale, the average size of SRS applying for registration over the last 2 years is 35 beds and these larger services are even more likely to have such business documents already on hand.

The following estimates have also been made by the department in the costing of the options based on current data, departmental experience and projections under the new arrangements (estimates averaged over a 10-year period):

- the number of applications for registration of new SRS is 2 per year
- the number of applications for registration involving a change of ownership is 23 per year
- one-third of SRS have day-to-day managers who are not the proprietor and will require assessment of the manager under the Act
- approximately three-quarters of SRS proprietors are bodies corporate
- there are 5 applications for variation of registration each year (this RIS has assumed 4 variations to increase bed numbers and 1 variation of SRS registration conditions)
- there are 4 applications for building alternations or extensions per year
- there are 4 applications per year for a new director or officer, 1 application over 10 years for a legal personal representative (or other) to carry on an SRS
- 50 applications for approval of managers when the new Regulations commence, and then 5 applications per year
- there are 27 cancellations of registration per year (23 relate to a corresponding registration for a change of ownership).

As a proxy for valuing an hour of a person's time (HR_x) the following formula is given in the *Victorian Guide to Regulation*:

$$HR_x = (AE_x \times OO_x) / (AW_x \times AH_x)$$

where:

AE_x = average weekly earnings (trend full-time, adult, total earnings in Victoria) multiplied by 52 weeks

AW_x = number of weeks worked per annum (44 weeks)

AH_x = average weekly hours for full-time workers (41 hours)

OO_x = multiplier for on-costs and overhead costs (1.75)

See *Victorian Guide to Regulation* (Appendix C, pp. 12–15). Using data from February 2011 in ABS Cat 6302.0 – *Average Weekly Earnings, Australia*, released 18 November 2010, (full-time, adult, total earnings in Victoria of \$1,286 per week) in the above formula gives an hourly

rate of \$64.87. Consultation with proprietors at a proprietors' forum indicated this was a broadly reasonable value to use.

Direct (financial) costs have also been included as follows:

Activity	Cost
Criminal record check	\$32.50
Postage per application	\$1.20
Photocopying	
- general application	\$10
- including building info	\$20
Cost of Act	\$18.65
Cost of Regulations*	\$12.20

* based on current Regulations at State Government Bookshop. Price of new Regulations will not be known until made. The costs for the Act and Regulations is effectively an upper limit, as they may also be downloaded and printed for lower cost.

The department estimates that currently, the Secretary requests additional information in around 95 per cent of cases, with 50 per cent requiring 2–3 separate requests. Each request for information is assumed to take *on average* 1.5 hours to respond. (The number of requests and time to respond will in fact vary depending on the type of application.) This indicates an average cost per application of \$165.42 (using the above proxy time value of \$64.87 per hour). With 43 applications per year, this indicates a total cost to the SRS sector of \$7,130 per year, or \$59,294 over 10 years (present value). The process of requesting further information also has a cost on the department, which must document the required information, write to the proprietor, and re-assess the application when the further information is provided. This is estimated to cost 1 hour of time for the department, or \$96.16 for each additional request. This is a total cost to government of \$7,045 per year, or \$58,595 over 10 years (present value).

The department anticipates that under the proposed Regulations, which have been designed to streamline processes and be clearer about the information needed, there will be fewer additional requests from the Secretary, needing less time for applicants to respond. This RIS assumes that additional requests for information will still be needed in 50 per cent of cases, with 25 per cent involving two requests. Time to respond is estimated at 1 hour on average. This indicates an average cost per application of \$56.76, and a total cost to the sector of \$2,446 per year, or \$20,346 over 10 years (present value). The corresponding costs to government from managing the requests are estimated to be \$3,626 per year, or \$30,160 over 10 years (present value).

It was difficult to estimate costs to SRS and government of responding to additional requests if there were no regulations in place at all to guide applicants. Based on the types of requests that are currently made under the existing system, the department estimates that without any regulations, an average of 3 requests for additional information would need to be made for each application before the Secretary could be in a position to make a decision. Each request is expected to require 1.5 hours of the applicant's time to respond and an hour of departmental time to managing the request and response. Overall, in the absence of any regulations, the costs to applicants of responding to requests for further information are estimated at \$12,582 per year, or \$104,636 over 10 years. The costs to the department are estimated at \$12,433 per year, or \$103,404 over 10 years.

The benefits of the current and proposed Regulations as presented in this RIS reflect the cost saving of each option against the base case of no regulations. Summarising the above information indicates cost savings as follows:

Cost savings of regulations related to applicant information

	Total cost (per annum)	Total cost (10-year present value)
Current Regulations		
<i>Saving to applicants</i>	\$5,452	\$45,342
<i>Saving to department</i>	\$5,388	\$44,809
TOTAL	\$10,840	\$90,151
Proposed Regulations		
<i>Saving to applicants</i>	\$10,136	\$84,290
<i>Saving to department</i>	\$8,807	\$73,244
TOTAL	\$18,943	\$157,534

Registration statements

There are assumed to be 3.5 registration statements required per year. The department recognises that requesting information (either under the Act as a registration statement, or by other type of request) imposes a new cost to proprietors, and as such will adopt a policy to request registration statements relatively infrequently – in general a trigger, such as a report of changes in proprietor, will be used as the basis for the statement. The department estimates that this is likely only 3 or 4 times per year.

For each registration statement, the department estimates, based on the above tables for the SRS applications, that the time to compile and send the information will be 48 minutes for a non-body corporate SRS and 53 minutes for a body corporate SRS. This is an average based on a departmental assumption that 2.5 of the registration statements per year will involve no more than completing a template form provided by the department indicating whether a change has occurred (20 minutes). Longer time has been assumed for 1 statement per year that would require preparation of relevant information (2 hours per statement; this relates primarily to the required suitability information). Postage of \$1.20 has also been included.

In the absence of regulations, an indicative cost of 1 hour per request for information has been assumed. This additional time takes account of costs to the department to request the information and to follow up when not provided, and the uncertainty and extent of what information may be requested (without knowing in advance, SRS may take more time to locate the relevant information, or may anticipate more information than is required).

Complaints

The estimated costs for complaints reflect the following assumptions:

- Annual review of complaints would take 1 hour per SRS on average. This is because the review does not involve reviewing outcomes or handling of complaints, but only to confirm that complaints are being resolved in a timely way and identifying any patterns of complaints in the SRS or with particular residents. This time was costed at \$65 per hour (see above), reflecting that this task will be done by the proprietor.

- In relation to the recoding of complaints, the department estimates that there would be on average 4 complaints per SRS per year. The department estimates that each complaint would take 30 minutes to seek information and record details. This is most likely to be done by a Certificate III level staff member, and as such an hourly wage cost of \$18.06 (see below for staffing assumptions) has been used.

Medications

In relation to the compliance costs of recording the administration of medications:

- It was assumed that on average each SRS would spend 20 hours per year recording the information. This was calculated as the average number of patients receiving medications at each SRS (10), times the average time to record the required information (10 seconds per event), times the average number of medication administrations per day (2), times 365 days per year. These are departmental estimates. The time taken to record the information recognises that the scheduled administration of medications will already be documented, meaning that SRS staff need only indicate that this administration has occurred.
- A wage rate of \$18.06 per hour has been used to value this time, based on the current rate set under Level 4, Health Professionals and Support Services Award 2010.

For the purpose of deriving an indicative cost of requiring medications to be stored in a lockable cabinet, the department has assumed that half of all SRS would require to purchase a lock for an existing cabinet (estimated at \$50), while half would require purchase of a new cabinet with a locking function (estimated at \$99). The department recognises that some SRS would already have lockable cabinets in place, although this has not been included in the costings. The cost estimate therefore reflects a conservative estimate, or an upper probably limit, on the additional costs of this requirement. The price estimates were based on a survey of items generally available on Australian retail websites.

Staffing assumptions

In relation to staff first aid requirements, the costings are based on the following:

- The number of staff to have first aid qualifications varies depending on the size of the SRS – 2 staff for small SRS, 3 staff for medium and large SRS (there are 12 small, 56 medium and 107 large SRS) in order to meet the proposed regulation. This is an estimated total of 513 staff to have first aid training.
- 80 per cent of these staff positions (410) would be filled by staff that already have these qualifications, either as a business as usual practice of the SRS or under OH&S legislation. This is a departmental estimate based on feedback from proprietors. Evidence from submissions to the review and subsequent consultations with a sample of proprietors for this RIS indicate that a significant proportion, SRS already employ staff with first aid qualifications. Most recently, a forum of proprietors from around 30 SRS suggested that all SRS would already have a first aid person on staff; however, this is unlikely to be universal across all SRS.
- The requirement is met for the remaining 20 per cent of people to be qualified in first aid (103) by the SRS paying for first aid training costs.
- The first aid course (which includes the CPR component) is completed every 3 years and the additional CPR course is updated annually in the 2 intervening years. For modelling, it is assumed that there is an equal distribution of attendees for the first aid course each year, therefore in any one year, of the 103 staff receiving training due to the proposed Regulations, there will be 34 additional people undertaking the first aid course and 69 people completing the CPR update.

- Course costs are estimated at \$220 for first aid (including CPR) and \$75 for CPR update (based on St John's Ambulance rates in 2011).
- Backfill rate of \$18.06 per hour (based on Level 4, Health Professionals and Support Services Award 2010); 15.2 hours for first aid and 4 hours for CPR refresher.

In relation to PSC qualifications, which are the same cost under the proposed Regulations as under the current Regulations, the costings are based on the following:

- 50 per cent of SRS would employ a 'coordinator' type person with qualifications to at least Certificate III as part of business as usual practice. This was reported by many proprietors, who are often the PSC, throughout the consultation since 2008.
- For the other 50 per cent of SRS, the requirement is reflected in the wage differential between an 'unqualified' person (wage taken at \$17.17 per hour based on the Level 2, Health Professionals and Support Services Award 2010) and the hourly rate of \$18.06 per hour for Certificate III (Level 4, Health Professionals and Support Services Award).
- 38-hour week, with 9 per cent superannuation and 3.5 per cent average WorkCover costs (no payroll tax has been included as most SRS are small).
- 4 weeks' leave per annum.
- The qualifications have been expanded from the current Regulations, and therefore there is no additional cost on SRS compared with the current situation. (In fact, the expansion of the qualifications should make it easier for SRS to find people to fill this role.)

Assumptions related to training requirements for PSC:

- 289 PSCs would be required to complete the training (reflecting the current number of PCCs – some SRS share the role; all PSCs will be required to undertake the training).
- The 40 hours training over three years is assumed to be spread evenly over time.
- Backfill rate of \$18.06 per hour; backfill is only required for half of the training time – many courses provided by a registered training organisation at Certificate II and IV level may be done on the job; some training may also be completed outside the 38 hours required for a PSC to be on duty. Therefore, the department applied a conservative estimate that 50 per cent of training will require backfill of staff.
- Training costs of \$50 per hour. While tuition fees vary considerably, it is noted that there are a number of training courses provided free of charge (including by the department) that could be used to make up the required 40 hours. For example, in 2010–11, the department provided almost 15,000 person hours of relevant training free of charge, well in excess of the 3,853 hours required for all PSCs per year (the department's training is not limited to PSCs).

Additional assumptions for requiring qualified staff at weekends are:

- 50 per cent of SRS already have weekend staff that would meet this new requirement. This estimate was confirmed by a sample of proprietors attending a forum in May 2011 as a reasonable assumption for the sector.
- 17.17 per hour for 'unqualified' staff (Level 2) and \$18.06 per hour for Certificate III (Level 4), based on the Health Professionals and Support Services Award 2010.
- Weekend rates of 1.5 times the normal wage.
- 15.2 hours per weekend.
- Pro-rata of full-time equivalent 4 weeks' leave per annum.
- A reduction of 50 per cent has been applied based on feedback from proprietors: in the absence of the proposed Regulations, the Act requires adequate staff on duty to meet the needs of residents. Many weekend staff would already have Certificate III level qualifications (the staff on duty on the weekend is often the proprietor).

Value of a statistical life

The undesirable outcomes in relation to SRS residents are serious injury and/or inadequate sustainment of wellbeing. These are very difficult to quantify.

Broad estimates are available for the 'value of a statistical life' (VSL), which attempts to place a value on a death avoided. The VSL refers to the benefits derived from reducing risk of a death that is experienced by a population. The term 'statistical' is used to describe an ex-ante, anonymous individual, and the concept does not imply that an individual life is a market good. It is not a measure of the value of life in general or the value of any particular life. It is purely a statistical tool to assist in judging whether policies are likely to be beneficial. A related measure is the value of statistical life years (VSLY), which is the equivalent marginal dollar value of a year of healthy human life.

The Victorian Competition and Efficiency Commission suggests a value for VSL and VSLY consistent with that published by the Commonwealth Office of Best Practice Regulation (OBPR). The most recent OBPR-published advice¹¹ recommends using the estimate of \$3.5 million for the VSL and \$151,000 for the VSLY (both of these are measured in 2007 dollars). In 2011 dollars (indexed by CPI), these figures are \$4 million for VSL and around \$172,000 for VSLY. The relation between VSL and VSLY uses a discount rate of 3 per cent over an estimated 40 years remaining life expectancy.

This value is an 'average' and does not take into account any particular risk preferences, health characteristics, background, age or socioeconomic status.

Allowing for the different circumstances of residents of SRS, VSLY is taken to be \$86,000, about half of an average healthy adult, while total VSL is assumed at \$734,000, reflecting a likely shorter life expectancy of 10 years on average.

While this estimate has been used in this RIS, it is noted that this is considered to represent the most conservative estimate – that is, the minimum benefit achieved. A larger meta-analysis of estimates of VSL by the Australian Safety and Compensation Council¹² recommended an average VSL of \$6.0 million in 2006 dollars, with sensitivity analysis suggested at \$3.7 million and \$8.1 million. This equated to an average VSLY of \$252,014 (\$155,409 to \$340,219), using a discount rate of 3 per cent over an estimated 40 years remaining life expectancy. This study also found that the empirical evidence appears inadequate to robustly stratify the average VSLY on the basis of age.

¹¹ OBPR, *Best Practice Regulation Guidance Note: Value of statistical life*, at www.finance.gov.au/obpr/cost-benefit-analysis accessed October 2011.

¹² ASCC, *The Health of Nations: The Value of a Statistical Life*, July 2008.

Attachment D

FEES: COST RECOVERY GUIDELINES AND FEE CALCULATIONS

The *Cost Recovery Guidelines* set out 10 steps to consider when setting fees. These steps are set out in the table below, together with a brief summary of the department's consideration of each step in accordance with the guidelines.

Step	Issues to be addressed	Departmental consideration
APPROPRIATENESS OF COST RECOVERY		
1	Is provision of the output or level of regulation appropriate?	The Regulations are the minimum necessary to meet the needs of the community and achieve the government's objectives.
2	What is the nature of the output or regulation?	The regulation is to ensure only appropriate proprietors operate SRS, and that they meet appropriate standards, in order to protect the wellbeing and safety of residents.
3	Who could be charged?	Potential parties to be charged are SRS proprietors or SRS residents. As the costs to government are directly linked to decisions of SRS proprietors, the department considers it appropriate that fees be levied on proprietors rather than residents. Further, the Act provides only that fees may be prescribed to charge on proprietors.
4	Is charging feasible, practical and legal?	Charging of fees is feasible and practical as it can be administered as part of the application processes. This also minimises transaction costs. The Act provides that fees may be prescribed. The fees are relatively low and as such noncompliance with registration requirements is expected to be minimal.
5	Is full cost recovery appropriate?	No – see the remainder of this attachment.
COST STRUCTURES AND NATURE OF CHARGES		
6	Which costs should be recovered?	The cost base for the purposes of assessing recovery is based on the incremental costs associated with the Department of Health administering the Act as it relates to processing applications and other information provided by SRS proprietors. Direct and indirect costs are included on a marginal cost basis. An activity-based costing method was used to determine the fee for each individual activity.
7	How should charges be structured?	The department does not consider it necessary to spread payment of fees over a longer period to support cashflow, investment, innovation or competition considerations. No cross-subsidisation is proposed. The fees are structured as a single fee for each type of activity, and are therefore the simplest structure.
8	Are cost-recovery charges based on efficient costs?	The combined effect of the Act and the proposed Regulations will be to significantly streamline registration and applications activities, reducing the overall costs of regulation and reducing the total amount of fees required to be paid by SRS. As the proposed fees are based on a partial cost-recovery basis, ongoing costs to the department will ensure continued incentive to keep costs efficient.
IMPLEMENTATION FEATURES		
9	What is the importance of consultation?	Consultation of fees is occurring via this RIS process.
10	How should cost-recovery arrangements be monitored and reviewed?	Requirements about the review of existing cost-recovery arrangements are stipulated in the Standing Directions of the Minister for Finance under the <i>Financial Management Act 1994</i> . These directions require the Chief Financial and Accounting Officer of the department to document, approve and annually review the level of charges levied by the department for the goods and services it provides. The department will monitor the impact of the proposed fees.

As stated in the *Cost Recovery Guidelines*, regulatory fees and user charges should generally be set on a full cost-recovery basis; however, if it is determined that full cost recovery is not consistent with other policy objectives, then it may not be appropriate to introduce a full cost-recovery regime. Consideration may be given to a regime of partial cost recovery (if it can be demonstrated that a lower than full cost recovery does not jeopardise other objectives) and/or to rely on other funding sources (e.g. general taxation) to finance the government activity.

Accordingly, where social policy or equity considerations are considered to outweigh the efficiency objectives associated with full cost recovery, and/or where full cost recovery might adversely affect the achievement of other government policy objectives, partial or zero cost recovery is to be considered. Therefore, proposed feasible fees options were considered:

- option A – full cost recovery (relevant fee based on 100 per cent of the average costs, both direct and indirect)
- option B – partial cost recovery (the proposed fees ranging from 13 to 23 per cent of full cost recovery)
- option C – zero cost recovery (this option is effectively the ‘base case’ because if the proposed fee regulations are not remade then no fees would be prescribed).

Multi-criteria analysis (MCA) was used to assess the preferred fee option. Reflecting the government’s *Cost Recovery Guidelines*, the criteria used were:

- efficiency – fees set at a level to promote the efficient allocation of resources
- effectiveness – fees set at a level to achieve the government’s policy objectives
- equity – fees set at a level to promote the sharing of costs and benefits across society.

Accordingly, the ‘efficiency’, ‘effectiveness’ and ‘equity’ criteria were each assigned a weighting of 33 per cent, reflecting their overall importance in achieving the government’s policy objectives in relation to fee setting.

Option A: full cost recovery

The *Cost Recovery Guidelines* state that the general government policy is that regulatory fees and user charges should usually be set on a full cost-recovery basis. In this case, full costs represent the value of all the resources used or consumed in the provision of registration, and the associated monitoring and compliance arrangements.

A departure from full cost recovery would result in the Victorian community providing a small subsidy to the SRS sector. However, full cost recovery may deter some individuals from participating in the sector if the perceived benefits of fees do not outweigh the fee costs. In general, fees will be passed on to residents or, in the case of pension-level SRS, more likely result in inferior services being provided (in both quality of services and number of SRS beds available). This also has implications for the overall effectiveness of the government’s approach to SRS, as higher costs or lower service to residents is likely to place additional pressure on the state care system, or worse, lead to people without suitable accommodation.

Given that full cost recovery is the most economically efficient option for fee levels and fully achieves the government’s objective on efficiency grounds, a maximum score of 10 is assigned to this criterion. In terms of ‘effectiveness’, if fee levels are set too high it may result in noncompliance. There is a risk that this could jeopardise the government’s policy objective of promoting protection and safety. Given the overall level of the fees, this is considered unlikely (based on current experience); however, a score of 6 is assigned to take account of this risk. A score of –10 is assigned to the equity criterion because the fees are not based on a person’s or business’s ability to pay (known as ‘vertical equity’), and reflects that SRS provide services that predominantly provide benefit to residents, and reduce pressure on other types of care and services. This results in a net score of +2.0.

Table G.1: Multi-criteria analysis of option A (full cost recovery)

Criterion	Weighting	Assigned score	Weighted score
Efficiency	33%	10	3.3
Effectiveness	33%	6	2.0
Equity	33%	–10	–3.3
Total	100%		+2.0

Option B: partial cost recovery

In terms of the level of the ‘discount’ appropriate for a partial cost-recovery option, the department has had particular regard to the position of pension-level SRS. Differential fees for different types of SRS are not feasible as there is no legal distinction between the types of SRS (at registration, there is no condition as to how many beds they must provide to different types of residents). Therefore, the setting of fees necessarily must consider the most marginal SRS, as these are the ones that are also most likely to withdraw from the sector if costs increase.

In terms of barriers to entry, establishment costs can vary considerably, but it is possible for there to be very low start-up costs; for example, a house with a few spare rooms can easily register to take in a few residents. In this case, a registration fee of almost \$600, on top of the administrative costs of making an application, is quite significant. The department does not have any reliable information on SRS profitability, so it is unknown how long it would take a small pension-level SRS to recover this amount.

Partial cost recovery seeks to balance the efficiency objective against the equity objective, while ensuring that the government’s overall policy objectives are not jeopardised. The efficiency criterion is positive because industry participants would still make a contribution towards funding the regulation of the industry, and provides a sufficient threshold barrier to screen genuine applications. However, given that this departs from the government’s general policy of full cost recovery, a score of 1 is assigned. The effectiveness and equity criteria receive a higher score (9 and –3) than the full cost-recovery option because the lower cost is less likely to discourage compliance, and allow better services to be provided by the SRS, while providing a more equitable balance of costs as the government, SRS residents and the community as whole are beneficiaries of a sustained SRS sector. This results in an MCA score of +2.3.

Table G.2: Multi-criteria analysis of option B (partial cost recovery)

Criterion	Weighting	Assigned score	Weighted score
Efficiency	33%	1	0.3
Effectiveness	33%	9	3.0
Equity	33%	-3	-1.0
Total	100%		+2.3

Assessment of options

Partial cost recovery was assessed as being superior to the base case, that is, zero cost recovery, and full cost recovery.

Table G.3: Summary of multi-criteria analysis of fee options

Regulatory proposal	MCA assessment
Option A: full cost recovery	+2.0
Option B: partial cost recovery	+2.3
Option C: zero cost recovery (<i>default base case</i>)	0.0

Calculation of fees

The cost base for the purposes of assessing cost recovery is based on the incremental costs associated with the Department of Health administering the Act as it relates to processing applications and other information provided by SRS proprietors. Direct and indirect costs are included on a marginal cost basis. An activity-based costing method was used to determine the fee for each individual activity.

The estimates of hours are based on the department's expectation of performance under the proposed new Regulations that set out the information to be provided with each application. While the estimates have been informed by current practices, they reflect that under the new arrangements there will be an increase in documentation provided upfront, which is more than offset by a reduction in time spent on requests for additional information.

Only costs associated with the consideration of applications was included in the cost base. There are additional costs to the department associated with the SRS Act, such as undertaking inspections, and monitoring and enforcement of compliance. Residents and the community are the direct beneficiaries of these activities, not SRS.

Table G.4 provides a breakdown of the time to process applications. It is the basis for the figures shown in Table 8.3 in section 8.2 of the RIS. Table G.4 shows the estimated hours in terms of a VPS 5 equivalent. The calculations of these costs are based on VPS 5 costs of an hourly rate of \$96.16 (\$54.95 salary plus \$41.21 on-costs and overheads).

Table G.4: Time to process applications (hours)

Activity	Application					
	Registration (new)	Registration (change)	Alternations	Variation (increase beds)	Variation (conditions)	Directors, LPR, managers
Receive/record/acknowledge application	1	1	1	1	1	1
Assess building information and prepare report	8	4	9	2	–	–
Site visit, facility audit and report	7	7	–	4	–	–
Assess business information	8	8	4	1	–	–
Prepare interview questions/conduct and assess	6	–	–	–	–	4
Assess grounds for removal	–	–	–	–	6	–
Assess additional info as requested	4	4	4	1	1	–
Formulate recommendations/obtain sign off/communicate decision	6	3	3	2	3	3
Total	40	27	21	11	11	8

Supported Residential Services (Private Proprietors) Regulations

Exposure Draft

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Victoria

Supported Residential Services (Private Proprietors) Regulations

Exposure Draft

PART 1—PRELIMINARY

1 Objectives

The objectives of these Regulations are to—

- (a) provide for the administration of the **Supported Residential Services (Private Proprietors) Act 2010**;
- (b) prescribe minimum standards for accommodation and personal support to be provided to residents of supported residential services;
- (c) prescribe fees and other matters authorised by the Act;
- (d) prescribe certain offences as infringement offences.

2 Authorising provision

These Regulations are made under section 207 of the **Supported Residential Services (Private Proprietors) Act 2010**.

3 Commencement

These Regulations come into operation on 1 July 2012.

4 Definitions

In these Regulations—

accommodation and personal support standards means the standards in Schedule 9;

ancillary functions include, but are not limited to, cooking, cleaning and maintenance of the SRS;

applicant's undertaking means the document referred to in regulation 5;

authority to the Secretary means the document referred to in regulation 6;

board means the Community (Residential Services) Visitors Board established under Part 9 of the Act;

Building Code of Australia has the same meaning it has in the **Building Act 1993**;

building permit means, in respect of a structure on the land or premises where the SRS is to operate or is operating, a building permit issued under Part 3 of the **Building Act 1993** on or after 1 August 1997;

building practitioner means—

- (a) a building surveyor, building inspector, engineer or draftsperson registered as a building practitioner under Part 11 of the Building Act 1993; or

- (b) an architect registered under the **Architects Act 1991**; or
- (c) a licensed surveyor within the meaning of the **Surveying Act 2004**;

building surveyor's statement means a statement issued on or after 1 August 1997 by a building surveyor registered under Part 11 of the **Building Act 1993**;

charges and convictions statement means a statement referred to in regulation 7;

corporate solvency declaration means a declaration signed by a director or officer of a body corporate about the ability of the body corporate to meet its debts;

criminal record check means a certificate noting any criminal history of a person within Australia issued by or on behalf of a duly authorised officer of the police force of Victoria, the Commonwealth or of another State or Territory;

financial statement means a declaration made by a person about his or her financial background, including whether the person is or has been declared bankrupt or insolvent;

health statement means a statement by a person indicating whether he or she believes on reasonable grounds that he or she has any mental or physical condition that may impair his or her ability to operate, exercise control over, or manage a SRS;

manager's statement means the statement referred to in regulation 8;

medication means any substance given with the intention of preventing, diagnosing, curing, controlling or alleviating disease or otherwise enhancing the physical or mental welfare of a person, including prescription and non-prescription medicines and complementary health care products;

occupancy permit means an occupancy permit issued under Part 5 of the **Building Act 1993** on or after 1 August 1997;

planning permit means, in respect of the land or premises where the SRS is to operate or is operating—

- (a) a permit issued under Part 4 of the **Planning and Environment Act 1987**; or
- (b) a certificate of compliance issued under Part 4A of the **Planning and Environment Act 1987**;

professional standards statement means the statement referred to in regulation 9;

proof of identity means evidence provided by a person that—

- (a) includes the person's full name and date of birth; and
- (b) provides adequate information or documents to establish the identity of the person;

referee statement means a statement made by a natural person (the **referee**), who is over the age of 18 years and unrelated to the person in respect of whom the statement is given, indicating—

- (a) the name and address of the person to whom the statement relates; and
-

- (b) the name, postal address, email address and telephone number of the referee; and
- (c) the length of time and basis on which the referee has known the person in respect of whom the statement is given; and
- (d) whether the person in respect of whom the statement is given is of good repute having regard to his or her character, honesty and integrity;

residential facility means any facility that provides accommodation and personal support, regardless of any regulatory scheme under which the accommodation and personal support is provided;

returning officer means the person appointed under regulation 62(1);

RSA means a residential and services agreement;

SRS means a supported residential service;

staff means—

- (a) the proprietor of the SRS; or
- (b) a director of the SRS; or
- (c) persons employed by the proprietor or on behalf of a body corporate that is a proprietor—

but does not include—

- (d) a person who provides services in exchange for accommodation at the SRS or benefits other than wages; or
- (e) a volunteer; or

- (f) a student undertaking a work placement at the SRS;
- (g) a resident of the SRS;

storage facility includes a drawer, cabinet, receptacle, cupboard, refrigerator or room;

the Act means the **Supported Residential Services (Private Proprietors) Act 2010**.

PART 2—ADMINISTRATION AND REGISTRATION

5 Applicant's undertaking

An application made under this Part must be accompanied by a signed document that the applicant will advise the Secretary within 7 days after becoming aware of any change to the information provided in relation to—

- (a) the suitability of the applicant;
- (b) the suitability of any person the applicant employs to manage a SRS.

6 Authority to the Secretary

An application made under this Part must be accompanied by a signed document authorising the Secretary to—

- (a) make enquiries to establish the truthfulness of the information provided; and
- (b) seek any other information that the Secretary considers necessary for the purposes of making a decision on the application.

Note

Section 199 of the Act states that it is an offence to knowingly give information or make a statement that is false or misleading in a material particular.

7 Charges and convictions statement

- (1) For the purposes of an application made under this Part, a charges and convictions statement means a statement made by a person stating—
 - (a) whether the person has been found guilty of any offence, other than a traffic infringement, in any Australian jurisdiction, or an equivalent offence in any other jurisdiction; and

- (b) whether, at the time of making the declaration, the person was the subject of a charge pending for an offence, other than a traffic infringement offence, in any Australian jurisdiction, or an equivalent offence in any other jurisdiction; and
 - (c) the details of any findings of guilt or charges referred to in paragraphs (a) and (b).
- (2) In this regulation, traffic infringement has the same meaning as it has in the **Road Safety Act 1986**.

8 Manager's statement

For the purposes of an application made under regulation 21, a manager's statement is a statement by a person proposed to manage a SRS, which states that the person—

- (a) is the subject of an application for approval to be a manager under section 68 of the Act;
- (b) has provided the prescribed information and prescribed documents set out in Schedule 6;
- (c) is employed or may be employed as a manager to carry out, direct or undertake the day to day operation of the SRS;
- (d) has agreed to inform the proprietor within 7 days of becoming aware of any changes to the prescribed information or prescribed documents set out in Schedule 6.

9 Professional standards statement

- (1) For the purposes of an application made under this Part, a professional standards statement is a statement made by a person stating whether or not he or she has been the subject of disciplinary proceedings before a Board of a relevant professional discipline leading to—

- (a) removal from a register of practitioners maintained by that Board; or
- (b) restrictions being imposed on the person's ability to practice professionally within that discipline.

- (2) For the purposes of subregulation (1), a relevant professional discipline means any profession for which registration or licensing is a prerequisite to practising.

Examples

Doctors, nurses, pharmacists, teachers and lawyers.

10 Application for registration of premises

- (1) For the purposes of section 14(2)(a) of the Act, the prescribed information for an application for registration of premises as a SRS is the information set out in Schedule 1.
- (2) For the purposes of section 14(2)(c) of the Act, the prescribed documents for an application for registration of premises as a SRS are the documents set out in Schedule 1.

11 Prescribed fee for application for registration of premises

For the purposes of section 14(2)(b) of the Act, the prescribed fee to accompany an application for registration of premises as a SRS is 48 fee units.

12 Application for variation of registration to increase the number of beds

- (1) For the purposes of section 20(3)(a) of the Act, the prescribed information for an application for variation of registration of a SRS to increase the number of beds is the information set out in Part 1 of Schedule 2.

- (2) For the purposes of section 20(3)(c) of the Act, the prescribed documents to accompany an application for variation of registration of a SRS to increase the number of beds are set out in Part 1 of Schedule 2.

13 Application for variation of any condition of registration

- (1) For the purposes of section 20(3)(a) of the Act, the prescribed information for an application for variation of any condition of registration to which the SRS is subject is the information set out in Part 2 of Schedule 2.
- (2) For the purposes of section 20(3)(c) of the Act, the prescribed documents to accompany an application for variation of any condition of registration to which the SRS is subject are the documents set out in Part 2 of Schedule 2.

14 Prescribed fee for application for variation of registration

For the purposes of section 20(3)(b) of the Act, the prescribed fee is 14 fee units.

15 Application for approval of alterations or extensions

- (1) For the purposes of section 25(2)(b) of the Act, the prescribed information for an application for approval of alterations or extensions to the premises of a SRS is the information set out in Schedule 3.
- (2) For the purposes of section 25(2)(c) of the Act, the prescribed documents to accompany an application for approval of alterations or extensions to the premises of a SRS are set out in Schedule 3.

- (3) If any alterations or extensions to be undertaken at a SRS do not require an application under section 25 of the Act, the proprietor must, on the completion of the works, apply to the Secretary in accordance with section 27 of the Act before the altered or extended area is occupied.
- (4) An application referred to in subregulation (3) must be accompanied by a certificate of completion by a relevant authority.

16 Prescribed fee for application for approval of alterations or extensions

For the purposes of section 25(2)(a) of the Act, the prescribed fee to accompany an application for approval of alterations or extensions of a SRS is 21 fee units.

Note

Section 27 of the Act requires a proprietor of a SRS to apply for a variation of registration of the SRS on the completion of works to which an approval for alterations or extensions applied.

17 Application for approval of a new director or officer of a proprietor that is a body corporate

- (1) For the purposes of section 31(2)(a) of the Act, the prescribed information for an application for approval of a person appointed as a director or other officer of a proprietor that is a body corporate, as a suitable person to carry on, exercise control over or manage a SRS, is the information set out in Schedule 4.
 - (2) For the purposes of section 31(2)(c) of the Act, the prescribed documents to accompany an application for approval of a person, appointed as a director or other officer of a proprietor that is a body corporate, as a suitable person to carry on, exercise control over or manage a SRS, are set out in Schedule 4.
-

18 Prescribed fee for application for approval of a new director or officer of a proprietor that is a body corporate

For the purposes of section 31(2)(b) of the Act, the prescribed fee to accompany an application to the Secretary for approval of a person appointed as a director or other officer of a proprietor that is a body corporate, as a suitable person to carry on, exercise control over or manage a SRS, is 14 fee units.

19 Application for approval of legal personal representative, executor, guardian or administrator to carry on the SRS

- (1) For the purposes of section 35(4)(a) of the Act, the prescribed information for an application to the Secretary for approval to carry on a SRS for a limited time is the information set out in Schedule 5.
- (2) For the purposes of section 35(4)(c) of the Act, the prescribed documents to accompany an application to the Secretary for approval to carry on a SRS for a limited time are set out in Schedule 5.

20 Prescribed fee for application for approval of legal personal representative to carry on a SRS

For the purposes of section 35(4)(b) of the Act, the prescribed fee to accompany an application to the Secretary for approval to carry on a SRS for a limited time is 14 fee units.

21 Application for approval of manager

- (1) For the purposes of section 68(2)(a) of the Act, the prescribed information for an application for approval of a person as a suitable person to be a manager of a SRS is set out in Schedule 6.
-

- (2) For the purposes of section 68(2)(c) of the Act, the prescribed documents to accompany an application for approval of a person as a suitable person to be a manager of a SRS are set out in Schedule 6.

22 Prescribed fee for application for approval of manager

For the purposes of section 68(2)(b) of the Act, the prescribed fee to accompany an application for approval of a person to be a manager of a SRS is 14 fee units.

23 Registration statements

For the purposes of section 36(3) of the Act, the prescribed information that must be contained in a registration statement is set out in Schedule 7.

24 Cancellation of registration

An application by a proprietor to cancel the registration of a SRS under section 28 of the Act must be accompanied by the information set out in Schedule 8.

25 Provision of prescribed documents

If an applicant makes a number of applications under this Part simultaneously and the same prescribed documents are required for each application, those prescribed documents need to be provided only once.

PART 3—INFORMATION FOR PROSPECTIVE RESIDENTS AND RESIDENTIAL AND SERVICES AGREEMENT

26 Act and Regulations to be available

A proprietor must ensure that an up-to-date copy of the Act and these Regulations are available at the premises of the SRS for use by staff members, residents and visitors at all times.

Penalty: 5 penalty units.

27 Information for prospective residents

For the purposes of section 44 of the Act, the prescribed matters to be contained in a document to be provided by the proprietor to prospective residents are the following—

- (a) the name and address of the SRS;
- (b) the name of the proprietor of the SRS;
- (c) the number of beds for which the SRS is registered;
- (d) a statement that the SRS is regulated by the Department and that services provided by the SRS must be consistent with the principles and requirements set out in the Act;
- (e) the items and services provided by the SRS and the current fee, charge or other amount that is or may be payable by a resident to the proprietor for those items and services, including—
 - (i) the frequency with which the fee, charge or other amount is payable;
 - (ii) how the fee, charge or other amount is payable;

- (iii) the mechanisms by which residents are informed of any changes to the provision of items or services and any changes to the fees, charges or other amounts applicable to them;
- (iv) any terms and conditions with respect to the refund of a security deposit, a fee in advance, a reservation fee or an establishment fee;
- (v) a statement that a resident has the right to apply to VCAT for an order if the proprietor does not refund a security deposit, establishment fee or a reservation fee in accordance with the Act;
- (f) if a service is offered to manage residents' money, a statement about the maximum amount of money that can be managed;
- (g) the health and community services located in the area;
- (h) the routines observed at the SRS including, but not limited to, meal times, activities and housekeeping schedules;
- (i) any house rules which may be applicable at the SRS;
- (j) how personal support services are planned and reviewed at the SRS, and who may be consulted in the process;
- (k) a statement explaining that a resident may nominate a person to receive information relating to the resident's accommodation and personal support received at the SRS;
- (l) a statement explaining how a residential and services agreement may be ended, including—

- (i) if the resident wishes to leave the SRS, the period within which the resident must give notice to the SRS of his or her intention to leave;
- (ii) that a proprietor may ask a resident to leave if the resident requires more health care or personal support than can be provided at the SRS;
- (m) a statement explaining when notices to vacate may be given, including—
 - (i) the grounds for which a notice to vacate may be given;
 - (ii) the periods of notice that proprietors must give under the Act;
 - (iii) that a resident has the right to apply to VCAT if he or she disagrees with a notice to vacate;
- (n) how changes to the residential and services agreement may be made, including the required period of notice to be given to the resident prior to the change taking effect;
- (o) the process in place to receive, resolve and advise parties of the outcome of complaints about the SRS, including that residents and their families may also make a complaint to the Department and a community visitor.

28 Residential and services agreement

For the purposes of section 47(1) of the Act, the prescribed information about the nature of services to be provided to a resident in the written agreement between a proprietor and the resident, is—

- (a) the name and address of the SRS;

- (b) the name of the proprietor of the SRS and contact details of the proprietor, or day to day manager, if applicable;
- (c) the number of beds for which the SRS is registered;
- (d) a statement that the SRS is regulated by the Department and that services provided by the SRS must be consistent with the principles and requirements set out in the Act;
- (e) the name of the resident;
- (f) details identifying the resident's accommodation;

Example

Room number.

- (g) the commencement date and duration of the residential and services agreement;
- (h) the name and contact details of the resident's guardian or administrator or person nominated, if any;
- (i) the items and services provided by the SRS and the current fee, charge or other amount that is or may be payable by the resident to the proprietor including—
 - (i) the frequency with which the fee, charge or other amount is payable;
 - (ii) how the fee, charge or other amount is payable;
 - (iii) the mechanisms by which residents would be informed of any changes to the provision of items or services and any changes to the fees, charges or other amounts applicable to them;

- (iv) any terms and conditions with respect to the refund of a security deposit, a fee in advance, a reservation fee or an establishment fee;
- (v) a statement that a resident has the right to apply to VCAT for an order if the proprietor does not refund a security deposit, establishment fee or a reservation fee in accordance with the Act;
- (j) if a service is offered to manage residents' money, a statement about the maximum amount of money that can be managed;
- (k) the routines observed at the SRS including, but not limited, to meal times, activities and housekeeping schedules;
- (l) any house rules which may be applicable at the SRS;
- (m) how personal support services are planned for the resident and reviewed at the SRS and who may be consulted in the process;
- (n) a statement explaining that a resident may nominate a person to receive information relating to the resident's accommodation and personal support received at the SRS;
- (o) a list of the furniture included in the room that belongs to the SRS;
- (p) a statement explaining how the residential and services agreement may be ended including—
 - (i) if the resident wishes to leave the SRS, the period within which the resident must give notice to the SRS of his or her intention to leave;

- (ii) that a proprietor may ask a resident to leave if the resident requires more health care or personal support than can be provided at the SRS;
- (q) a statement explaining when notices to vacate may be given, including—
 - (i) the grounds for which a notice to vacate may be given;
 - (ii) the periods of notice that proprietors must give in accordance with the Act;
 - (iii) that a resident has the right to apply to VCAT if they disagree with a notice to vacate;
- (r) information about how changes to the residential and services agreement may be made, including the required period of notice to be given to the resident prior to the change taking effect;

Note

Section 48 of the Act sets out the period of notice required if the proprietor proposes to change a term of the RSA.

- (s) the process in place to receive, resolve and advise parties of the outcome of complaints about the SRS, including that residents and their families may also make a complaint to the Department and a community visitor.
-

**PART 4—ACCOMMODATION AND PERSONAL SUPPORT
STANDARDS**

29 Accommodation and personal support standards

For the purposes of section 59 of the Act, the prescribed accommodation and personal support standards are set out in Schedule 9.

PART 5—MEDICATION

30 Storage of medication

- (1) For the purposes of section 63 of the Act, reasonable steps by a proprietor to maintain adequate storage of residents' medication are the following—
 - (a) any medication held on behalf of a resident is kept in a lockable storage facility that is secured to prevent access by an unauthorised person;
 - (b) when the storage facility is unlocked, it is kept under the direct supervision of an authorised staff member;
 - (c) any medication required to be stored at or below a particular temperature is stored at the appropriate temperature in a lockable storage facility in accordance with the requirements in paragraphs (a) and (b);
 - (d) no alteration is made to any label affixed to a container supplied by the person who dispensed the prescribed medication;
 - (e) adequate precautions are taken to ensure safe storage of medication where a resident personally administers medication to himself or herself.
- (2) Prescribed medications of any description must not be kept at a SRS if—
 - (a) a resident for whom the medication is prescribed no longer resides at the SRS; or
 - (b) the expiry date for the medication has passed; or
 - (c) the resident no longer requires the medication.

- (3) A prescribed medication stored on behalf of a resident must be returned to that resident when the resident leaves the SRS or temporarily transfers to another service or health agency.

31 Medication distribution and administration

- (1) For the purposes of section 63 of the Act, reasonable steps to maintain adequate distribution and administration of residents' medication are the following—
 - (a) prescribed medication is only administered in accordance with the directions of the person who prescribed it, regardless of the method or route of administration;
 - (b) non-prescribed medication must be distributed in accordance with the product instructions unless advised otherwise by a health practitioner;
 - (c) before administering or supervising the administration of medication to a resident, the staff member responsible for giving the medication confirms that the medication is being provided to the correct resident, at the correct dose, by the correct route, at the correct frequency and at the correct time;
 - (d) the staff member administering the medication should consult with the treating health practitioner or a pharmacist in relation to any concern about the appropriateness of a medication before administering the medication or substance;
 - (e) the proprietor or staff member notifies the relevant health practitioner of—
 - (i) any failure of administration, whether due to refusal or otherwise;
 - (ii) any error in medication administration.

- (2) Subregulation (1) does not apply if the resident is responsible for the administration of the medication to himself or herself.
- (3) If the resident is responsible for the administration of medication to himself or herself, the proprietor or staff member must notify the relevant health practitioner if there is reason to believe that the resident has maladministered or failed to administer that prescribed medication.

32 Medication records

- (1) A proprietor must maintain the following records of residents' medication—
 - (a) the resident's full name, date of birth and known medication allergies;
 - (b) any prescription, direction or administration details with regards to each medication;
 - (c) the name of each medication, its strength, dosage and route and frequency of administration;
 - (d) the date on which the record was commenced and, if applicable, completed.
- (2) For each instance of administration of a medication, the record that must be made at the time of administration is—
 - (a) the date and time the medication was administered;
 - (b) any variation from the directions for administration;
 - (c) the name and signature of the person who administered or supervised the administration of the medication;

- (d) any failure of administration, whether due to refusal or otherwise;
- (e) any error in medication administration.
- (3) Subregulation (2) does not apply if the resident is responsible for the administration of the medication to himself or herself.

Note

The definition of *medication* in regulation 4 includes prescription and non-prescription medication and complementary health care products.

PART 6—STAFFING

33 Personal support coordinator

In this Part, *personal support coordinator* means a person who, on behalf of, or in conjunction with the proprietor, is responsible for the coordination and continuity of the personal support provided to the residents at the SRS, and is qualified in accordance with regulation 36.

34 Minimum staff requirement

(1) For the purposes of section 64(1) of the Act, the proprietor of a SRS must ensure that—

- (a) from Monday to Friday inclusive, between the hours of 7 a.m. and 7 p.m.—
 - (i) a personal support coordinator is on duty for a period of not less than 7·6 hours; and

Note

The role of the personal support coordinator may be shared. The role may also be performed by the proprietor for some or all of the hours.

- (ii) for every 30 residents or fraction of 30 residents at the SRS, at least one staff member is employed and on duty to provide personal support to residents;
- (iii) at least one person is on duty who has completed first aid training in accordance with regulation 38;

- (b) on Saturday and Sunday between the hours of 7 a.m. and 7 p.m.—
 - (i) at least one staff member is on duty to provide personal support to residents, for a period of not less than 7·6 hours, qualified in accordance with regulation 36;
 - (ii) for every 30 residents or fraction of 30 residents at the SRS, at least one staff member is employed and on duty to provide personal support to residents;
 - (iii) at least one person is on duty who has completed first aid training in accordance with regulation 38;
 - (c) at all other times there is at least one person employed and available at the SRS who is able to respond to any first aid or emergency issues in accordance with the written protocols prepared by the proprietor.
- (2) For the purposes of section 64(2) of the Act, the proprietor must ensure that, at all times, if necessary, staff members in addition to those required subregulation (1) are on duty so that the personal support requirements of each resident are fully met in a timely manner in accordance with residents' support plans;
- (3) For the purposes of section 64(3) of the Act, the proprietor must ensure that additional numbers of appropriately trained ancillary staff are on duty at a SRS to assist in the proper functioning of the SRS.

35 Resignation or termination of employment of personal support coordinator

- (1) If the employment of a personal support co-ordinator is terminated or a personal support co-ordinator resigns, the proprietor must—
 - (a) notify the Secretary within 7 days; and
 - (b) employ a new personal support co-ordinator, as soon as practicable; and
 - (c) appoint an acting personal support co-ordinator until a permanent appointment is made.
- (2) If an acting personal support co-ordinator is employed for more than 12 weeks, the person is required to be qualified in accordance with regulation 36.

36 Qualifications

- (1) For the purposes of section 64 of the Act, and if required by these Regulations, a staff member is appropriately trained if he or she holds one of the following qualifications awarded by a registered training organisation—
 - (a) Certificate III in Aged Care;
 - (b) Certificate III in Home and Community Care;
 - (c) Certificate III in Disability;
 - (d) Certificate IV in Mental Health;
 - (e) Certificate IV in Alcohol and Other Drugs;
 - (f) a qualification in a related client support area that is recognised by a relevant authority as being at least equivalent to the certificates referred to in paragraphs (a) to (e).

- (2) A person is taken to meet the requirements of a qualification under subregulation (1) if the person holds a current registration with one of the following bodies—
 - (a) the Nursing and Midwifery Board of Australia;
 - (b) the Medical Board of Australia.
- (3) A proprietor must ensure that, the personal support coordinator, in addition to holding a qualification under subregulation (1), undertakes a minimum of 40 hours training every three years in priority areas as approved by the Secretary.
- (4) In this regulation—

registered training organisation means an entity registered by a state or territory training authority to deliver nationally recognised training;

related client support area means the provision of support which focuses on daily living activities for people with physical, intellectual or psychiatric disabilities, complex or age related disabilities;

relevant authority means—

- (a) the Overseas Qualifications Unit within the Department administering the **Education and Training Reform Act 2006**; or
- (b) the Australian Education International-National Office of Overseas Skills Recognition within the Commonwealth Department administering the Education Services for Overseas Students Act 2000 of the Commonwealth; or

- (c) a Victorian or Commonwealth government authority or unit which has the task of recognising skills obtained overseas; or
- (d) a registered training organisation for qualifications gained in Australia.

37 Qualifications of ancillary staff

For the purposes of section 64 of the Act, a proprietor must ensure that a person on duty for the purpose of performing an ancillary function at the SRS—

- (a) is appropriately trained; and
- (b) if necessary to perform the ancillary function, holds an appropriate qualification to perform that function.

38 Staff to have first aid training

For the purposes of regulation 34(a)(iii) and (b)(iii), the proprietor of a SRS must ensure that the person on duty responsible for providing first aid assistance at the SRS has completed and obtained the following—

- (a) a statement of attainment for the Health Training Package Unit HLTF301B; and
- (b) a statement of attainment for the Health Training Package Unit HLTCP201A; or
- (c) a course of study approved by the Secretary and recognised as being as equivalent to HLTF301B and HLTCP201A by the relevant authority within the meaning of regulation 36.

39 Criminal record check of prospective employees

- (1) Before employing a member of staff, a proprietor must consider the results of a criminal record check issued no earlier than 6 months before the date on which the staff member is to commence employment.
- (2) A proprietor must not employ a person whose criminal record check discloses a conviction, for which a term of imprisonment has been imposed, for—
 - (a) murder;
 - (b) manslaughter;
 - (c) a sexual offence or an offence committed in another jurisdiction that is equivalent to a sexual offence;
 - (d) any other form of assault.
- (3) A proprietor of a SRS may employ a person whose criminal record check discloses that the person has been found guilty of any offence other than those specified in subregulation (2) if the proprietor determines that the person is suitable to be employed, having regard to—
 - (a) the nature, seriousness and relevance of the conviction; and
 - (b) the role to be performed by that person.
- (4) A proprietor must ensure that any information in a criminal record check read by the proprietor is not divulged by the proprietor directly or indirectly, to any person other than the Secretary in accordance with the Act.
- (5) In this regulation, *sexual offence* has the same meaning it has in the **Criminal Procedure Act 2009**.

PART 7—COMPLAINTS

40 Principles

- (1) A proprietor must ensure that the complaints system of the SRS is consistent with the principles set out in section 7 of the Act.
- (2) Without limiting subsection (1), the complaints system must—
 - (a) provide that the complaint is handled in a fair, reasonable, confidential and timely manner;
 - (b) be described in a document, in clear, easy to read language, which is made available to residents and their families and friends and staff;
 - (c) include an annual review of complaints received to identify the causes of serious or recurrent complaints and use reasonable endeavours to resolve recurrent issues.

41 Complaints officer

- (1) For the purposes of section 75(1) of the Act, a proprietor must appoint a staff member who is regularly available as a complaints officer, to receive and deal with complaints from residents or anyone else about any aspect of the operation or services at the SRS.
- (2) A proprietor must ensure that staff, residents and residents' families and friends are informed of the name of the complaints officer.

42 Procedures for complaints

- (1) For the purposes of section 75(1) of the Act, a proprietor must—
 - (a) ensure that every resident and staff member is informed of the complaints procedure;
 - (b) ensure that the initial investigation of the complaint commences within 2 business days after it is made;
 - (c) use best endeavours to keep the complainant informed of the progress in resolving the complaint and any actions being taken to resolve the matter;
 - (d) inform the complainant of the decision on the resolution of the complaint and the reasons for the decision, whether or not it is determined that any action is required.

43 Written record of complaints

- (1) For the purposes of section 75(1) of the Act, a proprietor must ensure that a written record of each complaint is made and includes—
 - (a) the date of the complaint;
 - (b) the nature and details of the complaint;
 - (c) the actions taken in relation to the complaint;
 - (d) the date and method of communication of the outcome of the complaint.
 - (2) A proprietor must ensure that the written record of complaints is kept in a consolidated form.
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PART 8—REPORTING AND RECORDS

44 Prescribed incident

For the purposes of section 76(1) of the Act, a prescribed incident is any event that threatens the safety of a resident or staff.

45 Prescribed particulars of prescribed incidents

For the purposes of section 76(1) and (5)(a) of the Act, the prescribed particulars that must be contained in a record of a prescribed incident are—

- (a) a description of the incident including—
 - (i) what occurred;
 - (ii) the date and time it occurred;
 - (iii) where it occurred;
 - (iv) the names of any person involved in or affected by the incident;
- (b) the action taken in response to the incident;
- (c) the date, time and name of any person notified of the incident;
- (d) the printed name and signature of the person making the record of the incident.

46 Prescribed resident information

For the purposes of section 76(2) and (5)(a) of the Act, the prescribed particulars to be kept in respect of each resident are—

- (a) full name;
- (b) gender;
- (c) date of birth;
- (d) date of admission to the SRS;

- (e) nationality;
- (f) languages spoken;
- (g) religious denomination (if any);
- (h) pension number and type (if any and if known by the proprietor);
- (i) resident's room number at the SRS;
- (j) name and contact details of the resident's relative or next of kin (if any);
- (k) name and contact details of the resident's administrator (if any);
- (l) name and contact details of the resident's guardian (if any);
- (m) name and contact details of the person nominated (if any);
- (n) name and contact details of the resident's medical practitioner and other health service providers (if any);
- (o) the resident's RSA and any documents amending or varying the RSA from time to time;
- (p) any personal information or health information within the meaning of the Health Records Act 2001, which is held within the SRS including, but not limited to, true copies of—
 - (i) all documents forming part of the resident's personal support plan;
 - (ii) any documents amending or varying the resident's personal support plan from time to time;
 - (iii) any record relating to the administration of medication to the resident at the SRS;

- (q) any documents prepared in relation to the taking or retaining of a security deposit, a fee in advance, a reservation fee or an establishment fee;
- (r) any documents prepared in relation to money managed or controlled on behalf of the resident under Part 5 of the Act;
- (s) a list of items of personal property belonging to the resident brought into the SRS;
- (t) any notice to vacate issued to the resident;
- (u) any record of transfer of the resident to another facility.

47 Prescribed particulars of staff information

For the purposes of section 76(3) and (5)(a) of the Act, the prescribed particulars to be kept in respect of each current and former staff member are—

- (a) the person's name;
- (b) the date the person's employment commenced at the SRS;
- (c) a copy of any relevant qualifications or certificates of completed training of the employee, (if applicable);
- (d) the person's employment position at the SRS;
- (e) the date of issue and the reference number of the criminal record check;
- (f) the date of termination of employment (if applicable).

48 Record of staff roster

For the purposes of section 76(4) and (5)(a) of the Act, the prescribed particulars to be kept in the record of staff rosters are—

- (a) the name of the SRS;
- (b) the commencement date and end date for the period to which the roster applies;
- (c) the days, times and number of hours to be worked by each employee during the roster period and the capacity in which the employee is rostered.

49 Records

- (1) For the purposes of sections 76(5)(b) and 77(2)(b) of the Act, the prescribed manner of keeping all records that are required to be kept under the Act is—
 - (a) in the English language; and
 - (b) in a secure location that is readily accessible by authorised officers at any time for the purposes of monitoring compliance with the Act and the regulations.
- (2) For the purposes of sections 76(1), 76(5)(b) and 77(2)(b), records which relate to prescribed incidents and prescribed reportable incidents must be maintained in one of the following—
 - (a) a bound book with consecutively numbered pages; or
 - (b) a loose leaf system in which each incident, and each page of a report of the incident, is consecutively numbered; or
 - (c) a database on a computer maintained at the SRS in which each incident is assigned a unique number.

50 Prescribed reportable incidents

For the purposes of section 77(1) of the Act, a prescribed reportable incident is—

- (a) an unexpected death of a resident;
- (b) a serious injury of a resident;
- (c) a fire or other emergency event;
- (d) an alleged serious assault (sexual or physical).

51 Prescribed particulars of prescribed reportable incidents

For the purposes of section 77(2)(a) of the Act, the prescribed particulars that must be included in a record of a prescribed reportable incident are—

- (a) a description of the incident including—
 - (i) the date and time it occurred;
 - (ii) where it occurred;
 - (iii) the names of any persons involved in or affected by the incident;
 - (iv) what occurred;
- (b) the action taken in response to the incident;
- (c) the name of any person notified of the incident and the date and time at which the person was notified;
- (d) the printed name and signature of the person making the record of the incident.

52 Prescribed time for notification of a prescribed reportable incident

For the purposes of section 77(3) of the Act, the prescribed reporting time within which a proprietor must notify the Secretary of a prescribed reportable incident is by the end of the

next business day after the occurrence of the incident.

53 Record of visits by community visitors

For the purposes of section 192 of the Act, the prescribed form for recording the visits of community visitors to a SRS is a record containing—

- (a) the name of the SRS;
- (b) the number of registered beds;
- (c) the name of the person in charge of the SRS at the time of the visit;
- (d) the names of the community visitors attending;
- (e) the date, time and duration of the visit;
- (f) the matters discussed between the community visitors and the person in charge;
- (g) any actions arising from matters discussed;
- (h) the signature of the community visitor;
- (i) the signature of the person in charge.

54 Record of transfer of residents

- (1) If a resident is transferred temporarily or permanently to another facility, a proprietor must ensure that—
 - (a) a transfer record is made and a copy of the record is kept at the SRS as part of the record of prescribed resident information;
 - (b) the original of the transfer record is provided to the facility to which the resident is transferring.
- (2) For the purposes of subregulation (1), the particulars to be kept in relation to the transfer record are—

- (a) the resident's name, date of birth, gender, language and religious denomination (if any);
 - (b) the pension number and type of pension (if any and if known to the proprietor);
 - (c) the name and contact details of the resident's relative or next of kin (if any);
 - (d) the name and contact details of the resident's guardian (if any);
 - (e) the name and contact details of the resident's administrator (if any);
 - (f) the name and contact details of the person nominated (if any);
 - (g) the name and telephone number of the transferring SRS and the name of the service or agency where the resident is being transferred;
 - (h) the transfer date;
 - (i) the reason for transfer;
 - (j) the name and contact details of resident's medical practitioner and other health service providers (if any);
 - (k) the details of any medication sent with the resident;
 - (l) the details of any allergies of the resident;
 - (m) a note about accompanying reports sent with the resident (if any).
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PART 9—FEES AND MONEY AND PROPERTY OF RESIDENTS

55 Prescribed amount of reportable and prohibited transactions

- (1) For the purposes of the definition of *reportable transaction* in section 3(1) of the Act, the prescribed amount is \$250.
- (2) For the purposes of section 4(1)(a) and(d) of the Act, the prescribed amount is \$250.
- (3) For the purposes of section 4(1)(e) of the Act, the prescribed amount is \$850.

56 Prescribed maximum amount of resident's money that may be managed or controlled by proprietor

For the purposes of section 79(2) of the Act, the prescribed amount is an amount equivalent to one month's fees in respect of the relevant resident.

57 Prescribed information in statement acknowledging receipt of a security deposit or fees

For the purposes of section 94 of the Act, the prescribed information is—

- (a) the name of the resident and the name of the person from whom the money is received;
 - (b) the name of the SRS;
 - (c) the date of payment;
 - (d) the amount paid;
 - (e) the purpose of the payment;
 - (f) any terms and conditions with respect to the refund of the money;
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- (g) the name, account number, ADI and branch at which the money has or will be deposited;

Note

The **Interpretation of Legislation Act 1984** provides that an ADI means an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth.

- (h) the printed name and signature of the person making the statement.
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PART 10—NOTICES TO VACATE

58 Prescribed time for notification to Secretary

If a notice to vacate has been given to a resident under section 110, 114, 115, 116 or 117 of the Act, the proprietor must, for the purposes of section 108(2), notify the Secretary by the end of the next business day after the notice to vacate has been given.

PART 11—MONITORING AND ENFORCEMENT

59 Prescribed form of receipt for seized things and samples taken

For the purposes of section 145(1) of the Act, the prescribed form of the receipt for seized things and samples taken is the form in Schedule 10.

60 Infringement offences

- (1) For the purposes of section 155(1) of the Act, an offence specified in column 2 of the table in Schedule 11 is prescribed as an infringement offence.
 - (2) For the purposes of section 155(3) of the Act, the prescribed infringement penalty for an infringement offence is the amount specified in column 4 of table in Schedule 11 in respect of that infringement offence.
 - (3) The description of the offence in column 3 of the table in Schedule 11 is not to be taken to affect—
 - (a) the nature or elements of an offence to which the description refers; or
 - (b) the operation of these Regulations.
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**PART 12—ELECTION TO THE COMMUNITY
(RESIDENTIAL SERVICES) VISITORS BOARD**

61 Method of electing visitors to the board

- (1) For the purposes of section 193(2)(b) of the Act, an election must be—
 - (a) held before 30 June in each year; and
 - (b) conducted in accordance with this Part.
- (2) The office of one community visitor elected to the board falls vacant each year.
- (3) A community visitor elected to the board holds office from 1 July of the year that he or she was elected for a period of 2 years unless—
 - (a) the community visitor resigns; or
 - (b) the office of the community visitor otherwise becomes vacant before the end of that period.

62 Appointment and functions of the returning officer

- (1) The Public Advocate must appoint a returning officer.
 - (2) The functions of the returning officer are—
 - (a) to conduct an election of members to the board or the filling of any casual vacancy in respect of the board;
 - (b) to ensure that a list of names and addresses of community visitors is kept and maintained;
 - (c) to fix the dates for nomination day and polling day;
 - (d) to determine questions relating to the validity or regularity of votes.
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63 Notice of an election

- (1) The returning officer must give notice of an election in accordance with subregulation (2) not later than 1 April in each year.
- (2) Notice of the election must be given by sending a copy of the notice to the postal address of each community visitor on the list of community visitors provided to the returning officer by the Public Advocate.

64 Information in notice

The notice of an election must specify—

- (a) the nomination day, on or before which nomination of candidates for election must be lodged;
- (b) the place where nominations must be lodged;
- (c) a polling day.

65 Nomination and polling days

- (1) The nomination day must be on or before 1 May in each year.
- (2) The polling day must be on or before 1 June in each year.

66 Method of nominating

- (1) A community visitor who intends to be a candidate at an election must lodge, or cause to be lodged, a nomination paper with the returning officer not later than 12 noon on the nomination day.
- (2) A nomination paper may be lodged either in person by the candidate or by another person, or by sending the paper by post or sending a copy of the paper by facsimile or electronic transmission.

- (3) The returning officer must give a receipt for a nomination to any candidate—
 - (a) whose nomination paper is lodged within the time referred to in subregulation (1);
 - (b) who requests a receipt.

67 Form of nomination paper

A nomination paper must—

- (a) be in writing;
- (b) state that the community visitor is nominating himself or herself as a candidate for election to the Community (Residential Services) Visitors Board;
- (c) contain the full name and address of the community visitor nominating as a candidate;
- (d) contain the signature of the candidate and the date of the signing of that nomination paper.

68 Withdrawal of nomination

- (1) A community visitor who has nominated as a candidate for an election may withdraw from the election by giving notice of withdrawal in writing by a method referred to in regulation 66(2) to the returning officer not later than 12 noon on nomination day.
- (2) The returning officer must not include the name of a community visitor who has withdrawn under subregulation (1) on any ballot paper for the election.

69 Contested election

- (1) If more than two nominations are received, the returning officer must conduct an election.
- (2) The returning officer must prepare ballot papers, postal ballot envelopes, ballot paper envelopes and reply paid return envelopes for the election.
- (3) A ballot paper must contain—
 - (a) the full name of each candidate who has nominated for election to the board and who has not withdrawn under regulation 68; and
 - (b) written advice regarding the method of voting set out in regulation 74.

70 Order of names on ballot paper

The returning officer must include the names of the nominated candidates on the ballot paper in alphabetical order of their surnames.

71 Candidate's personal statement

- (1) A candidate may lodge a personal statement for inclusion in the postal ballot envelope.
- (2) A candidate's personal statement must be—
 - (a) no longer than 150 words; and
 - (b) signed by the candidate; and
 - (c) lodged with the returning officer no later than 12 noon on the third day after nomination day.
- (3) A candidate's personal statement may be lodged either in person by the candidate or by another person, or by sending the statement by post or sending a copy of the statement by facsimile or other electronic transmission.

- (4) A candidate must not in his or her personal statement refer to another candidate standing for election without the written consent of that other candidate.
- (5) Any written consent as required under subregulation (4) must be lodged or sent together with the candidate's personal statement.
- (6) The returning officer must only forward to community visitors the first 150 words of a candidate's personal statement.
- (7) The returning officer may—
 - (a) liaise with any candidate with respect to the content or form of his or her personal statement; and
 - (b) amend a candidate's personal statement in accordance with the written authorisation of the candidate or a person duly authorised by a candidate.
- (8) The returning officer must keep a record of all amendments made to a candidate's personal statement.
- (9) The returning officer must reject a candidate's personal statement if it contains a reference to any other candidate standing for election without the written consent of that other candidate.
- (10) The returning officer may reject a candidate's personal statement if in the opinion of the returning officer it contains offensive or obscene material or is likely to mislead or deceive a community visitor in the casting of his or her vote.
- (11) A candidate who lodges a personal statement is responsible for the accuracy and integrity of all statements contained in it.

- (12) The returning officer must ensure that a candidate's personal statement remains confidential until distributed to community visitors.

72 Inclusion of candidate's personal statement

- (1) If a candidate lodges a personal statement, the returning officer must ensure that a copy of that statement is included in the postal ballot sent to each community visitor.
- (2) If a candidate does not lodge a personal statement, the returning officer must include in the postal ballot envelope, sent to each visitor, advice that the candidate has not lodged a personal statement.

73 Distribution of ballot papers

At least 14 days before the polling day, the returning officer must send to the postal address of each community visitor a postal ballot envelope containing—

- (a) voting instructions;
- (b) a ballot paper;
- (c) a ballot paper envelope;
- (d) a reply paid return envelope addressed to the returning officer;
- (e) the candidate's personal statements or advice that a candidate has not lodged a personal statement.

74 Method of voting

- (1) To record a valid vote, a community visitor must insert the number "1" on the ballot paper opposite the name of the candidate who is the community visitor's choice for member of the board.
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75 Manner of lodging vote

After marking the ballot paper, the elector must—

- (a) place the ballot paper in the ballot paper envelope and seal the envelope; and
- (b) sign her or his name on that envelope and include the date of the signing of that envelope; and
- (c) place the ballot paper envelope in the reply paid return envelope and seal that envelope; and
- (d) post, or deliver, the reply paid return envelope to reach the returning officer before 4.00 p.m. on polling day.

76 Receipt of reply paid return envelopes

As soon as practicable after the close of the election, the returning officer must—

- (a) remove the ballot paper envelope from each reply paid return envelope received before the close of the election; and
 - (b) record receipt of the ballot paper envelope on the list of community visitors; and
 - (c) separate the signed ballot paper envelopes from the unsigned ballot paper envelopes; and
 - (d) disallow the unsigned ballot paper envelopes; and
 - (e) remove and separate the ballot papers from the signed ballot paper envelopes; and
 - (f) count the votes.
-

77 Invalid votes

A ballot paper must not be counted if—

- (a) it is not enclosed in a ballot paper envelope signed by a community visitor; or
- (b) it is received from a person whose name is not on the list of community visitors; or
- (c) it does not have a number "1" placed opposite one of the candidates' names in accordance with regulation 74.

78 Method of counting votes and recording of election result

- (1) The returning officer must record as elected to the board the candidate who received the most votes.
- (2) In the event of a tie of votes between candidates, the returning officer must separately place the names of those candidates in a container and arrange for another person to draw out the name of one of those candidates as the elected candidate.
- (3) The returning officer must record the candidate with the second highest votes who, in the event of a casual vacancy, may occupy that position.

79 Recounts

- (1) The returning officer may recount the votes at any time before the declaration of the election—
 - (a) on the written request of any candidate stating the reasons for the request; or
 - (b) on his or her own motion.
- (2) The returning officer must advise all candidates if a recount is to be conducted.

80 Disputes

The Public Advocate may determine any question arising as to the validity or regularity of any vote.

81 Notification of election results

- (1) As soon as practicable after recording of the election results, the returning officer must notify the results to the Public Advocate and each candidate.
- (2) The Public Advocate must ensure that the results of the election are declared at a general meeting of community visitors held before 30 June in each year.

82 Custody and destruction of election papers

The returning officer must ensure the safe custody of all materials used in an election for 12 months from the day the results of that election are declared.

83 Method for filling casual vacancies

- (1) If a vacancy arises in a position of an elected member of the board, other than by expiry of the member's term, the Public Advocate must appoint a returning officer to fill the casual vacancy for the remainder of the current term.
- (2) The returning officer must fill the vacancy by appointing the candidate who received the second highest number of votes in the most recent election under this Part.
- (3) In the absence of a candidate referred to in subregulation (2), the returning officer must undertake the requirements of this Part in relation to the filling of any casual vacancy.

- (4) The returning officer must record the name of the candidate—
 - (a) who is a sole nominee; or
 - (b) if more than one nomination is received, who received the most votes at the election conducted to fill the casual vacancy—

as elected to the board and advise the Public Advocate and each of the candidates accordingly.
- (5) Despite subregulation (2), the returning officer is not required to comply with any requirements as to time in this Part if the returning officer is satisfied that it is necessary to dispense with those requirements in order to conduct the election to fill the casual vacancy as expeditiously as is practicable and appropriate in the circumstances.

84 Transitional arrangements for staggering of community visitor board member terms

- (1) Subject to section 213 of the Act, a community visitor holding office as a member of the board immediately before the commencement of these Regulations continues as a member of the board until the term of the office expires unless he or she sooner resigns or the office becomes vacant.
 - (2) Before the expiration of the term referred to in subregulation (1), the returning officer must separately place the names of both board members in a container and arrange for another person to draw out the name of one board member, whose appointment must be declared to be extended by 12 months from the date it would otherwise expire.
 - (3) Within 7 days after the ballot referred to subregulation (2), the returning officer must notify in writing both board members of the date on which each office will become vacant.
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Note

Section 213(1) of the Act provides that a person who was a community (residential services) visitor under the **Health Services Act 1988** before the Act commenced is taken to be appointed under the Act. Section 213(2) of the Act provides that the term of office for which such a person was appointed under the **Health Services Act 1988** continues under the Act. That term of office may be extended under this regulation for up to a further 12 months.

SCHEDULES

SCHEDULE 1

Regulation 10

PRESCRIBED INFORMATION AND DOCUMENTS FOR APPLICATION FOR REGISTRATION OF PREMISES AS A SRS

1 Details of applicant and premises

1.1 The prescribed information is—

- (a) the name and postal address of the applicant;
- (b) the name, postal address, email address, telephone and facsimile numbers of the contact person for the purposes of the application;
- (c) if the applicant is a body corporate—
 - (i) the full name, postal address, email address and telephone number of each director, and any other officer empowered by his or her position to exercise control over the affairs of the body corporate;
 - (ii) the name, role and level of involvement of each director in the management and operation of the SRS;
- (d) the name, street address (including number), email address, and telephone and facsimile numbers of the SRS;
- (e) name, postal address and telephone number of the landlord, if any.

2 Suitability of the applicant, or, if the applicant is a body corporate, each director and any other officer of the body corporate empowered to exercise control over the affairs of the body corporate

2.1 The prescribed information is—

- (a) details of the applicant's qualifications and experience in operating or working in a SRS or any other similar residential facility;
- (b) details of any sanctions, conditions or restrictions imposed on the applicant or any residential facility under the ownership or management of the applicant, within the last five years;
- (c) details of any business which has been placed under external administration within the last 10 years, while under the applicant's ownership or management;
- (d) details about the previous business experience of each person who is a party to the application indicating the capacity in which that person operated;

2.2 The prescribed documents are—

- (a) proof of identity;
- (b) two referee statements;
- (c) a criminal record check issued within the 6 months preceding the date of the application;
- (d) the following statements—
 - (i) a health statement;
 - (ii) a financial statement;
 - (iii) a charges and convictions statement;

- (iv) a professional standards statement;
- (v) in the case of a body corporate, a corporate solvency declaration;
- (e) applicant's undertaking;
- (f) authority to the Secretary.

3 Relevant arrangements in place to operate a SRS

3.1 The prescribed information is—

- (a) evidence of the nature and extent of the applicant's right to occupy the premises;
- (b) proposed staffing qualifications and staff training arrangements.

3.2 The prescribed documents are—

- (a) staff roster;
- (b) where the application for registration is pursuant to an acquisition of the business of the operation of a SRS, evidence of that acquisition;
- (c) copies of—
 - (i) information for prospective residents;
 - (ii) a template residential and services agreement;
 - (iii) a template support plan;
 - (iv) a template resident transfer form.

Notes

- 1 If a manager is employed under section 67 of the Act, the prescribed information and documents for an application for approval of a person to manage a SRS should also be submitted with an application under regulation 10.
- 2 If the application is made because of a change of ownership of an existing SRS, the prescribed information and documents for an application for cancellation of registration from the outgoing proprietor should also be submitted with the application under regulation 10.

4 Suitability of building and site for a SRS

4.1 The prescribed information is the number of single and double rooms and the number of beds proposed to be registered.

4.2 Except in the case of a an application for a change of ownership of an existing SRS, the prescribed documents are—

- (a) plans and diagrams prepared or endorsed by a building practitioner including—
 - (i) a site plan showing the location of the SRS and its location relative to any buildings or areas not forming part of the SRS;
 - (ii) a plan showing the elevation of the land and the buildings on it;
 - (iii) a detailed floor plan showing the whole building and any proposed alterations including—
 - (A) the location, dimensions and use of each indoor and outdoor space forming part of the SRS;
 - (B) bedroom room numbers;
 - (C) proposed number of beds per bedroom;
 - (D) the location of each bed;
 - (E) the dimensions and floor area of each bedroom, excluding any ensuite or bathroom;
 - (F) the location of each call bell;
 - (G) a calculation of the space ratio of the number of residents to the internal communal space of the premises;

- (b) a copy of the following permits issued by the relevant authority—
 - (i) a planning permit for the use of the premises as a SRS;
 - (ii) a building permit;
 - (iii) an occupancy permit;
- (c) a report by a building surveyor that the premises is currently compliant with the Building Code of Australia and any guidelines on SRS design issued by the Department.

5 Evidence of the applicant's capacity to operate an SRS

5.1 The prescribed information is details of any external funding available to the applicant.

5.2 The prescribed documents are—

- (a) a business plan containing at least the following information—
 - (i) the purpose and objectives of the business;
 - (ii) the profile of the proposed target group of residents, including the level and type of disabilities that are intended to be catered for;
 - (iii) the types of services proposed to be provided by the SRS;
 - (iv) estimated future demand for the services provided by the SRS;
- (b) financial statements showing a balance sheet and profit and loss figures for each of the preceding 3 years (if applicable);
- (c) a projected profit and loss forecast for the next 12 month period;

- (d) in the case of a body corporate—
 - (i) an extract from the database maintained by the Australian Securities and Investments Commission showing the Australian Company Number (or other identifying number) and the registered business office of the body corporate; and
 - (ii) if the body corporate is required under section 292, 293 or 294 of the Corporations Act to prepare a financial report or a director's report, a copy of these reports that comply with the requirements of that Act.
-

SCHEDULE 2

Regulations 12 and 13

**PRESCRIBED INFORMATION AND DOCUMENTS FOR
APPLICATION FOR VARIATION OF REGISTRATION OF
PREMISES**

**PART 1—APPLICATION FOR VARIATION OF
REGISTRATION TO INCREASE BED NUMBERS UNDER
SECTION 20(1) OF THE ACT**

1 Details of applicant and premises

1.1 The prescribed information is—

- (a) the name and postal address of applicant;
- (b) the name, postal address, email address, telephone and facsimile numbers of the contact person for the purposes of the application;
- (c) the name and street address of the SRS.

1.2 The prescribed document is the certificate of registration.

2 Suitability of the premises

2.1 The prescribed information is—

- (a) if the variation did not require a prior application to alter or extend, details of the number of additional beds to be registered;
- (b) if the variation was preceded by an application to alter or extend, details of the alterations or extensions completed.

2.2 The prescribed documents are—

- (a) a copy of the Secretary's approval of that application;
- (b) an 'as built' floor plan, prepared by a building practitioner, of the whole building showing—
 - (i) details of each proposed additional bedroom including the room number, proposed number of beds per bedroom and the location of each bed;
 - (ii) the dimensions and floor area of each additional bedroom, excluding any ensuite or bathroom;
 - (iii) the location of each call bell;
 - (iv) a calculation of the space ratio of the total proposed number of residents to the internal communal space of the premises;
- (c) if the variation did not require an application to alter or extend—
 - (i) an occupancy permit from the relevant authority;
 - (ii) a report by a building surveyor on the compliance of the completed works with the Building Code of Australia and any guidelines on SRS design issued by the Department;
- (d) if the variation was preceded by an application to alter or extend a report by a building surveyor on the compliance of new bedrooms and/or ensuites with the Building Code of Australia and any guidelines on SRS design issued by the Department.

3 Relevant arrangements in place to operate a SRS

- 3.1 The prescribed information is projected additional staffing arrangements.
- 3.2 The prescribed document is a proposed staff roster.

PART 2—APPLICATION FOR VARIATION OF A CONDITION OF REGISTRATION TO WHICH THE SRS IS SUBJECT UNDER SECTION 20(2) OF THE ACT

1 Details of applicant and premises

- 1.1 The prescribed information is—
 - (a) the name and postal address of applicant;
 - (b) the name, postal address, email address and telephone and facsimile numbers of the contact person for the purposes of the application;
 - (c) the name and street address of the SRS;
 - (d) the certificate of registration.

2 Details of the proposed variation

- 2.1 The prescribed information is details of the proposed variation to the condition of registration.
- 2.2 The prescribed document is an authority to the Secretary.

Note

Under section 41 of the Act, the Secretary may require the applicant to provide any further information in relation to an application that the Secretary requires in order to make a decision on the application.

SCHEDULE 3

Regulation 15

PRESCRIBED INFORMATION AND DOCUMENTS FOR APPLICATION FOR APPROVAL OF ALTERATIONS OR EXTENSIONS

1 Details of applicant and premises

- 1.1 The prescribed information is—
 - (a) the name and postal address of the person or entity applying for the alteration or extension;
 - (b) the name, postal address, email address and telephone and facsimile numbers of the contact person for the purposes of the application;
 - (c) the name and street address of the SRS;
 - (d) details of the nature of the proposed alterations or extensions including the impact of the works on residents and how the impact will be managed to reduce disruption to residents.
- 1.2 The prescribed documents are—
 - (a) a copy of the certificate of registration;
 - (b) plans and diagrams prepared or endorsed by a building practitioner, showing the whole building and the proposed alterations including—
 - (i) the location, dimensions and use of each indoor and outdoor space forming part of the SRS;
 - (ii) bedroom room numbers;
 - (iii) proposed number of beds per bedroom;

- (iv) the location of each bed;
 - (v) the dimensions and floor area of each bedroom, excluding any ensuite or bathroom;
 - (vi) the location of each call bell;
 - (vii) a calculation of the space ratio of the number of residents to the internal communal space of the premises;
 - (c) a copy of the following permits issued by the relevant authority—
 - (i) a planning permit for the proposed alteration of the premises;
 - (ii) a building permit;
 - (d) projected additional staffing requirements and proposed roster;
 - (e) applicant's undertaking;
 - (f) authority to the Secretary.
-

SCHEDULE 4

Regulation 17

PRESCRIBED INFORMATION AND DOCUMENTS FOR APPLICATION FOR APPROVAL OF A NEW DIRECTOR OR OFFICER OF A PROPRIETOR WHICH IS A BODY CORPORATE

1 Details of applicant and premises

1.1 The prescribed information is—

- (a) the name and postal address of the applicant;
 - (b) the name, postal address, email address, telephone and facsimile numbers of the contact person for the purposes of the application;
 - (c) the name and street address of the SRS;
 - (d) the number of the certificate of registration;
 - (e) the name, postal address, email address, telephone and facsimile numbers of the new director or officer;
 - (f) details of the new director's or officer's qualifications and experience in operating or working in a SRS or any other similar residential facility;
 - (g) details of any sanctions, conditions or restrictions imposed on the new director or officer or any residential facility under the ownership or management of the new director or officer, within the last five years;
 - (h) details of any business which has been placed under external administration within the last 10 years, while under the ownership or management of the new director or officer;
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- (i) details of the role and level of involvement of the person in the management and operation of the SRS.
- 1.2 The prescribed documents in relation to each proposed new director or officer are—
- (a) proof of identity;
 - (b) two referee statements;
 - (c) a criminal record check issued within the 6 months preceding the date of the application;
 - (d) the following statements—
 - (i) a health statement;
 - (ii) a financial statement;
 - (iii) a charges and convictions statement;
 - (iv) a professional standards statement;
 - (e) applicant's undertaking;
 - (f) authority to the Secretary.
-

SCHEDULE 5

Regulation 19

PRESCRIBED INFORMATION AND DOCUMENTS FOR AN APPLICATION BY LEGAL PERSONAL REPRESENTATIVE, EXECUTOR, GUARDIAN OR ADMINISTRATOR TO CARRY ON THE SRS

1 Details of applicant and premises

- 1.1 The prescribed information is—
- (a) the name and postal address of the applicant;
 - (b) the name, postal address, email address and telephone and facsimile numbers of the contact person for the purposes of the application;
 - (c) the name and street address of the SRS;
 - (d) details of the person's qualifications and experience in operating or working in an SRS or any other similar residential facility;
 - (e) details of any sanctions, conditions or restrictions imposed on the person or any residential facility under the ownership or management of the person, within the last five years;
 - (f) details of any business which has been placed under external administration within the last 10 years, while under the person's ownership or management.
- 1.2 The prescribed documents are—
- (a) proof of identity;
 - (b) two referee statements;
-

- (c) a criminal record check issued within the 6 months preceding the date of the application;
- (d) the following statements—
 - (i) a health statement;
 - (ii) a financial statement;
 - (iii) a charges and convictions statement;
 - (iv) a professional standards statement;
 - (v) in the case of a body corporate, a corporate solvency declaration;
- (e) applicant's undertaking;
- (f) authority to the Secretary.

Note

If a manager is employed under section 67 of the Act, the prescribed information and documents for an application for approval of a person to manage a SRS should also be submitted with an application under regulation 19.

SCHEDULE 6

Regulation 21

PRESCRIBED INFORMATION AND DOCUMENTS FOR AN APPLICATION FOR APPROVAL OF A PERSON TO MANAGE A SRS

1 Details of applicant and premises

1.1 The prescribed information is—

- (a) the name and postal address of the applicant;
- (b) the name, postal address, email address and telephone and facsimile numbers of the contact person for the purposes of the application;
- (c) the name and street address of the SRS;
- (d) the number of the certificate of registration.

2 Details of the proposed manager

2.1 The prescribed information is—

- (a) the name, postal address, email address and telephone and facsimile numbers of the person who is proposed to be the manager;
- (b) details of the person's qualifications and experience in operating or working in an SRS or any other similar residential facility;
- (c) if the person has been involved in a managerial capacity in a residential facility, details of any sanctions, conditions or restrictions imposed within the last 5 years on the person or the residential facility under the management of the person;

- (d) if the person has been involved in an ownership capacity, details of any such business which has been placed under external administration within the last 10 years.

2.2 The prescribed documents are—

- (a) applicant's undertaking;
- (b) authority to the Secretary.

3 Suitability of the proposed manager

3.1 The prescribed documents to be provided by the proposed manager in relation to himself or herself are—

- (a) proof of identity;
- (b) two referee statements;
- (c) a criminal record check issued within the 6 months preceding the date of the application;
- (d) the following statements—
 - (i) a health statement;
 - (ii) a financial statement;
 - (iii) a charges and convictions statement;
 - (iv) a professional standards statement;
 - (v) in the case of a body corporate, a corporate solvency declaration;
- (e) applicant's undertaking;
- (f) authority to the Secretary.

SCHEDULE 7

Regulation 23

PRESCRIBED INFORMATION FOR REGISTRATION STATEMENTS

1 Details of the proprietor and premises

1.1 The prescribed information is—

- (a) the name, postal address, email address and telephone and facsimile numbers of the proprietor of the SRS;
- (b) if the proprietor is a body corporate—
 - (i) the full name, postal address, email address and telephone number of each director, and any other officer empowered by his or her position to exercise control over the affairs of the body corporate;
 - (ii) the name, role and level of involvement of each director in the management and operation of the SRS;
- (c) the name, street address (including number), email address and telephone and facsimile numbers of the SRS;
- (d) name and address of any other person who has an interest in the premises of the SRS as owner or lessee;
- (e) name of the person employed to be the manager of the SRS, if not the proprietor;
- (f) name of the person employed as the personal support coordinator.

2 Suitability of the proprietor or director

2.1 The prescribed documents are—

- (a) proof of identity;
 - (b) two referee statements;
 - (c) a criminal record check issued within the 6 months preceding the date of the application;
 - (d) the following statements—
 - (i) a health statement;
 - (ii) a financial statement;
 - (iii) a charges and convictions statement;
 - (iv) a professional standards statement;
 - (v) in the case of a body corporate, a corporate solvency declaration;
 - (e) applicant's undertaking;
 - (f) authority to the Secretary.
-

SCHEDULE 8

Regulation 24

INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION FOR CANCELLATION OF REGISTRATION OF A SRS

1 Details of applicant and premises

1.1 The prescribed information is—

- (a) the full name and postal address of the registered proprietor;
- (b) the name, postal address, email address and telephone and facsimile numbers of the contact person for the purposes of the application;
- (c) the name and address of the SRS;
- (d) the date on which the cancellation of the registration should become effective;
- (e) the reasons for the cancellation;
- (f) how the proprietor proposes to satisfy the proprietor's obligations under the Act regarding notification of residents;
- (g) if the cancellation relates to a change of ownership to a new proprietor who intends to submit an application for registration of the SRS, the name, address and contact details of the new proprietor.

1.2 The prescribed documents are—

- (a) the SRS registration certificate;
 - (b) authority to the Secretary.
-

SCHEDULE 9

Regulation 29

**ACCOMMODATION AND PERSONAL SUPPORT
STANDARDS**

PART 1—PURPOSE

- 1 The purpose of this Schedule is to set out the minimum standards required under section 1 of the Act, and to identify the reasonable steps expected of proprietors to give effect to requirements under the Act.

PART 2—LIFESTYLE

- 2 The purpose of the standards in this Part is to support residents to retain and exercise their personal, civic, legal and consumer rights and to achieve control over their own lives within the SRS and the community.

Standard 2.1—Privacy, dignity and confidentiality

- 2.1.1 The purpose of this standard is to ensure that residents' rights to privacy, dignity and confidentiality are respected by the proprietor and all staff at the SRS.
- 2.1.2 Minimum standards are—
 - (a) facilities provided allow residents to undertake personal activities (for example, bathing, toileting and dressing) in private;
 - (b) where rooms are shared, provision is made to ensure residents' privacy to the documented satisfaction of the residents concerned;
 - (c) facilities provided must be suitable for disabled use, if required;

- (d) residents' personal and health information is securely stored.

Standard 2.2—Independence and choice

- 2.2.1 The purpose of this standard is to ensure that residents' rights to independence and freedom of choice is recognised, provided they do not unreasonably affect the rights of other residents.
- 2.2.2 Minimum standards are—
 - (a) residents are encouraged to exercise choice in their lifestyle and participate in decisions regarding the services they receive;
 - (b) residents' interests and preferences are reflected in activities provided at the SRS;
 - (c) residents are assisted, as far as possible, with transport and making arrangements to engage in activities outside the SRS;
 - (d) arrangements in place assist residents to maintain relationships with families and friends, including arrangements to receive visitors and make or take telephone calls in private, at reasonable times, having regard to the needs of other residents;
 - (e) residents are not subject to unusual or unreasonable routines in respect of daily living activities (for example, house rules that unreasonably restrict bed times, meal times, bathing and dressing).

Standard 2.3—Protection from abuse

- 2.3.1 The purpose of this standard is to ensure that residents live in an environment free of verbal, emotional, sexual or physical abuse, harassment, exploitation or neglect.

2.3.2 Minimum standards are—

- (a) staff listen and speak to residents in a respectful, supportive and courteous manner;
- (b) residents are not subject to abusive language;
- (c) bullying, intimidation and physical, verbal or sexual abuse of residents by staff or other residents is not tolerated and if it occurs, is dealt with swiftly.

Standard 2.4—Protection of private property

2.4.1 The purpose of this standard is to ensure that residents' private property is protected.

2.4.2 Minimum standards are—

- (a) residents are provided with suitable storage facilities for their personal property;
- (b) private property is not taken, borrowed or given to another person without the permission of the resident or resident's guardian;
- (c) if a resident moves out of the SRS to alternate accommodation, arrangements are made to ensure that a resident's personal belongings are forwarded to the alternate accommodation.

PART 3—FOOD AND NUTRITION

- 3 The purpose of the standards in this Part is to ensure that residents are provided with safe and nutritious food sufficient to meet their daily requirements.
-

Standard 3.1—Choice

3.1.1 The purpose of this standard is to ensure that residents' health and dietary needs and preferences are taken into account in the selection of food.

3.1.2 Minimum standards are—

- (a) dietary needs and preferences are discussed with each resident as part of the development of individual on-going support plans;
- (b) kitchen staff are informed of dietary preferences and menus are planned taking these into consideration;
- (c) food acquisition and supplies reflect the planned menu.

Standard 3.2—Nutritious food

3.2.1 The purpose of this standard is to ensure that residents are provided with food that is adequate in quality, quantity, variety and nutritional value to meet their daily requirements.

3.2.2 Minimum standards are—

- (a) menu planning is undertaken with reference to published dietary guidelines or, when necessary, the advice of a qualified dietician or nutritionist and is adequate in quality and quantity;
 - (b) menus are rotated regularly to ensure variety;
 - (c) food provided meets specific dietary requirements of residents;
 - (d) residents have ready access at all times to drinking water and other beverages.
-

Standard 3.3—Safe food

3.3.1 The purpose of this standard is to ensure that food facilities and storage and preparation practices comply with relevant laws.

3.3.2 Minimum standards are—

- (a) staff adhere to the requirements of the SRS' registration under the **Food Act 1984**;
- (b) staff adhere to the safe food handling practices, food storage and equipment requirements in accordance with the Australia New Zealand Food Standards Code.

PART 4—HEALTH AND WELLBEING

4 The purpose of the standards in this Part is to ensure that residents' health and wellbeing is promoted through the provision of personal support services and support to access appropriate health care providers.

Standard 4.1—Choice of and access to health care providers

4.1.1 The purpose of this standard is to ensure that residents are offered the opportunity to select their own health care providers and are provided with reasonable support to access those providers in a timely way.

Example

General practitioner, allied health provider, dentist.

4.1.2 Minimum standards are—

- (a) preferred health care providers are identified by residents and included in each resident's individual ongoing support plan;

-
- (b) residents are assisted, as far as possible, with making appointments and transport arrangements to attend appointments with health care providers;
 - (c) residents are encouraged to access health care promptly if any sign of deterioration in their health status appears.

Standard 4.2—Personal support

4.2.1 The purpose of this standard is to ensure that residents' personal support needs and the services provided to meet these needs are identified in residents' support plans.

4.2.2 Minimum standards are—

- (a) residents' support plans document the needs of residents for all aspects of personal support, including hygiene, toileting, dressing, eating, medication, mobility, requirements for accessing health care and emotional support;
- (b) residents' support plans document the type, frequency and timing of assistance to be provided to meet residents' personal support needs;
- (c) hygiene issues requiring medical or other professional attention are addressed in a timely way;
- (d) residents have access to an appropriate range of toiletries, including individual and personal items, to adequately maintain their personal hygiene;
- (e) equipment provided to promote residents' mobility and sensory function is kept in good order.

Standard 4.3—Clothing

4.3.1 The purpose of this standard is to ensure that residents wear their own clean clothing appropriate to the climate, individual activities and personal preferences.

4.3.2 Minimum standards are—

- (a) residents have access to their own clothing;
- (b) clothing is named clearly, but discreetly;
- (c) clothing is laundered regularly.

Standard 4.4—Bedding and linen

4.4.1 The purpose of this standard is to ensure that residents' beds are maintained with clean bedding and linen which is kept in good repair and is adequate for warmth.

4.4.2 Minimum standards are—

- (a) bedding (including linen, blankets, quilts and mattresses) is regularly cleaned, checked and repaired or replaced when necessary;
- (b) protection of bedding is provided when required;
- (c) residents have access to additional bedding for warmth when required.

Standard 4.5—First aid

4.5.1 The purpose of this standard is to ensure that at all times, a well-equipped and maintained first aid kit is available which is easily recognisable and accessible to staff.

4.5.2 Minimum standards are—

- (a) first aid materials are kept in an easily recognisable container which is located in a place easily accessible to staff;
- (b) staff are made aware of how to use first aid materials;
- (c) a regular stock take of first aid materials is undertaken.

PART 5—PHYSICAL ENVIRONMENT

5.0.1 The purpose of the standards in this Part is to ensure that SRS premises are safe, well maintained and comfortable in a way that is conducive to being a home and allows residents and staff to move safely around the SRS.

5.0.2 In this Part, *premises* include—

- (a) the building design and layout;
- (b) decoration and furniture;
- (c) arrangement of resident's personal belongings.

Standard 5.1—A safe environment

5.1.1 The purpose of this standard is to ensure that residents live in a safe and stable environment.

5.1.2 Minimum standards are—

- (a) functioning call bells are located and accessible in each bedroom, bathroom, shower and residents' toilets;
- (b) call bells are tested regularly to ensure continuous operation;
- (c) if appropriate, grab rails are provided in each toilet, shower room and bathroom;

- (d) there is sufficient lighting in passages, stairways, bathrooms, shower rooms and toilets for safe movement around the SRS;
- (e) there are sufficient power outlets available in every bedroom to accommodate electrical appliances without the need for extension cords;
- (f) hot and cold water is supplied to all showers, baths and hand basins and the temperature of the hot water controlled to avoid the risk of scalding;
- (g) processes are in place and maintained to identify and manage risks and hazards to residents.

Standard 5.2—A clean, comfortable and well maintained environment

5.2.1 The purpose of this standard is to ensure that residents live in a clean and comfortable environment that is well maintained.

5.2.1 Minimum standards are—

- (a) all facilities, fittings, fixtures, furniture and equipment are maintained in a proper state of repair and in good working order;
- (b) cleaning and maintenance of the premises, furniture, fixtures, fittings and equipment is undertaken in accordance with a schedule adequate for the needs of the resident population;
- (c) waste is not permitted to accumulate at the premises and is collected at regular and frequent intervals;
- (d) pending the collection of waste and rubbish, it is stored so as to minimise any risk of fire hazard or injury to residents;

- (e) offensive odours are identified at the premises and controlled and vermin are eradicated;
- (f) the temperature of the premises is maintained at a level at which residents are comfortable;
- (g) residents have access to bedside lighting as well as general room lighting.

Standard 5.3—Emergency procedures and planning

5.3.1 The purpose of this standard is to ensure that the proprietor has an effective emergency management plan in place and can respond to first aid emergencies at all times.

5.3.2 Minimum standards are—

- (a) an up-to date map of the SRS which identifies the number of each bedroom door, and clearly marked exit points, is kept in a prominent place;
 - (b) procedures for managing emergencies and evacuations are documented and maintained;
 - (c) all staff are aware of their roles and responsibilities in activating emergency procedures;
 - (d) residents are informed about emergency and evacuation procedures;
 - (e) regular fire drills and evacuation procedures are carried out.
-

SCHEDULE 10

Supported Residential Services (Private Proprietors) Regulations 2011
Regulation 59

RECEIPT FOR SEIZURE OF THINGS AND SAMPLES TAKEN

Note

Under regulation 59, this receipt is required from an authorised officer who has taken a sample or seized a thing at the premises of a SRS.

Name of the SRS:

Address of the SRS:

I, [Print Full Name], being an authorised officer of the Department, am seizing under section 145 of the **Supported Residential Services (Private Proprietors) Act 2010** the documents or things listed below.

THINGS SEIZED OR SAMPLES TAKEN

- 1.
- 2.
- 3.

Signed: _____ Date: _____ Time: _____

[Authorised officer]

Signed: _____ Date: _____ Time: _____

[Proprietor/staff member]

THINGS OR SAMPLES RETURNED

Signed: _____ Date: _____ Time: _____

[Authorised officer]

Signed: _____ Date: _____ Time: _____

[Proprietor/staff member]

SCHEDULE 11

Regulation 60

INFRINGEMENT OFFENCES

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Item</i>	<i>Infringement Offence</i>	<i>Description of Offence</i>	<i>Infringement Penalty</i>
1	An offence against section 18 of the Act	Failure of proprietor to display certificate of registration	In the case of a natural person, 1 penalty unit In the case of body corporate, 5 penalty units
2	An offence against section 30 of the Act	Failure of proprietor to notify the Secretary of person ceasing to be a director/officer of a body corporate proprietor	In the case of a natural person, 1 penalty unit In the case of a body corporate, 5 penalty units
3	An offence against section 34 of the Act	Proprietor operates SRS with unapproved director/officer of body corporate proprietor	In the case of a natural person, 1 penalty unit In the case of a body corporate, 5 penalty units
4	An offence against section 37 of the Act	Failure of a proprietor to provide Secretary with a registration statement within 28 days	In the case of a natural person, 6 penalty units In the case of a body corporate, 30 penalty units
5	An offence against section 45(2) of the Act	Failure of a proprietor to record details of a resident's person nominated	In the case of a natural person, 1 penalty unit In the case of a body corporate, 5 penalty units

Supported Residential Services (Private Proprietors) Regulations
Exposure Draft

<i>Column 1</i> <i>Item</i>	<i>Column 2</i> <i>Infringement Offence</i>	<i>Column 3</i> <i>Description of Offence</i>	<i>Column 4</i> <i>Infringement Penalty</i>
6	An offence against section 45(3) of the Act	Failure of a proprietor to keep resident's person nominated details up to date	In the case of a natural person, 1 penalty unit In the case of a body corporate, 5 penalty units
7	An offence against section 46(1) of the Act	Failure of a proprietor to record details of resident's guardian	In the case of a natural person, 1 penalty unit In the case of a body corporate, 5 penalty units
8	An offence against section 46(2) of the Act	Failure of a proprietor to record details of resident's administrator	In the case of a natural person, 1 penalty unit In the case of a body corporate, 5 penalty units
9	An offence against section 46(3) of the Act	Failure of a proprietor to keep details of resident's guardian or administrator up to date	In the case of a natural person, 1 penalty unit In the case of a body corporate, 5 penalty units
10	An offence against section 47(2) of the Act	Failure of a proprietor to provide a copy of the RSA to a resident within 48 hours	In the case of a natural person, 6 penalty units In the case of a body corporate, 30 penalty units
11	An offence against section 48(2) of the Act	Failure of a proprietor to provide written notice of changes to RSA	In the case of a natural person, 2 penalty units In the case of a body corporate, 10 penalty units

Supported Residential Services (Private Proprietors) Regulations
Exposure Draft

<i>Column 1</i> <i>Item</i>	<i>Column 2</i> <i>Infringement Offence</i>	<i>Column 3</i> <i>Description of Offence</i>	<i>Column 4</i> <i>Infringement Penalty</i>
12	An offence against section 56(1) of the Act	Failure of a proprietor to prepare interim resident support plan within 48 hours of admittance	In the case of a natural person, 6 penalty units In the case of a body corporate, 30 penalty units
13	An offence against section 57(2) of the Act	Failure of proprietor to review and update resident's support plan at least once every 6 months	In the case of a natural person, 6 penalty units In the case of a body corporate, 30 penalty units
14	An offence against section 58(7) of the Act	Failure of a proprietor to inform the resident's guardian/person nominated of the death of a resident as soon as practicable	In the case of a natural person, 6 penalty units In the case of a body corporate, 30 penalty units
15	An offence against section 68(1) of the Act	Failure of a proprietor to apply to the Secretary for approval of a new manager within 7 days of that employment	In the case of a natural person, 6 penalty units In the case of a body corporate, 30 penalty units
16	An offence against section 74(2) of the Act	Failure of a proprietor to inform Secretary when an approved manager ceases to work at SRS, is on leave or unable to perform role	In the case of a natural person, 1 penalty unit In the case of a body corporate, 5 penalty units

Supported Residential Services (Private Proprietors) Regulations
Exposure Draft

<i>Column 1 Item</i>	<i>Column 2 Infringement Offence</i>	<i>Column 3 Description of Offence</i>	<i>Column 4 Infringement Penalty</i>
17	An offence against section 76(1) of the Act	Failure of a proprietor to maintain a record of prescribed incidents	In the case of a natural person, 2 penalty units In the case of a body corporate, 10 penalty units
18	An offence against section 76(2) of the Act	Failure of a proprietor to maintain record of prescribed resident information	In the case of a natural person, 2 penalty units In the case of a body corporate, 10 penalty units
19	An offence against section 76(3) of the Act	Failure of a proprietor to maintain records of prescribed staff information	In the case of a natural person, 2 penalty units In the case of a body corporate, 10 penalty units
20	An offence against section 76(4) of the Act	Failure of proprietor to maintain records of staff rosters	In the case of a natural person, 2 penalty units In the case of a body corporate, 10 penalty units
21	An offence against section 77(1) of the Act	Failure of a proprietor to maintain records of prescribed reportable incidents	In the case of a natural person, 2 penalty units In the case of a body corporate, 10 penalty units
22	An offence against section 79(1) of the Act	Failure of a proprietor to obtain written consent from resident to manage or control resident's money	In the case of a natural person, 6 penalty units In the case of a body corporate, 30 penalty units

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<i>Column 1 Item</i>	<i>Column 2 Infringement Offence</i>	<i>Column 3 Description of Offence</i>	<i>Column 4 Infringement Penalty</i>
23	An offence against section 79(3) of the Act	Failure of a proprietor to keep a copy of resident's written consent to manage/control resident's money	In the case of a natural person, 1 penalty unit In the case of a body corporate, 5 penalty units
24	An offence against section 80(1) of the Act	Failure of a proprietor who manages/controls resident money to maintain an accurate and up-to-date record of resident income and expenditure	In the case of a natural person, 6 penalty units In the case of a body corporate, 30 penalty units
25	An offence against section 80(2) of the Act	Failure of a proprietor to ensure records individually itemise financial transactions	In the case of a natural person, 1 penalty unit In the case of a body corporate, 5 penalty units
26	An offence against section 90(1) of the Act	Proprietor requesting a security deposit greater than 1 month's fees	In the case of a natural person, 6 penalty units In the case of a body corporate, 30 penalty units
27	An offence against section 90(2) of the Act	Proprietor accepting a security deposit greater than 1 month's fees	In the case of a natural person, 6 penalty units In the case of a body corporate, 30 penalty units

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<i>Column 1</i> <i>Item</i>	<i>Column 2</i> <i>Infringement</i> <i>Offence</i>	<i>Column 3</i> <i>Description of</i> <i>Offence</i>	<i>Column 4</i> <i>Infringement</i> <i>Penalty</i>
28	An offence against section 91(1) of the Act	Proprietor requesting a resident to pay fees in advance greater than 1 month's fees	In the case of a natural person, 6 penalty units In the case of a body corporate, 30 penalty units
29	An offence against section 91(2) of the Act	Proprietor accepting a fee greater than 1 month's fees in advance without written request by resident	In the case of a natural person, 6 penalty units In the case of a body corporate, 30 penalty units
30	An offence against section 94 of the Act	Failure of a proprietor to provide a prescribed statement in respect of fees	In the case of a natural person, 2 penalty units In the case of a body corporate, 10 penalty units
31	An offence against section 99 of the Act	Failure of a proprietor to return security deposit within 14 days	In the case of a natural person, 2 penalty units In the case of a body corporate, 10 penalty units
32	An offence against section 118 of the Act	Failure of a proprietor to provide appropriate notice to vacate	In the case of a natural person, 2 penalty units In the case of a body corporate, 10 penalty units
33	An offence against section 158 of the Act	Failure of a proprietor to display a copy of undertaking	In the case of a natural person, 1 penalty unit In the case of a body corporate, 5 penalty units

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<i>Column 1</i> <i>Item</i>	<i>Column 2</i> <i>Infringement</i> <i>Offence</i>	<i>Column 3</i> <i>Description of</i> <i>Offence</i>	<i>Column 4</i> <i>Infringement</i> <i>Penalty</i>
34	An offence against section 163 of the Act	Failure of a proprietor to display compliance notice	In the case of a natural person, 1 penalty unit In the case of a body corporate, 5 penalty units
35	An offence against section 192 of the Act	Failure of a proprietor to keep a record of community visitor visits	In the case of a natural person, 1 penalty unit In the case of a body corporate, 5 penalty units
36	An offence against regulation 24 of these Regulations	Failure of the proprietor to make available a copy of the Act and Regulations	5 penalty units

ENDNOTES

Fee Units

These Regulations provide for fees by reference to fee units within the meaning of the **Monetary Units Act 2004**.

The amount of the fee is to be calculated, in accordance with section 7 of that Act, by multiplying the number of fee units applicable by the value of a fee unit.

The value of a fee unit for the financial year commencing 1 July 2011 is \$12.22. The amount of the calculated fee may be rounded to the nearest 10 cents.

The value of a fee unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a fee unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.

Penalty Units

These Regulations provide for penalties by reference to penalty units within the meaning of section 110 of the **Sentencing Act 1991**. The amount of the penalty is to be calculated, in accordance with section 7 of the **Monetary Units Act 2004**, by multiplying the number of penalty units applicable by the value of a penalty unit.

The value of a penalty unit for the financial year commencing 1 July 2011 is \$122.14.

The amount of the calculated penalty may be rounded to the nearest dollar.

The value of a penalty unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a penalty unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.