

Ministerial Advisory Committee on the Review of the
Health Services (Residential Care) Regulations 1991

REGULATORY IMPACT STATEMENT

**PROPOSED HEALTH SERVICES
(SUPPORTED RESIDENTIAL SERVICES)
REGULATIONS 2001**

Produced by: Aged Care Branch,
Aged Community and Mental Health Division,
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¹ For on-line browsing or downloading refer to “Proposed Health Services (Supported Residential services) Regulations 2001” hotlink.

Chapter 1: Executive Summary

Reason for the Proposed Regulations

The *Health Services (Supported Residential Services) Regulations 2001* (the Proposed Regulations) are replacement regulations for the *Health Services (Residential Care) Regulations 1991* (the Sunsetting Regulations).

Regulations are necessary to give effect to the principles in the administration of the *Health Services Act 1988* (the Act) with respect to residents in supported residential services (SRS) as stated in section 10 of the Act.

The principles are stated as:

- (a) residents are entitled to high quality health care and personal care, to their choice of registered medical practitioner or other provider of health services and to an informed choice of appropriate treatment;*
- (b) residents should be provided with a sufficient level of nutrition, warmth, clothing and shelter in a home-like environment;*
- (c) services should be provided in a safe physical environment and the residents' right to choose to participate in activities involving a degree of risk should be recognised;*
- (d) residents should be treated with dignity and respect and are entitled to privacy;*
- (e) residents should be provided with and be encouraged to participate in activities appropriate to their interests and needs and to physical and social rehabilitation;*
- (f) residents are entitled to social independence including the right to choose and pursue friendships with members of either sex, to practise religion and cultural customs and to exercise rights as citizens;*
- (g) residents are entitled to the right to manage their own finances wherever possible;*
- (h) residents are entitled to freedom of choice to the extent that it does not unreasonably infringe the rights of others and the freedom to comment about the provision of health services.*

A number of other sections of the Act contain specific references to prescribed forms and fees, and other matters required to be dealt with by regulation. Regulations are also necessary to deal with those matters.

It is also recognised that there are a number of factors that differentiate the SRS industry from other health service industries. In particular, SRS residents are more vulnerable than the users of other health services, are less able to advocate for their own rights, and have little capacity to choose another service provider if they are unhappy with the standards of care they receive. Socio-economic and demographic

profiles of SRS residents reveal a population that contains some of the most disadvantaged and disempowered members of society.

Given the clear intentions of the Act, the vulnerability of these people and demonstrable failure of the market to make adequate provision for the socially disadvantaged, the State has a duty of care to provide a legislative and regulatory framework that provides for probity, safety and choice. The Proposed Regulations are an important future component of that framework.

Objectives of the Proposed Regulations

The Proposed Regulations complement the Principles and authorising provisions of the Act by specifying minimum standards of care and accommodation, supervision, staffing and safety in SRS, and by linking those minimum standards to the administration and registration process.

The objectives of the Proposed Regulations are, therefore, to -

- provide for the administration of the Act in respect to SRS; and
- prescribe minimum standards for the care and wellbeing of residents and the installation of certain facilities and fixtures in SRS; and
- prescribe various forms, fees and other matters which the Act authorises to be prescribed by regulation.

Costs and benefits of the Proposed Regulations

The administration and registration proposals define fees associated with various stages of the administrative pathway. Those fees are designed to partially recover the costs associated with administration of the Act and the Proposed Regulations. For an average size, generally compliant facility, the burden imposed by the prescribed fees will be between 23 and 27 cents per registered bed per week. In terms of total costs faced by proprietors in the SRS industry they are very minor costs which will be passed on to residents through fees and charges.

The standards of care, facilities and fixtures, staffing, complaints and records proposals are all essentially declaratory or mechanical in nature and impose no additional costs of themselves. Any additional costs arise as a result of the requirements of the Act which are not the subject of the RIS.

The benefits arising from the Proposed Regulations accrue to both the successful applicants at various stages of the administration pathway and to residents who are protected by the safeguards built into the approval and registration processes.

Proprietors also benefit by knowing that they will not be at a competitive disadvantage as a result of the application of good business practices, particularly in the areas of provision of information, care planning and complaints handling procedures.

The most significant class of beneficiaries, however, are the residents of SRS who are provided significant additional protection through improved definition of the standards of care, facilities and staffing requirements of the Act.

Those benefits are considered to be worth much more than 23 cents a week.

When determining the appropriate level of application and annual fees to be prescribed, the Ministerial Advisory Committee took into account a number of factors before electing to not pursue full cost recovery. These included:

- the reasonable expectation of proprietors that fees be maintained at levels consistent with what they have paid in the past; and
- the flow-on effect to residents of higher fees being reflected in higher prices, particularly for residents on low, fixed incomes.

Alternatives to the Proposed Regulations

The Proposed Regulations are all considered necessary to give effect to the principles and requirements outlined in various sections of the Act.

The Proposed Regulations have been determined in such a way as to give the proprietor maximum flexibility consistent with the principles and requirements of the Act. Consideration was given to making the regulations much more prescriptive in terms of processes, measurement and forms.

The Ministerial Advisory Committee rejected that position on the basis that it would result in a regulatory framework that was unnecessarily complex, difficult to implement and laborious to monitor. Such prescriptive regulation would have the potential to become relatively costly to administer and those costs would largely be passed on to residents.

Consideration was also given to prescribing a system of self determination or industry accreditation that, in combination with a less detailed regulatory framework, may give effect to the principles and requirements of the Act. This was the favoured position of the Association of Supportive Care Homes.

The Ministerial Advisory Committee, however, rejected that position on the basis that it may not provide sufficient protection for residents. Members considered that maintaining adequate and appropriate standards of care for residents, who may be amongst the most vulnerable members of the community, was of primary importance.

National Competition Policy assessment

The Proposed Regulations have, of themselves, no significant National Competition Policy implications.

Any limitations or restrictions on participants in the industry are imposed on all participants in the industry.

No significant barriers to entry or exit are created.

No significant costs are imposed.

It may be argued that the approval and registration stages of the administrative pathway create barriers to entry and impose costs. Those processes, however, are required and determined by the relevant sections of the Act, which is not the subject of this RIS.

Reason for the Regulatory Impact Statement

The *Subordinate Legislation Act 1994* requires that all regulations are automatically revoked ten years after they are made, unless an extension is granted. Such an extension has been granted and so the Sunsetting Regulations are due to be revoked in January 2002.

The Sunsetting Regulations provide additional definition and detail to the requirements of the Act and as such form an important component of the legislative framework in which SRS operate. The Government intends that the additional protection afforded to SRS residents by the Sunsetting Regulations be extended beyond the revocation date.

A Ministerial Advisory Committee has been appointed from key stakeholder groups in the industry to review the Sunsetting Regulations and prepare replacement regulations. This Regulatory Impact Statement (RIS) has been produced in accordance with the requirements of the *Subordinate Legislation Act 1994* to give the public the opportunity to comment on the Proposed Regulations.

Submissions will be considered on any aspect of the Proposed Regulations though there are specific matters that the Ministerial Advisory Committee is seeking comment on. Those matters are listed in Chapter ten of this RIS.

Conclusion

The Proposed Regulations represent the most reasonable solution that the Ministerial Advisory Committee could determine that will give effect to the principles and requirements of the Act as they relate to SRS.

Of themselves they create no significant additional costs or other imposts on the industry and maximise the benefits of the Act to both residents and proprietors of SRS.

Chapter 2: Context to the Proposed Regulations

Introduction

Supported Residential Services (SRS) currently operate within the framework of the *Health Services Act 1988* (the Act) and the *Health Services (Residential Care) Regulations 1991* (the Sunsetting Regulations) and are registered with the Department of Human Services (the Department). They are defined by the Act as premises where accommodation and special or personal care are provided or offered to persons, other than members of the family of the proprietor, for fee or reward, but does not include a residential care service or a state funded residential care service.

Section 3 of the Act defines special or personal care as being:

- (a) *assistance with one or more of the following:*
 - (i) *bathing, showering or personal hygiene;*
 - (ii) *toileting;*
 - (iii) *dressing or undressing;*
 - (iv) *meals; or*
- (b) *physical assistance for persons with mobility problems; or*
- (c) *assistance for persons who are mobile but require some form of supervision or assistance; or*
- (d) *assistance or supervision in dispensing medicine; or*
- (e) *the provision of substantial emotional support.*

There are currently about 240 SRS registered with the Department, providing for approximately 6,500 residents. They are generally run as private businesses where the income is generated primarily from resident fees. Unlike residential care services (hostels and nursing homes), which are funded by the Commonwealth Government, they receive no public funding.

Since January 1993, approximately 30 SRS have transferred to the Commonwealth funded residential care sector and approximately 120 have closed. Most of those that have closed were older, pension-level facilities.

During the same period approximately 50 new SRS have opened. These have predominantly been purpose built facilities with fees ranging from \$1,600 to \$4,000 per month for accommodation and personal care.

There is no such thing as a 'typical' SRS. The industry is characterised by a range of facilities distinguished by size, design, quality of care offered, fees charged and the age and disability of residents. There are two distinct sectors in the industry²:

² Department of Human Services, 1998: *Supported Residential Services Bed Number Guidelines*, p. 3.

- Older style buildings which, when first registered, were not subject to the Building Code or Design Guidelines (approximately 40 per cent of SRS). Residents in some of these facilities have, in the past, faced significant overcrowding with up to six residents per bedroom. Many of these SRS charge rates up to the pension and are often referred to as 'pension level' facilities.
- Relatively new, purpose built facilities with no more than two residents per bedroom (about 60 per cent of SRS). These facilities generally charge rates higher than the pension.

There is also no such thing as a 'typical' SRS resident. Whilst many in the community might presume that residents are predominantly frail older persons who need some assistance with activities of daily living, this is only true to a degree.

There are significant numbers of older residents who have quite complex care needs arising from frailty, dementia or other long-term disability. Many of these residents may qualify for placement in a Commonwealth funded residential care service, but remain in SRS through lack of available places.

There are also significant numbers of younger people living in SRS with physical, intellectual or dual disabilities, acquired brain injury or ongoing mental health issues. Most of these residents are dependent on a Commonwealth pension or benefit as their sole source of income and they represent some of the most vulnerable and disadvantaged members of society.

In April 1998, proprietors of all SRS were sent a questionnaire seeking details of resident characteristics. The total response rate for the census was 87.5 per cent. The high response rate would lend weight to the view that the residents in the facilities surveyed are likely to be representative of the SRS resident population as a whole.

The 1998 SRS Census found that in the facilities that responded to the questionnaire, the majority of residents were aged 65 years or older. Female residents accounted for 61 per cent of all residents, while male residents were over represented in the younger age cohorts³. The 1998 resident population age and gender profile was similar to that reported in a 1993 SRS Survey⁴.

As with the 1993 SRS Survey, the 1998 Census found that the majority of residents have complex care needs. Forty-six per cent of residents were identified as being frail aged and approximately 40 per cent as having a physical/sensory, psychiatric or intellectual health issue. Only nine per cent of residents were listed as not having a predominant condition⁵.

Supported Residential Service Bed Number Guidelines were released in June 1998 to outline a procedure for the assessment of bed capacity of existing facilities and

³ Department of Human Services, 2000: *Supported Residential Services Census May 1998*, pp. 13 - 15.

⁴ Department of Health and Community Services, 1994: *Supported Residential Services Resident Access Survey, General Report*.

⁵ Department of Human Services, *op. cit.*, pp. 20 - 26.

application of those assessments. All facilities were progressively reviewed in accordance with those Guidelines and, where necessary, variations have been made to the registration of facilities.

The assessment of bed capacity took into account a range of factors at each SRS. These included⁶:

- the existing number of registered beds;
- the established occupancy level;
- minimum space requirements;
- bedroom size and layout;
- number of beds per bedroom;
- provision of private space;
- furnishings;
- communal living areas;
- bathrooms and toilets; and
- safety issues.

In order to provide an appropriate degree of natural justice for proprietors, they were offered the opportunity to have their case considered by an Independent Review Panel before a decision on bed numbers was made. They also had the right appeal any decision to vary registration to the Victorian Civil and Administrative Tribunal.

The spirit and intent of the Act

Section 1 of the Act defines its purpose as:

to make provision for the development of health services in Victoria, for the carrying on of hospitals and other health care agencies and related matters.

In regards SRS, the specific intent of the Act is to safeguard the rights of residents. Section 10 states that:

It is the intention of the Parliament that the following principles be given effect in the administration of this Act with respect to residents in supported residential services -

- (a) *residents are entitled to high quality health care and personal care, to their choice of registered medical practitioner or other provider of health services and to an informed choice of appropriate treatment;*
- (b) *residents should be provided with a sufficient level of nutrition, warmth, clothing and shelter in a home-like environment;*

⁶ Department of Human Services, 1998: *Supported Residential Services Bed Number Guidelines*, pp. 9 – 11.

- (c) *services should be provided in a safe physical environment and the residents' right to choose to participate in activities involving a degree of risk should be recognised;*
- (d) *residents should be treated with dignity and respect and are entitled to privacy;*
- (e) *residents should be provided with and be encouraged to participate in activities appropriate to their interests and needs and to physical and social rehabilitation;*
- (f) *residents are entitled to social independence including the right to choose and pursue friendships with members of either sex, to practice religion and cultural customs and to exercise rights as citizens;*
- (g) *residents are entitled to the right to manage their own finances wherever possible;*
- (h) *residents are entitled to freedom of choice to the extent that it does not unreasonably infringe the rights of others and the freedom to comment about the provision of health services."*

In order to safeguard those rights, the Act establishes procedures and criteria by which approval and registration of SRS are determined, including registration of proprietors, as well as setting requirements for the administration and care of residents in facilities. The Act also provides for powers of inspection, investigation and inquiry by officers of the Department and by Community Visitors.

Part 4, Division 4 of the Act gives the Minister the power to censure a proprietor or to suspend admissions to a facility if the proprietor has:

- failed to carry on the service in accordance with the provisions of the Act, Regulations or any condition placed upon the registration;
- has been convicted of an offence against the Act or Regulations; or
- has ceased to be a fit and proper person to carry on or exercise control over the service.

The Minister may also revoke the registration of an SRS if satisfied that the proprietor has failed, or is not likely to continue, to carry on the service in accordance with the Act, regulations or conditions on registration.

Revocation of registration, a request from the proprietor or a refusal by the Secretary to renew registration can also lead to the appointment of an administrator.

The purpose of regulation

The Sunsetting Regulations came into operation on 1 February 1991 and have been subject to a number of amendments in the intervening period. The objectives of the Sunsetting Regulations, as defined in regulation 103, are to prescribe:

- (a) *minimum standards for safety and care in SRS; and*

(b) *various forms, fees and other matters which the Act authorises to be prescribed by regulation.*

As such, they contain detailed provisions regarding such matters as:

- administration and registration;
- standards of care provided to residents;
- minimum requirements for physical facilities and fittings; and
- supervision and staffing levels.

The Victorian *Subordinate Legislation Act 1994* requires that all regulations are automatically revoked ten years after the day that they are made, unless an extension is granted. A 12 month extension was granted and so the 'sunset' date for the current regulations is, 28 January 2002.

The need for regulation

It is widely recognised that there are a number of factors that differentiate the SRS industry from other health service providers beyond the socio-economic and demographic characteristics described above.

The *Health Services Policy Review Discussion Paper* released by the Department for public comment in March 1999 describes those factors as⁷:

- SRS residents are generally more vulnerable than users of other health services, and are less able to advocate their own interests;
- residents may lack friends or advocates to champion their interests;
- the shortage of accommodation options for frail aged and other vulnerable persons often means that SRS residents have little capacity to relocate to another facility if they are dissatisfied with the standard of care that they receive; and
- the nature of the SRS industry is such that the professionalism, honesty and integrity of proprietors is likely to have a profound impact upon the way that an individual facility is run.

Given the clear intentions of the Act, the vulnerability of these people and demonstrable failure of the market to make adequate provision for the socially disadvantaged, the State has a duty of care to provide a legislative and regulatory framework that provides for probity, safety and choice, and which is more prescriptive than that which is required for other health industries. The Proposed Regulations are an important future component of that framework.

A number of sections within the Act contain specific references to prescribed forms and fees and other matters required to be dealt with by regulation. These sections relate to:

⁷ Phillips Fox and Casemix Consulting, 1999: *Health Services Policy Review Discussion Paper*, pp. 160 – 161.

- application for approval in principle - section 70(2),
- transfer or variation of approval in principle - section 74(2),
- application for registration - section 82(2),
- annual fees - section 87,
- renewal of registration - section 88(2),
- variation of registration - section 92(2),
- provision of information - section 106(2),
- privacy, dignity and security of residents - section 108A(1),
- personal hygiene of residents - section 108B(1),
- medication for residents - section 108C(1),
- suitable nutrition for residents - section 108D,
- procedures for residents complaints - section 108G(1),
- maintenance and cleanliness - section 108I(1),
- communications systems - section 108J,
- safe supply of water - section 108K,
- minimum staff - section 108L,
- resident and staff records - section 109, and
- records of visits by Community Visitors - section 122.

Regulations are required to satisfy these sections of the Act and replacement regulations must, therefore, be prepared to address at least these issues.

The section of the Act that describes the powers of authorised officers, section 147, requires that *if any thing is seized by an authorised officer*, the officer must give notice of the seizure in the prescribed form. To date, no receipt form has been prescribed and it would be appropriate to prescribe such a form in the replacement regulations.

In addition to those sections of the Act listed above which *require* regulations be prepared, section 158(1) states that the Governor in Council *may* make regulations for or with respect to prescribing a number of things related to SRS.

Regulations may, therefore, cover the additional areas of:

- maximum fees for accommodation - sub-section (b),
- standards of safety, hygiene, cleanliness and care - sub-section (d),
- requirements for the welfare of residents - sub-section (e),
- fire precautions - sub-section (f),
- staffing requirements - sub-section (g),
- maintenance requirements - sub-section (h),

- food and medicine storage - sub-section (i),
- meal arrangements and supervision of medications - sub-section (j),
- requirements for, or prohibition of, advertising - sub-section (k),
- notification of next of kin or other responsible persons - sub-section (l),
- provision and display of information and documents - sub-section (m),
- record keeping - sub-section (n),
- returns to be made to the Secretary - subsection (o),
- penalties not exceeding 100 penalty units for breaches of the Regulations - sub-section (p), and
- any matter or thing required or permitted by the Act to be prescribed, or necessary to be prescribed, to give effect to the Act - sub-section (q).

New regulations may be developed to continue or initiate regulation of any of these matters. They may:

- be of general or limited application - section 158(2)(a);
- differ according to differences in time, place or circumstances - section 158(2)(b); or
- leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Secretary, a municipal council or public authority - section 158(2)(ba).

They may also apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method that has been formulated, issued, prescribed or published by any person - section 158(2A). Such use may be whole or partial, or as amended by the regulations.

Monitoring of the SRS industry

Regulation, of and by itself, is insufficient to guarantee that vulnerable SRS residents will be afforded all the rights intended by the Act, and from time to time those rights may be violated. A rigorous system of approval, registration and monitoring of the industry is necessary to protect residents from unscrupulous persons who may wish to take advantage of the vulnerable through provision of inappropriate facilities, inadequate care or financial misconduct. This need is recognised in the Act through the various provisions related to approval and registration as well as the powers provided for inspection, investigation and inquiry by Authorised Officers and Community Visitors.

The Department employs SRS Advisors for each of its nine regions whose role includes monitoring SRS compliance with the requirements of the Act, regulations and any conditions of registration. The Advisors are all Authorised Officers appointed under section 145 of the Act to exercise the powers and authorities, and discharge the functions and duties conferred on Authorised Officers by the Act.

Advisors investigate complaints, carry out Performance Evaluations and Functional Evaluations, and conduct unannounced 'drop in' inspections at SRS.

It should be noted that it is not the Advisors' role to conduct physical examinations of residents. Proprietors are responsible under section 107(a) of the Act for taking all reasonable steps to ensure that appropriate health care is provided to residents.

Concern by Government, the Department and others about the standards of care and infrastructure in the SRS industry since the Sunsetting Regulations were introduced has led to a range of actions.

The Minister has revoked the registration of a number of facilities and the Secretary has refused to renew the registration of others that failed to meet the required standards. Many proposed proprietors have been refused registration to operate an SRS because they have been assessed by the Department as failing to meet the requirement to be fit and proper persons to carry the responsibility of the care of residents in these facilities. Many facilities have also had conditions placed on their registrations requiring building improvements or the adoption of staffing levels above the minimum requirement established by regulation.

More than 20 proprietors have been prosecuted for significant breaches of the Act and regulations.

There have been several cases where breaches of the Sunsetting Regulations related to personal hygiene, administration of medications and suitable nutrition for residents have been successfully prosecuted. Proprietors have also been successfully prosecuted for breaches of the regulations relating to the provision of information, residential statements, service planning and privacy, dignity and security of residents.

There have been cases where the death certificates of SRS residents have indicated bed sores over extended periods as a cause or contributing cause of death. There have also been cases where incontinent residents have been left in wet and soiled beds for undue periods and where residents have been so dehydrated that hospitalisation has been required.

The Parliament of Victoria has passed a number of amendments to the Act designed to give proprietors greater incentive for the provision of quality services to residents. Maximum penalties for offences have been increased for the majority of breaches, including increasing the maximum fine for more serious breaches from \$10,000 to \$60,000 plus the possibility of 5 years imprisonment.

Chapter 3: Development of the Proposed Regulations

Introduction

As discussed in the preceding Chapter, the Sunsetting Regulations will be automatically revoked on 28 January 2002 in accordance with the provisions of the *Subordinate Legislation Act 1994*. The proposed *Health Services (Supported Residential Services) Regulations 2001* (the Proposed Regulations) are replacement regulations to ensure that the provisions of the Act, as they relate to SRS, will continue to be put into effect.

The Sunsetting Regulations were originally developed as a result of the recommendations of the Ministerial Review of Special Accommodation Houses⁸ which called for a more appropriate legislative regime for nursing homes, hostels and SRS. Over the ten years since their coming into effect, the Sunsetting Regulations have been amended a number of times in accordance with changing community expectations and Government policy.

The development of the Proposed Regulations has occurred within the parameters of Government policy to ensure that SRS residents receive high quality care and are afforded privacy, dignity and respect in a safe and homelike environment. The Department has undertaken a number of initiatives over the last few years towards that end. These include:

- Implementing a review of bed numbers in SRS.
- Funding a review of the adequacy of medical services for residents of SRS.
- The development of requirements for minimum qualifications for personal care coordinators.
- Implementation of a requirement that new proprietors attend an orientation seminar conducted by the Department covering a range of issues relevant to the operation of SRS.
- Funding a series of dementia care training workshops for SRS staff and the development of a SRS Dementia Training Resource Package.
- Funding a project to examine and advise on the nutrition and physical activity needs of residents.
- Development of a series of regional education sessions for SRS staff on a range of care issues.
- Establishment of the Community Connection Program to assist residents of low-cost accommodation, including pension level SRS, access a range of State funded support services.

⁸ Health Department of Victoria, 1987: *Final Report – Ministerial Review of Special Accommodation Houses*.

As mentioned in the previous Chapter, the development of the Proposed Regulations has taken place during a time when the Act itself was being reviewed in accordance with National Competition Policy Guidelines. It is recognised in that review that an appropriate role for Government is to regulate to *ensure acceptable standards of accommodation and personal care and that vulnerable people are not abused or exploited*.⁹

The development of the Proposed Regulations has also been influenced by a number of problematic issues in the formulation process. One of these is the non-subsidised, for profit general nature of the industry, where over-regulation has the capacity to make individual services financially non-viable and ultimately cause serious damage to the industry. As a result of their generally low operating margins pension level facilities are most vulnerable in this context.

For this reason, the Proposed Regulations, where appropriate, require that the proprietor take *reasonable steps* to ensure the wellbeing of residents.

Another issue has been the difficulties associated with designing regulation that satisfies the prescriptive nature of the Act and the non-prescriptive, or outcome oriented, conventions associated with modern regulatory regimes. The Proposed Regulations are all considered essential in promoting the spirit and intent of the Act and ensuring that residents' rights to a reasonable quality of life are protected.

Members of the Ministerial Advisory Committee also raised a number of concerns about care and fabric standards in some SRSs during the development of the Proposed Regulations. Where appropriate these concerns were incorporated into specific regulatory proposals.

In a number of cases, however, issues could not be dealt with in the Proposed Regulations because:

- of the lack of appropriate authorising provisions in the Act (for example, for the application of 'fit and proper' tests to SRS staff other than the proprietor);
- of the potential for duplication of, or conflict with, other legislation (for example, in matters relating to the storage of medications); or
- the nature of the concern was such that it would require a non-regulatory response (for example, the adequacy of resourcing of community based activity programs for SRS residents).

Objective of the Proposed Regulations

In keeping with the intent of the Act, the *protection of residents* living in SRS is the focus of this regulatory proposal. The Proposed Regulations complement the Principles outlined in section 10 of the Act by adding detail to the requirements of the authorising provisions. They aim to protect residents' rights by:

⁹ Stephen Duckett *et. al.*, 1999, *Health Services Policy Review: Final Report*, p. 141.

- specifying minimum standards of care, accommodation, administration, supervision, staffing and safety; and
- linking the minimum standards to Approval in Principle, Registration, Censure and other administrative processes.

Nature and extent of the Proposed Regulations

In order to avoid confusion with regulation related to other service industries, the Proposed Regulations are specifically restricted to the SRS industry. The Sunsetting Regulations will ultimately be superseded by these Regulations.

In accord with normal drafting protocols, the Proposed Regulations do not restate provisions contained in the empowering Act, other Acts or sets of regulations.

The minimum standards have been developed after considering in a general sense:

- the reasonable expectation of residents in regards safety, care and service provision;
- the potential for neglect, exploitation or abuse in the SRS industry; and
- the body of advice of key stakeholders in the SRS industry.

Consultation and participation

The development of the Proposed Regulations was overseen by a Ministerial Advisory Committee on the Review of the Health Services (Residential Care) Regulations under the Chair of Mr Bruce Mildenhall MP, Parliamentary Secretary to the Premier and Member for Footscray.

Membership of the Ministerial Advisory Committee was extended to representatives from a number of Departmental program areas having some responsibility for SRS residents, local government, service providers, advocacy groups and officers authorised under the Act to perform various duties and functions. They were:

- the Action for More Independence and Dignity in Accommodation Service;
- the ARBIAS Acquired Brain Injury Service;
- the Association of Supportive Care Homes;
- the City of Maribyrnong;
- the Department of Human Services, Aged Community and Mental Health Division;
- the Department of Human Services, DisAbility Services Division;
- the Department of Human Services, Legislation and Legal Services Branch;
- the Office of the Public Advocate, Community Visitors Program;
- the Uniting Church in Australia, Prahran Mission;

- Regional Directors as Delegates of the Secretary, Department of Human Services; and
- SRS Advisors as Authorised Officers under the Health Services Act 1988.

Each of the organizations listed were represented at meetings of the Ministerial Advisory Committee and all were given the opportunity to make both verbal and written contributions to the development of the Proposed Regulations. It should be noted that the Association of Supportive Care Homes declined to continue to be represented after the first meeting and also declined the invitation to make a written submission to the Ministerial Advisory Committee.

In addition to the Ministerial Advisory Committee, the development of the Proposed Regulations was discussed in a number of other forums. They included meetings of the Residential Care Liaison Committee and during consultation on implementation of the recommendations of the Review of the Adequacy of Medical Services to Residents in SRS.

Those discussions included representation from a number of those organizations listed above, as well as:

- the Australian Nursing Homes and Extended Care Association, Victoria;
- the General Practice Divisions, Victoria;
- the Retirement Villages Association, Victoria;
- the Royal Australian College of General Practitioners;
- the Service Industry Advisory Group;
- the State Trustees Limited; and
- the Victorian Employers' Chamber of Commerce and Industry.

This paper is released for public comment and has been distributed to a wide range of industry stakeholders including SRS proprietors, service providers, advocacy and industry groups.

National Competition Policy assessment

The Victorian Government established the Health Services Policy Review in March 1998 to analyse the impact of the Act and any regulations arising from the Act, including the Sunsetting Regulations, on the operations of the market. This was done in the context of the Government's obligations under the National Competition Principles Agreement.

That review was conducted in seven stages¹⁰:

- **Stage 1** involved analysis of the industry affected by the legislation under review and identified the residential care market as being substantially different to that for health care.

¹⁰ Stephen Duckett *et. al.*, 1999, *Health Services Policy Review: Final Report*, pp. 1 - 2.

- **Stage 2** involved the identification and analysis of restrictions on competition.
- **Stage 3** consisted on an international literature review.
- **Stage 4** involved consultation with stakeholders to elicit their views on existing restrictions on the efficient operation of the identified markets.
- **Stage 5** involved a cost benefit analysis of alternative competitive models.
- **Stage 6** saw the release of a detailed public Discussion Paper¹¹.
- **Stage 7** was an analysis of the submissions made to the Discussion Paper and preparation of the Final Report.

The Discussion Paper was released in March 1999 to canvass views regarding the legislative restrictions on competition the health and residential care markets in Victoria. More than 3,000 copies were distributed, the website received hundreds of 'hits' and 75 written responses were received by the consultants¹². Several related to the operation of SRSs and the SRS industry and included submissions from:

- The Health Issues Centre;
- Villamanta Legal Service;
- The Tenants Union;
- The Mental Health Legal Centre;
- The Association of Supportive Care Homes; and
- Two SRS proprietors.

The Final Report noted that there are significant differences in the way in which SRSs and other forms of supported accommodation are currently regulated. *Whether removing those differences is appropriate [however] requires further consideration*¹³.

Recommendations were made in relation to removing the planning control requirements of the Act in relation to SRSs¹⁴ and considering the development of output based controls for the industry¹⁵.

No other changes to the administrative pathway or regulatory framework were proposed by the Review.

Whilst the recommendations were considered by the Ministerial Advisory Committee in the development of the Proposed Regulations, it should be noted that planning controls are a function of the Act itself and not the subject of this RIS. The issue of output based regulation has been addressed elsewhere in this chapter.

¹¹ Phillips Fox and Casemix Consulting, 1999, *Health Services Policy Review Discussion Paper*.

¹² Stephen Duckett *et. al.*, *op. cit.*, p. 2.

¹³ *Ibid.*, p. 139.

¹⁴ *Ibid.*, pp. 140 –141.

¹⁵ *Ibid.*, pp. 143 – 144.

The Proposed Regulations generally retain the care and safety protections of the Sunsetting Regulations as supported by the Health Services Policy Review.

The Proposed Regulations have, of themselves, no significant National Competition Policy implications.

Any limitations or restrictions on participants in the industry are imposed on all participants in the industry.

No significant barriers to entry or exit are created.

No significant costs are imposed.

It may be argued that the approval and registration stages of the administrative pathway create barriers to entry and impose costs. Those processes, however, are required and determined by the relevant sections of the Act, which is not the subject of this RIS.

Chapter 4: Administration and registration

Introduction

This Chapter of the RIS explains the administrative processes and provides a justification for the fees which are proposed.

Part 4 of the Act lays out, among other things, the required administrative processes relating to the approval and registration of health service establishments, including SRS.

The Act requires that applications for approval in principle and for registration, and for a variation or transfer of either an approval in principle or registration, be submitted in the prescribed manner and be accompanied by the prescribed fee. The Act also requires that the prescribed annual fee be paid. The content of the application forms and amounts of the accompanying fees are set down in the Proposed Regulations.

The activities associated with approval, registration and monitoring SRS are carried out by a number of functional units within the nine Regional Offices of the Department. They are also supported by officers of the Aged Care, Capital Management and Legislation and Legal Services Branches of the Department as required. These activities can be represented diagrammatically as the 'Administrative Pathway' shown on the next page.

Fees and taxes

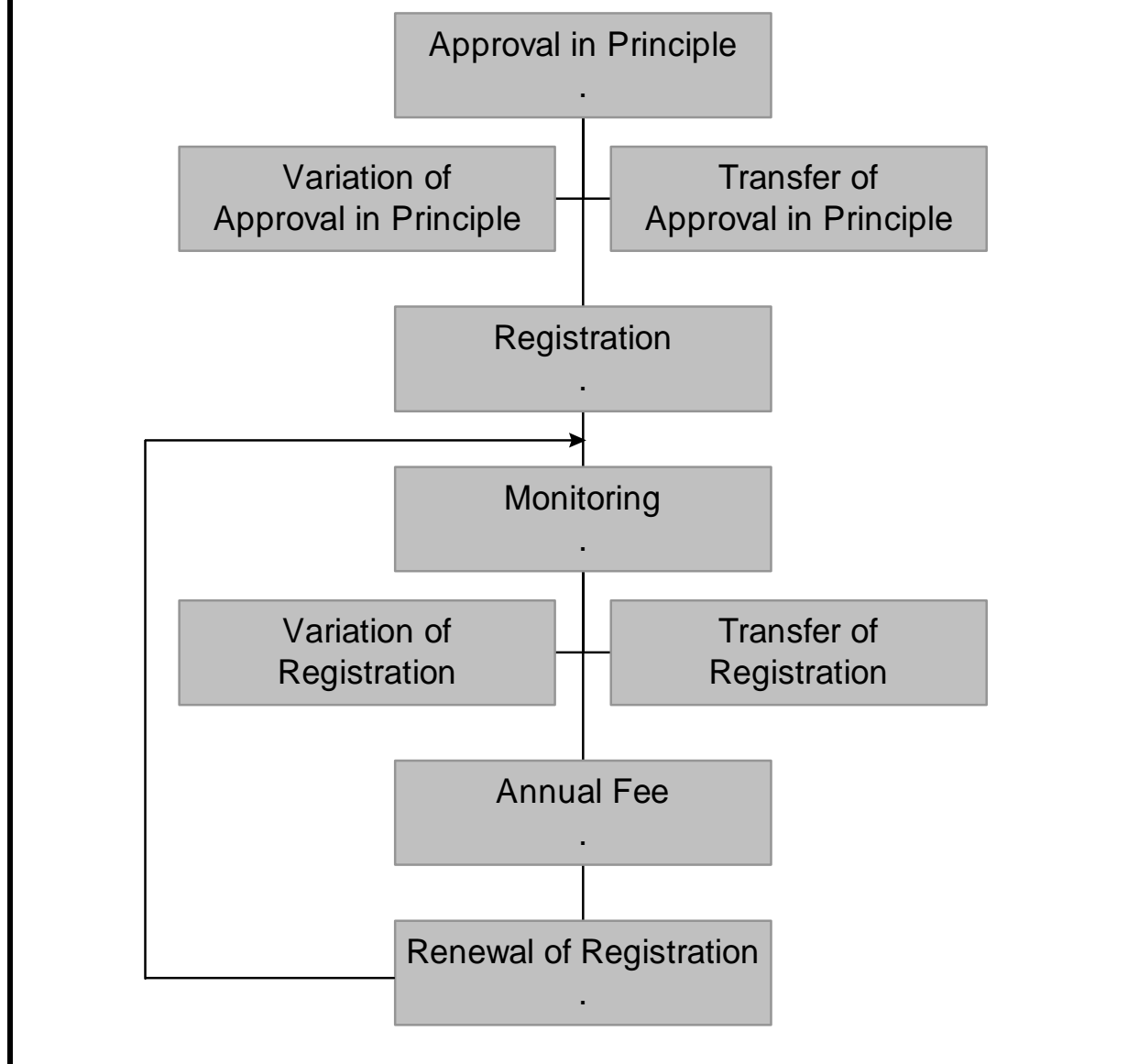
A fee is generally defined as a charge to recover some or all of the costs associated with the provision of a service or function. The power to set a fee does not authorise the recovery of revenue greater than cost.

A tax, on the other hand, is a charge levied by Government on some or all members of the community in order to raise or redistribute revenue. A fee which recovers revenues greater than cost, and so contributes a net revenue to Government is effectively a tax.

From a regulatory perspective this distinction is of critical importance. Section 21(1)(b) of the *Subordinate Legislation Act 1994* requires that regulations be reviewed by the Scrutiny of Acts and Regulations Committee of Parliament to ensure that taxes are not being imposed without specific authority in the authorising Act. Where such a specific power does not exist, fees which over-recover costs would be considered invalid.

The fees which are prescribed by the Proposed Regulations relate either to applications made as part of the Administrative Pathway or to annual fees as authorised and required by Part 4 of the Act.

Administrative Pathway



Current fee structure

The general approach to fee setting taken in preparation of the Sunsetting Regulations was one that aimed to partially recover the costs of regulating the industry¹⁶. Those fees were listed in Schedule 3 of Statutory Rules No.14/1991 and have been variously amended and substituted from time to time¹⁷.

¹⁶ Health Department Victoria, 1990: *Health Services (Residential Care) Regulations 1990, Regulatory Impact Statement*, p. 17.

¹⁷ Statutory Rules No.s 20/1992, 329/1992, 89/1995 and 160/1996.

The original fees were calculated to recover the direct labour and operating costs associated with registration and enforcement of standards¹⁸. It did not take account of non-direct costs such as accommodation and corporate overheads, nor did it take account of capital related costs such as depreciation or return on assets.

An application for approval in principle originally attracted a fee of \$150. That was increased to \$180 in February 1992. It remains at \$180 in the Sunsetting Regulations.

An application for transfer or variation of certificate of approval in principle originally attracted a fee of \$100. That fee was increased to \$120 in February 1992 and has remained unchanged since.

An application for registration originally attracted a fee of \$350. That fee was increased to \$420 in February 1992 and has remained unchanged since.

An application for renewal of registration originally attracted a fee of \$270. That fee was increased to \$290 in February 1992 and has remained unchanged since.

An application for transfer of registration originally attracted a fee of \$300. That fee was increased to \$360 in February 1992 and has remained unchanged since.

An application for any other variation of registration originally attracted a fee of \$100. That fee was increased to \$120 in February 1992 and has remained unchanged since.

The annual fee was originally prescribed as \$540. It was increased to \$570 in February 1992 and subsequently reduced to \$100 in December that year. The annual fee has remained at \$100 since.

Options for fee setting

As mentioned above, the general approach taken to setting the original fees was to *partially recover* the costs of regulating the industry. The fees were calculated on the basis of the estimated proportion of staff resources expended on different processes applied to the combined salary and direct operating costs of the responsible unit.

Given that considerable resources are expended by Government on processes associated with approval and registration of SRS, it is not unreasonable to recoup some of the costs through the charging of fees from the beneficiaries of a successful application. The most obvious direct beneficiary is the applicant. The indirect beneficiaries are the residents of SRS who are provided with a degree of protection by application of the Act and Regulations.

The Act, however, does not provide authority for collection of fees directly from residents. Even if it did, there would be considerable difficulty in developing a

¹⁸ Health Department Victoria, 1990: *Health Services (Residential Care) Regulations 1990, Regulatory Impact Statement*, p. 17.

collection system that was both equitable and administratively efficient. On the other hand, the Act does give authority to collect fees from the applicants for approval or registration, and from the proprietors of facilities in the form of annual fees.

According to the Office of Regulation Reform, fee setting in situations where there are both direct and indirect beneficiaries, such as here, should take account of a number of considerations¹⁹. They include the impact that fees may have on the provision of services and flow on effects to the community.

This presents a number of options that could be argued to be consistent with the original intent. Firstly, leave the fees at the current level; secondly, adjust the fees to take account of inflation; and thirdly, recalculate the fees using direct salary and operating costs expended on the various processes.

Process	Current	Adjusted²⁰	Recalculated²¹
Approval in principle	\$180	\$220	\$790
Transfer of approval in principle	\$120	\$150	\$170
Variation of approval in principle	\$120	\$150	\$380
Registration	\$420	\$510	\$1,070
Renewal of registration	\$290	\$350	\$400
Transfer of registration	\$360	\$440	\$970
Variation of registration	\$120	\$150	\$270
Annual fee	\$100	\$120	\$920

Note: the 'adjusted' and 'recalculated' figures are rounded to the nearest \$10.

The first option, to retain the existing fee structure without modification, is not supported as it does nothing to address the increased real costs faced by the Department associated with various stages of the administrative pathway and is, effectively, an increased subsidisation of the SRS industry.

The second option, to adjust the current fees for inflation, is proposed.

The third option is not supported as it has no significant affect on the administrative burden while significantly increasing the fee burden on proprietors. Those increased fees would ultimately be passed on to residents.

¹⁹ Office of Regulation Reform: *Regulatory Impact Statement Handbook*, p. 33.

²⁰ Australian Bureau of Statistics, Catalogue No. 6401.0, Table 1 indicates that the Consumer Price Index, All Groups Index Numbers (base 1989-90 = 100.0), Melbourne increased from 108.1 in 1991-92 to 130.8 in December 2000, an increase of 20.99 per cent.

²¹ Refer Appendix for calculations.

Comparable fee structures

While the SRS industry is particular to Victoria, comparisons can be drawn with the South Australian Supported Residential Facility industry and the Commonwealth funded residential aged care industry.

Supported Residential Facilities operate in South Australia under the *Supported Residential Facilities Act 1992* and the *Supported Residential Facilities Regulations 1994*. Local Government generally administers and enforces that legislative framework.

A range of fees are payable by those Supported Residential Facilities, they are²²:

Process	Fee
Application for licence	\$55
Issue of licence	\$275 (or proportion if less than 12 months)
Annual licence fee	\$275 (or proportion if less than 12 months)
Application for renewal	\$55
Renewal of licence	\$275 (or proportion if less than 12 months)
Late application	\$25
Application for transfer of licence	\$55
Application to settle dispute	\$25

Approved providers in the Commonwealth funded residential aged care industry do not have to pay any application or licence fees when applying for approved provider status or for an allocation of places. They do, however, have to pay a fee with every application for certification of the physical fabric of the facility. The amount of the fee varies with the number of beds in a facility, being \$15 per bed with a minimum fee of \$150 and a maximum of \$700²³.

They also have to pay the Aged Care Accreditation Standards Agency a fee when they apply for accreditation of the care provided at the facility. That fee is set at \$3,050 plus \$95 per bed²⁴, within certain minimum and maximum limits, unless the facility is a *commencing* facility, in which case the fee is 20 per cent of \$3,050 plus \$95 per bed²⁵.

²² *Supported Residential Facilities Regulations 1991 (South Australia)*, Schedule 1.

²³ *Aged Care Act 1977, Certification Principles 1977 (Commonwealth of Australia)*, part 8.17.

²⁴ *Aged Care Act 1997, Accreditation Grant Principles 1999 (Commonwealth of Australia)*, part 2.6(5).

²⁵ *Ibid.*, part 2.6(6).

It is intended that the periods of certification and accreditation be aligned in the future. The maximum period of certification or accreditation is three years, though it can be as short as one year.

For the sake of comparison, consider a 30 bed facility (the average size of a registered SRS).

What would the minimum applicable fees be under the Sunsetting and Proposed Regulations, the South Australian and the Commonwealth systems if that facility was to be built and operated for a period of six years, with the intention to keep operating it into the future?

Under the Sunsetting Regulations, the minimum fees payable would be:

• Application for approval in principle	\$ 180
• Application for registration	\$ 420
• Application for renewal of registration (2 x \$290)	\$ 580
• Annual fee (6 x \$100)	\$ 600
• <u>Total</u>	<u>\$1,780</u>

Under the Proposed Regulations, the minimum fees payable would be:

• Application for approval in principle	\$ 220
• Application for registration	\$ 510
• Application for renewal of registration (2 x \$350)	\$ 700
• Annual fee (6 x \$120)	\$ 720
• <u>Total</u>	<u>\$2,150</u>

Under the South Australian system, the minimum fees payable would be:

• Application for licence	\$ 55
• Issue of licence	\$ 275
• Application for renewal of licence (2 x \$55)	\$ 110
• Issue of licence renewal (2 x \$275)	\$ 550
• Annual fee (4 x \$275)	\$1,100
• <u>Total</u>	<u>\$2,090</u>

Under the Commonwealth system, the minimum fees payable would be:

• Application for commencing accreditation (20 per cent of (\$3,050 + (30 x \$95)))	\$1,180
• Application for continuing accreditation (2 x (\$3,050 + (30 x \$95)))	\$5,900
• Application for certification (3 x (30 x \$15))	\$1,350
• <u>Total</u>	<u>\$8,430</u>

It has been assumed here that payments are made in a timely manner, that the original operator continues to operate the facility, and that the facility is assessed as generally compliant with the relevant requirements. It is also assumed that the practice of giving three year registrations for generally compliant facilities is maintained.

In terms of cost per bed, this represents approximately:

- 19 cents per week under the Sunsetting Regulations;
- 23 cents per week under the Proposed Regulations;
- 22 cents per week under the South Australian system; and
- 90 cents per week in the Commonwealth funded sector.

It is clear from this comparison that while the Proposed Regulations will impose an increased fee burden on proprietors over the Sunsetting Regulations, that burden is comparable to that imposed by the South Australian system and less than that imposed by the Commonwealth on participants in the funded sector.

In terms of total costs in the SRS industry, 23 cents per week per bed is a very modest amount.

The Ministerial Advisory Committee has also considered the usual period of registration and suggests that registrations normally be granted for a period of two years, unless circumstances indicate otherwise, in accordance with section 85(h) of the Act. This would raise the average cost per bed from the administrative pathway to about 27 cents per week.

APPENDIX TO CHAPTER 4

Direct costs associated with administrative functions

For the purposes of recalculation, average direct labour expended on each part of the administrative process is used here. Advisors and Managers are regionally based employees whilst Architects are centrally based in Capital Management Branch.

Mid-range pay rates are used to calculate the labour costs with an additional amount of 20 per cent for direct on-costs. This equates to \$35.50 per hour for a VPS4 Advisor and \$46.60 per hour for a VPS5 Manager or a Capital Management Branch Architect.

Capital Management Branch also utilises external architectural firms to provide additional advice at various stages of the process and to conduct site and facility inspections as appropriate.

Additional expertise is used from time to time to assist with policy, legal or financial matters, though there is no clear or predictable pattern of use. Those resources have not, therefore, been included in these calculations.

Application for approval in principle:	\$
• Prepare and issue documents in response to enquiry 0.5 hour VPS4 Advisor	17.80
• Receive and process application 1.0 hour VPS4 Advisor	35.50
• Inspection of site 2.0 hours VPS4 Advisor	71.00
• Inspection of plans 1.0 hour VPS4 Advisor	35.50
3.0 hours CMB Architect	139.80
3.0 hours Contract Architect	240.00
• Consultation with applicant 2.0 hours VPS4 Advisor	71.00
1.0 hour CMB Architect	46.60
1.0 hour VPS5 Manager	46.60
• Preparation and processing of recommendation 1.0 hour VPS4 Advisor	35.50
0.5 hour CMB Architect	23.30
0.5 hour VPS5 Manager	23.30
• <u>Total</u>	<u>785.90</u>

Application for variation of approval in principle:

• Prepare and issue documents in response to enquiry 0.5 hour VPS4 Advisor	17.80
• Receive and process application 1.0 hour VPS4 Advisor	35.50

• Inspection of plans		
0.5 hour VPS4 Advisor		17.80
2.0 hours CMB Architect		93.20
• Consultation with applicant		
1.0 hour VPS4 Advisor		35.50
1.0 hour CMB Architect		46.60
0.5 hour VPS5 Manager		23.30
• Preparation and processing of recommendation		
1.0 hour VPS4 Advisor		35.50
1.0 hour CMB Architect		46.60
0.5 hour VPS5 Manager		23.30
• <u>Total</u>		<u>375.10</u>

Application for transfer of approval in principle:

• Prepare and issue documents in response to enquiry		
0.5 hour VPS4 Advisor		17.80
• Receive and process application		
1.0 hour VPS4 Advisor		35.50
• Consultation with applicant		
1.0 hour VPS4 Advisor		35.50
0.5 hour VPS5 Manager		23.30
• Preparation and processing of recommendation		
1.0 hour VPS4 Advisor		35.50
0.5 hour VPS5 Manager		23.30
• <u>Total</u>		<u>170.90</u>

Application for registration:

• Prepare and issue documents in response to enquiry		
0.5 hour VPS4 Advisor		17.80
• Receive and process application		
4.0 hours VPS4 Advisor		142.00
• Interview proposed proprietors (average 3 interviews conducted)		
3.0 hours VPS4 Advisor		106.50
3.0 hours VPS5 Manager		139.80
• Inspect facility		
5.0 hours VPS4 Advisor		177.50
Contract Architect		660.00
• Consultation with applicant		
3.0 hours VPS4 Advisor		106.50
1.0 hour VPS5 Manager		46.60
• Preparation and processing of recommendation		
1.0 hour VPS4 Advisor		35.50
0.5 hour CMB Architect		23.30
0.5 hour VPS5 Manager		23.30
• <u>Total</u>		<u>1,072.70</u>

Application for variation of registration:

• Prepare and issue documents in response to enquiry	
0.5 hour VPS4 Advisor	17.80
• Receive and process application	
1.0 hour VPS4 Advisor	35.50
• Consultation with applicant	
1.0 hour VPS4 Advisor	35.50
0.5 hour VPS5 Manager	23.30
• Inspect facility	
2.0 hours VPS4 Advisor	71.00
• Preparation and processing of recommendation	
1.0 hour VPS4 Advisor	35.50
0.5 hours CMB Architect	23.30
0.5 hour VPS5 Manager	23.30
• <u>Total</u>	<u>265.20</u>

Application for transfer of registration:

• Prepare and issue documents in response to enquiry	
0.5 hour VPS4 Advisor	17.80
• Receive and process application	
4.0 hours VPS4 Advisor	142.00
• Interview proposed proprietors (average 3 interviews conducted)	
3.0 hours VPS4 Advisor	106.50
3.0 hours VPS5 Manager	139.80
• Inspect facility (2 Advisors required)	
10.0 hours VPS4 Advisor	355.00
• Consultation with applicant	
3.0 hours VPS4 Advisor	106.50
1.0 hour VPS5 Manager	46.60
• Preparation and processing of recommendation	
1.0 hour VPS4 Advisor	35.50
0.5 hour VPS5 Manager	23.30
• <u>Total</u>	<u>973.00</u>

Application for renewal of registration:

• Prepare and issue documents in response to enquiry	
0.5 hour VPS4 Advisor	17.80
• Receive and process application	
4.0 hours VPS4 Advisor	142.00
• Interview proposed proprietors	
1.0 hour VPS4 Advisor	35.50
1.0 hour VPS5 Manager	46.60
• Consultation with applicant	
2.0 hours VPS4 Advisor	71.00
0.5 hour VPS5 Manager	23.30
• Preparation and processing of recommendation	
1.0 hour VPS4 Advisor	35.50

	0.5 hour VPS5 Manager	23.30
•	<u>Total</u>	<u>395.00</u>

Annual fee (average annual direct monitoring effort):

•	Functional evaluation (2 Advisors usually required) 10.0 hours VPS4 Advisor	355.00
•	Performance evaluation (2 Advisors usually required) 8.0 hours VPS4 Advisor	284.00
•	Unannounced inspections (average 4 per facility) 4.0 hours VPS4 Advisor	142.00
•	Consultation with proprietor 4.0 hours VPS4 Advisor	142.00
•	<u>Total</u>	<u>923.00</u>

Chapter 5: Standards of resident care

Introduction

The recent Health Services Policy Review noted that²⁶:

There is a substantial power imbalance between most users and providers of supported residential services and other forms of supported accommodation. In these circumstances, we agree with the submissions that argue that market forces may not be sufficient to ensure that users of such services will be treated fairly and reasonably.

Government, therefore, has a duty of care to see that appropriate minimum standards of care are maintained in SRS. This Chapter of the RIS looks at the proposed minimum standards of care.

Each of the proposed regulations that are the subject of this Chapter add detail and definition to the principles to be given effect with respect to residents in SRS as stated in section 10 of the Act, or to other sections of the Act as indicated. As such, they are essentially declaratory or mechanical in nature.

Alternatives

Given the specific intention of the Parliament three alternatives are generally available:

1. prescribe the manner and detail of how proprietors will ensure that the intent is satisfied;
2. prescribe a system of self determination or industry accreditation; or
3. prescribe that proprietors will take reasonable steps to ensure that the intent is satisfied.

The first alternative is considered unnecessarily prescriptive in most cases and is likely to result in many, complicated regulations that attempt to quantify all possible circumstances at any give point in time. Such an approach would be clearly inappropriate given the degree of differentiation exhibited in the industry, particularly in relation to the range of services provided by particular facilities or available in different locations, and the variation in needs and preferences of individual residents. The first alternative is not supported except in certain, specified instances.

As there is no appropriate self determination or industry accreditation system that could be prescribed the second alternative is also not supported.

Alternative three, the generally proposed alternative, satisfies the Parliamentary intent whilst allowing proprietors a degree of flexibility to make arrangements to ensure the best possible outcome for residents that is reasonable in individual circumstances.

²⁶ Duckett, S., *et. al.*, 1999: *Health Services Policy Review Final Report*, p. 139.

Choice of health service providers

Section 10(a) of the Act states, in part, that residents of SRS are entitled to *their choice of registered medical practitioner or other provider of health services*. The intent of this proposal is to add definition and detail to that entitlement and ensure that admission to an SRS does not unreasonably diminish a resident's access to the health services otherwise available in the community.

It is recognised that residents have a range of service needs, some of which are to be provided for by the SRS. Others may need to be provided for by external parties and proprietors should take reasonable steps to ensure that residents are able to obtain the services they need from the health service provider of their choice.

The continuity that comes from having consistent attention from health professionals whom the resident has come to know and trust is an important aspect of care that needs to be managed and respected. On a number of occasions in the past, however, proprietors have restricted access to facilities to one general practitioner or other health service provider as a matter of convenience for the proprietor.

Resident care plans

The care plan proposal is about the particular needs of individual residents and how it is proposed to address those needs. It requires that proprietors ensure that an individual care plan for each resident is prepared and reviewed in consultation with the resident and other relevant persons. That care plan must describe the resident's needs and the services to be provided to assist them with daily living. This proposal adds definition and detail to the information needs described in sections 9(e) and 10(a) of the Act.

It may seem self-evident that a proprietor would seek the cooperation of the resident and other appropriate persons in the development of some form of care plan, particularly for residents who may be frail or disabled, or who have particular social, cultural or religious needs to be met. Indeed, it would appear to be a prudent business practice to specify exactly what goods or services are being provided to a resident in exchange for the fees being paid.

On at least 12 occasions, however, proprietors have been successfully prosecuted for not preparing such plans in accordance with the requirements of the Act and the Sunsetting Regulations. In excess of 100 individual charges were proven.

During one recent prosecution the Magistrate hearing the case specifically requested that his views as to the *appallingly inadequate sentencing options* available under the Sunsetting regulation be relayed to Government. He also observed that these plans are of fundamental importance as a *measure of control to provide forward planning and to minimize risk to residents*.

Activities

The activities proposal seeks to uphold the principles in section 10(e) of the Act which states, in part, that residents of SRS *should be provided with and encouraged to participate in activities appropriate to their interests and needs.*

Active participation in a range of activities appropriate to the needs and interests of individuals is a normal part of everyday life in the wider community and should be none the less so for residents of SRS. There is a substantial body of work that suggests that the quality of life of individuals is significantly enhanced through participation in normal activity. Miller²⁷, for example, puts the case that when working with people with a disability:

... in the absence of contrary evidence, it must be assumed that they will enjoy the best quality of life when they approach as near as is possible to the kind of life they would have lived if they had not suffered their handicaps. There is evidence that normal, elderly people still retain a need for some active involvement and participation in life ... and none that they are happiest when totally abdicating their independence to an institution.

The language is a little dated, but the conclusion is still valid that the majority of SRS residents will positively benefit from active participation in an appropriate range of everyday activities.

Privacy, dignity and security

This proposal adds detail to the requirement of section 108A(1) of the Act which states that the proprietor must *take reasonable steps to ensure that residents are treated with dignity and respect and with regard to their entitlement to privacy.* It also adds definition to the principles in section 10[c] of the Act which states, in part, that *services should be provided in a safe physical environment.*

Privacy is recognised as a basic need and is an aspect of life that is often absent in congregate facilities such as SRS. Bathing, toileting and dressing are considered personal activities which, by their very nature, require a reasonable degree of privacy.

Normal standards of privacy and respect, however, extend beyond those activities to the individual's ability to have a measure of control over personal information and possessions, and consideration of their needs and preferences in respect to daily routines.

Wearing clothing that is personally chosen is a form of self expression and contributes to an individual's sense of personal dignity and self esteem. The proposal requires that residents be dressed in their own clothing. This would preclude the use of a pool of communal clothing though it would allow proprietors to maintain a store of clothing from which residents could select items to be kept for the exclusive use of that resident.

²⁷ Miller, cited in Jorm, A.F. (1987), *Understanding Senile Dementia*. Croom Helm, London, p. 135.

Residents should not be subject to abuse in any form.

Over the last six years there have been five successful prosecutions against proprietors for breaches of the privacy, dignity and security provisions of the Act and Sunsetting Regulations. Ten individual charges were proven.

Personal hygiene

Section 108B of the Act requires that proprietors of SRS must *take reasonable steps to ensure that the personal hygiene of all residents is maintained at the best practicable levels*. It also defines personal hygiene as including:

- (a) *clean and healthy hair, skin and nails; and*
- (b) *good oral and dental hygiene; and*
- (c) *management of or control over incontinence.*

Good personal hygiene is an important component of self esteem and is important for reducing health risks to residents and those who come into contact with them including other residents and staff.

Possessing and using personal toiletries contributes to an individual's sense of personal dignity and self esteem. The proposal requires that proprietors ensure that residents have the choice to use personal toiletries. It would, however, allow proprietors to maintain a store of toiletries from which residents could select items to be kept for the exclusive use of that resident.

The proposal sets minimum requirements for care of residents in regards personal hygiene and requires that proprietors seek appropriate professional care in certain circumstances. Those circumstances include the development of lower limb complications, bed sores and incontinence.

It may be argued that the proposal is overly prescriptive in regards frequency of bathing, nail and teeth care. It should be noted, however, that the proposal is written in the context of section 108B of the Act, which requires that proprietors take *reasonable steps to ensure that the personal hygiene of all residents is maintained at the best practical level*, and represents what is considered a socially acceptable standard of care towards which those reasonable steps should be taken. It is considered important that a clear statement of those acceptable standards is made and that the best place to make that statement is in the regulations.

On at least 12 occasions, proprietors have been successfully prosecuted for breaches of the personal hygiene provisions of the Act and Sunsetting Regulations.

Medications

Section 108C of the Act requires that the proprietor of an SRS must *take reasonable steps to maintain adequate standards of storage, distribution and administration of*

residents' medications. The prescribed medications and other medications proposals add detail to those requirements by defining the minimum requirements for distribution and administration of medications.

It is recognised that there is considerable variation in the qualifications and experience of staff employed across the SRS industry and the medications proposals are considered necessary to ensure that what constitutes good practice is commonly understood and can be enforced where necessary.

It is also recognised that these proposals represent an absolute minimum standard to which SRS will be held accountable and many facilities have well established internal policies and procedures that exceed these minimum requirements. Effective policies and procedures which cover all aspects of medicine storage and administration provide safeguards against potentially harmful incorrect or inappropriate use of medicines. Those policies and procedures should include:

- timely and safe administration of medications;
- the secure storage of medications in appropriately labelled containers;
- the appropriate disposal of medications no longer required; and
- consultation with appropriate professionals in relation to administration of non-prescription medications or in the event of mal-administration or failure to administer prescribed medications.

It is of considerable concern to the Ministerial Advisory Committee that on ten occasions, SRS proprietors have been successfully prosecuted for breaches of the medication provisions of the Act and Sunsetting Regulations. Almost 30 individual charges have been proven.

The Ministerial Advisory Committee also noted the comments and recommendations of Noreen Toohey, Coroner, who, in December 2000, suggested changes to the Sunsetting Regulations to include a more comprehensive medications record. Those suggested changes have been incorporated into the regulatory proposals as appropriate.

Suitable nutrition

Food plays an important role in the life of everyone, both as a primary determinant of health and as a stimulus to social interaction and self esteem. Food can also be intimately linked to individual's identities through cultural and religious observances.

One of the principles to be given effect with respect to residents of SRS is that they be provided with adequate nutrition²⁸. Section 108D of the Act goes further by requiring that:

The proprietor of a supported residential service must ensure that food and beverages of adequate nutritional value and variety are supplied to residents in

²⁸ Section 10(b) of the Act which states *residents should be provided with a sufficient level of nutrition, warmth, clothing and shelter in a home-like environment.*

a form appropriate to the individual health needs of residents and in accordance with the regulations.

The suitable nutrition proposal adds detail to that requirement in regards resident participation in menu planning, timing and adequacy of meals, and access to appropriate beverages.

It is important that within facilities' budgetary limits there is adequate provision for food and beverages which are enjoyable and nutritious. In the past, there has been a tendency in some facilities for food to be given a relatively low priority, and even for expenditure on food to be curtailed in order to maintain profit levels. Regulation is necessary to ensure that the business goals of minimising operating expenses and maximising profits in an establishment are not achieved at the expense of high quality meals and a balanced, nutritious diet for residents,

Given the social, cultural and health significance of food for residents, it is in the proprietor's interest to provide adequate and appealing meals in order to maximise occupancy and stability at the facility. Unfortunately, this has not always been the case.

Complaints about meals are amongst the most common received by SRS Advisors. Individual proprietors have been counselled about meal planning, conditions have been put on the registration of facilities, and, on two occasions, proprietors have been successfully prosecuted for breaches of the suitable nutrition provisions of the Act and Sunsetting Regulations.

Chapter 6: Facilities and fixtures

Introduction

Just as Government has a duty of care to see that appropriate minimum standards of care are maintained in SRS, it also has a duty of care to see that facilities are of an appropriate standard for their use. This Chapter of the RIS looks at the minimum standards for facilities and fixtures that are proposed.

Each of the proposed regulations that are the subject of this Chapter add detail and definition to the principles to be given effect with respect to residents in SRS as stated in section 10 of the Act, or to other sections of the Act as indicated. As such, they are essentially declaratory or mechanical in nature.

Alternatives

As discussed in an earlier Chapter, a number of alternative approaches to regulation that will satisfy the Parliamentary intent are available.

Developing regulations that prescribe that proprietors will take reasonable steps to ensure that the intent is satisfied allows proprietors a degree of flexibility to make arrangements to ensure the best possible outcome for residents that is reasonable in individual circumstances. As before, this is the recommended approach.

Home-like environment

Section 10(b) of the Act establishes the principle that *residents should be provided with a sufficient level of nutrition, warmth, clothing and shelter in a home-like environment*. This proposal adds further definition to the concept of a home-like environment.

Regulation in this regard is considered necessary to ensure that there is a common understanding of what is meant by home-like environment and that the principle can be enforced where necessary.

It is recognised that, whilst important, the creation of a homely, non-institutional environment which is suited to the needs of residents requires more than an appropriate building design. Decoration and furnishing are also important, as is the ability for residents to have personal possessions around them.

The culture created in a facility by proprietors and staff can also play a major role in the creation of a home-like environment. Staff attitudes to residents are very important in achieving this goal and the way that the privacy, dignity and security proposal is addressed in any particular facility is likely to impact on the degree of compliance with this proposal.

Safe physical environment

Section 10[c] of the Act establishes the principle that *services should be provided in a safe physical environment and the residents' right to choose to participate in activities involving a degree of risk should be recognised*. A number of the proposals relate directly to the safe physical environment principle, provide additional detail to that principle and allow it to be enforced where necessary.

Heating and cooling

Older and frailer residents in particular are affected to a greater extent than the general community by temperature extremes and temperature control in SRS, or lack of it, is a consistent source of complaints to the Department.

On a number of occasions in the past, SRS Advisors employed by the Department have visited facilities that were stifling hot and where residents have required hospitalisation for dehydration, partly the result of inadequate cooling during summer months.

Advisors have also been to facilities where central heating is in place, but not turned on in the middle of winter when residents have been forced to remain in bed during the day to stay warm.

Individual proprietors have been counselled about providing appropriate temperature controls, conditions have been placed on the registration of particular facilities, and, three times in the last six years, proprietors have been successfully prosecuted for breaches of the heating and cooling provisions of the Sunsetting Regulations.

Lighting

The provision of adequate lighting for movement around the premises is a basic safety requirement in SRS where residents may have partial or total visual impairment or where staff are required to be active at night.

On at least two occasions, proprietors have been successfully prosecuted for breaches of the adequate lighting provisions of the Sunsetting Regulations.

First aid kit

The provision of a first aid kit for use by staff is covered by Occupational Health and Safety requirements. This proposal requires that a first aid kit be provided and maintained for use in SRS thereby extending its use to residents and visitors as well as staff.

Grab rails

The grab rails requirement is included in recognition of the needs of frail and disabled residents. They are required to be provided in each toilet, shower room and bathroom for the safety of residents.

Bedside lighting

General lighting is usually sufficient for visual tasks such as circulation or access to wardrobes. Localized lighting, however, for tasks such as reading in bed is necessary to reduce residents' visual fatigue, assist in maintaining harmony in dual occupancy rooms, and to generally promote the residents' feeling of well-being.

Whilst the provision of bedside lighting is virtually an industry standard, there have been occasions in the past when individual proprietors have failed to provide bedside lights when requested to do so by residents.

Power outlets

Residents will often bring to their new homes a number of electrical items such as televisions, clock radios and cassette players. Access to sufficient power outlets has proven to be a problem from time to time. This has created hazards from overloaded outlets and extension cords trailing across the floor.

Identification of rooms

The purpose of this proposal is to help ensure that all residents are able to be evacuated safely. Staff and emergency services personnel will be able to confirm, by reference to the plan, that they have located and cleared people from each room in the event of an emergency.

All SRS currently maintain a room numbering system and would probably continue to do so even if not required by regulation.

Maintenance and cleanliness

The proper maintenance and the attainment of high standards of cleanliness are considered fundamental to a resident's ability to sustain a reasonable quality of life within an SRS. Regulation of these matters is considered essential.

This proposal adds further detail section 108(1) of the Act which requires that:

The proprietor of a supported residential service must keep the premises, facilities, furniture, fittings and equipment of the service -

- (a) in a proper state of repair; and*
- (b) in good working order; and*
- (c) in a clean and sanitary condition; and*
- (d) in accordance with the regulations.*

Whilst most SRS attain appropriate standards in regards maintenance and cleanliness, there have been problems at individual facilities from time to time.

Proprietors have been counselled by SRS Advisors in regards appropriate standards, conditions have been put on the registration of individual facilities, and, on at least

three occasions, proprietors have been successfully prosecuted for breaches of the maintenance and cleanliness provisions of the Act and Sunsetting Regulations.

Communications systems

It is fundamental to the safety and wellbeing of residents that help is able to be called when required. It is for that reason that section 108J of the Act requires that:

The proprietor of a supported residential service 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.

This proposal adds additional detail to those requirements by defining the areas of the facility where the system must be effective and allowing for an additional back-up system to be used when the electronic system is not operating.

All registered SRS currently operate a conforming communication system, though there have been problems at individual facilities from time to time. Eleven charges have been proven in four prosecutions for breaches of the communication system requirements of the Act and Sunsetting Regulations.

Supply of water

Section 108K of the Act requires that:

The proprietor of a supported residential service must ensure that an adequate and safe supply of hot and cold water is provided in the service in accordance with the regulations.

Tragically, there was a situation a number of years ago leading to a coronial enquiry into a death by scalding in a residential care facility. This proposal acts on the Coroner's recommendation that all residential care facilities provide a system or mechanism to control outlet temperature of hot water.

In the past there have been instances where residents have not had access to adequate supplies of hot water to maintain personal hygiene. The personal hygiene proposal deals with that issue.

There have also been cases where residents have had insufficient access to drinking water which has contributed to hospitalisation for dehydration. The suitable nutrition proposal deals with that issue.

Chapter 7: Supervision and staffing

Introduction

This Chapter of the RIS looks at the minimum requirements for supervision and staffing that are proposed for SRS.

The proposed regulations that are the subject of this Chapter are essentially declaratory or mechanical in nature as they add detail and definition to the principle *that residents are entitled to high quality health care and personal care* as stated in section 10(a) of the Act, or to the requirements of section 108L of the Act. Section 108L(1) states that:

The proprietor of a supported residential service must ensure that adequate and appropriately trained staff are employed in the service in accordance with the regulations.

Alternatives

As discussed in an earlier Chapter, a number of alternative approaches to regulation that will satisfy the Parliamentary intent are available.

Developing regulations that prescribe that proprietors will take reasonable steps to ensure that the intent is satisfied allows proprietors a degree of flexibility to make arrangements to ensure the best possible outcome for residents that is reasonable in individual circumstances. As before, this is the recommended approach.

Personal care coordinator

The objective of the personal care coordinator proposals is to ensure the appointment of high calibre persons to the position of personal care coordinator or acting personal care coordinator. This is considered an essential goal if industry standards are to be raised as it is recognised that the quality of care received by residents in SRS is dependent in large part on the ability of the senior care provider.

The proposals define the role of the personal care coordinator as being responsible, either with or on behalf of the proprietor, *for the co-ordination and continuity of the special or personal care provided*. They define the position as a full time position (though giving the proprietor a degree of flexibility on how the position is filled) and set minimum qualification requirements for persons who are employed as a personal care coordinator or as an acting personal care coordinator.

In those matters, therefore, the proposals add definition and detail to the requirements of section 108L(1).

The requirements in the proposals that the proprietor notify the Secretary of the resignation or termination of a personal care coordinator or acting personal care coordinator, allow the Department to monitor compliance with the appointment and

qualification requirements. To the extent that quality of care is predicated upon the quality of the senior care providers, the proposals add definition and detail, and allow enforcement if necessary, of the principles stated in section 10(a) of the Act.

The Office of the Public Advocate and others have consistently raised concerns about the lack of skills of management and staff in some SRS over a number of years²⁹. In March 1999 the Department released a Regulatory Impact Statement³⁰ leading to minimum qualifications for personal care coordinators became effective on 1 January 2001³¹.

The defined minimum qualification is either of two nationally accredited, competency based courses, or any other qualification that has been certified as equivalent to either of those two courses. One of those courses is the same as that previously prescribed as the minimum qualification and all registered SRS should, therefore, currently employ a personal care coordinator that satisfies these requirements. No additional costs are imposed on existing proprietors.

For new entrants into the industry, or for those individuals who aspire to become personal care coordinators, the courses cost about \$500 in fees and includes approximately 400 hours of course time, half of those being undertaken 'on the job'³². There are more than 90 training providers accredited to provide courses in Victoria that lead to the proposed minimum qualification³³, including adult education and community centres, private providers and at least 16 TAFE colleges.

Core competency areas required as part of the courses leading to the proposed minimum qualifications include essential skills in communication, and the development and coordination of service delivery strategies. Elective components can also be drawn from a wide range of community services areas thereby allowing maximum flexibility to develop skills necessary to work effectively with residents with a variety of care and support needs.

It should be noted that in many instances proprietors either employ a more highly qualified personal care coordinator, or hold qualifications themselves that are likely to be assessed as appropriate and fulfil the functions of personal care coordinator within the SRS, and that more advanced qualifications than those proposed are becoming the industry norm. The proposed qualifications represent the minimum competencies considered necessary for personal care coordinators to effectively manage the delivery of personal care services in SRS.

²⁹ See, for example, *1997 Annual Report of Community Visitors Appointed Under the Health Services Act 1988*, pp 61 – 63.

³⁰ Department of Human Services (1999), *Proposed Health Services (Residential Care) (Further Amendment) Regulations 1998, Regulatory Impact Statement*.

³¹ *Health Services (Residential Care) Regulations 1991*, regulation 506(3).

³² Department of Human Services, *op. cit.*, p 10.

³³ Refer to the National Training Information Service website, www.ntis.gov.au

Minimum staffing

Whilst the skills and abilities of staff are important determinants of quality of care, section 108L(1) of the Act also recognises the importance of an adequacy of staff. The minimum staffing proposal adds detail to the adequacy of staff requirement.

The proposal requires that there be at least one special or personal care provider on duty for each 30, or fraction of 30, residents during periods when the residents are normally active. This is an absolute minimum staffing level and if the care needs of residents are such that more staff are needed, then the proprietor must ensure that they are available.

The proposal allows a lower staffing level at night when residents are not normally active and the needs are commensurately less.

While these staffing levels appear low, it is important to note that they are essentially the same as those that have been in place for 10 years and that higher staffing levels are the norm in many SRS. It is estimated by Departmental staff that less than 20 per cent of SRS currently operate with the current minimum staffing ratios, and then only in facilities where the personal care needs of residents would not justify additional staff being employed.

Consideration was given to increasing the minimum personal care staff levels above 1:30 as suggested by the Community Visitors³⁴ and others.

It was decided not to propose a higher minimum staffing level for two reasons. Firstly, proprietors are required by the proposal to employ adequate staff to provide for the needs of residents. This requirement adequately addresses those situations where additional staff would be warranted.

Secondly, the extra costs associated with any additional increases in staffing levels will be passed on to residents through increased fees and charges. This has the potential to price SRS accommodation and care beyond the capacity of pensioners, and others on low incomes, to pay.

Concerns at individual facilities have, from time to time, resulted in proprietors being counselled about adequate staffing levels, conditions being placed on the registration of facilities, and, on a small number of occasions, proprietors have been successfully prosecuted for breaches of the minimum staffing requirements of the Act and Sunsetting Regulations.

Residents not to be employed

Concern has been expressed over a number of years by Community Visitors³⁵ and others about the nature and extent of poverty among SRS residents. After paying

³⁴ See, for example, *1997 Annual Report of Community Visitors Appointed Under the Health Services Act 1988*, pp. 40 – 45.

³⁵ See, for example, *1999 Annual Report of Community Visitors Appointed Under the Health Services Act 1988*, pp. 12 – 15.

the fees charged by the SRS, some residents are left with insufficient disposable income to purchase toiletries, clothing or medication, or for recreational activities beyond those provided free of charge within the SRS. This lack of disposable income makes the resident almost totally dependent upon the proprietor and staff for their wellbeing.

Under such circumstances, it is essential that vulnerable residents are not directly, or indirectly, pressured to undertake activities that would normally be carried out by paid staff of the facility. Advice from the Department is that such practices were not uncommon before they were prohibited by the Sunsetting Regulations.

This proposal adds detail to the principles stated in section 10(e), (f) and (h) of the Act. Those principles are that residents should be encouraged to participate in activities appropriate to their interests and needs; are entitled to social independence; and, are entitled to freedom of choice. The proposal allows those principles to be enforced in situations where residents are coerced into undertaking activities that are not appropriate or which diminish their social independence.

The Department will continue to provide explanatory information to proprietors to assist with interpretation of these requirements.

Chapter 8: Resident complaints

This Chapter of the RIS looks at the proposed procedures for resident complaints.

The proposed regulations that are the subject of this Chapter are essentially declaratory or mechanical in nature as they add detail and definition to the requirements of section 108G(1) of the Act which states that:

The proprietor of a supported residential service 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.

In any congregate living arrangements different individuals may have different expectations and goals which can lead to disagreements about those living arrangements or conduct of other residents and staff. Many disagreements can be successfully resolved in an informal manner, particularly if the disagreement is centred on a relatively minor matter. Negotiated solutions are preferable to the use of excessive power.

In some cases, however, informal approaches fail and then provisions for formal complaint are necessary.

The complaints procedures proposal requires that the proprietor nominate a member of staff to receive and deal with complaints; that complaints are dealt with promptly and treated confidentially; that a record is kept of the complaint and any actions taken in respect to the complaint; that the person making the complaint is informed of those actions; and, that every resident and member of staff is informed of the complaints procedure.

Some proprietors may choose to nominate themselves as the person who handles complaints, others may nominate the personal care co-ordinator, or even another member of staff. The appropriate person to deal with complaints will vary with the size and staffing arrangements of the SRS, the important thing is that an appropriate person is nominated and that the relevant people know who that person is and what they have done about the complaint.

The form of the record of complaint will also vary from one facility to the next depending on the usual form of record keeping in those facilities and the abilities of the person nominated to deal with complaints. The complaint may be recorded in an exercise book, a numbered journal or on a computer program. Again, the important thing is not how the record is made, but that a reliable record is kept that shows the details of the complaint and what actions were taken in relation to it, and that the complaint is dealt with promptly and confidentially.

The maintenance of an effective complaints handling system incorporating the aspects required by this proposal would seem to good business practice in that it can provide proprietors important information on how the business can improve and assists in maintaining a positive market impression. Despite these obvious benefits, there have been problems in the past with compliance with these requirements. On

at least two occasions proprietors have been successfully prosecuted for breaches of the complaints provisions of the Act and Sunsetting Regulations.

It should be noted that there are external avenues that residents, staff and others can access if they have a complaint about an SRS.

SRS Advisors employed by the Department accept and investigate complaints about SRS. A number of options are available to the Department if a complaint is substantiated. These include advocating change in the facility through negotiation and education, placing conditions on the registration of the facility, prosecution for breaches of the Act or regulations, or recommending that the Minister suspend admissions, revoke the registration or appoint an administrator.

A number of prosecutions in the past have come about as the result of investigation of complaints received by the Department from staff, residents and other concerned parties.

Residents may also request to see a Community Visitor, one of whose functions is to inquire into any complaint made by a resident³⁶. Following those enquiries, the Visitor may make recommendations considered appropriate to the Department and the Public Advocate³⁷.

The person in charge of the SRS is required to notify a Community Visitor within 7 days of a request to see one being made³⁸.

Residents, staff or members of the public may also lodge a complaint about health services, including SRS, with the Health Services Commissioner.

Alternatives

As discussed in an earlier Chapter, a number of alternative approaches to regulation that will satisfy the Parliamentary intent are available.

Developing regulations that prescribe that proprietors will take reasonable steps to ensure that the intent is satisfied allows proprietors a degree of flexibility to make arrangements to ensure the best possible outcome for residents that is reasonable in individual circumstances. As before, this is the recommended approach.

³⁶ *Health Services Act 1988, section 117(b)(v).*

³⁷ *ibid., section 121(3).*

³⁸ *Ibid., section 121(2).*

Chapter 9: Information and records

Introduction

This Chapter of the RIS looks at the information and records that are proposed be provided and maintained.

The proposed regulations that are the subject of this Chapter are essentially declaratory or mechanical in nature as they add detail and definition to the requirements of various sections of the Act.

The provision of information proposal relates to sections 9 and 10 of the Act which identify the need to ensure that users of health services and residents of SRS have sufficient information to make informed choices in relation to treatment and care.

The various records proposals mostly relate to section 109 of the Act which states that:

- (1) *The proprietor of a health service establishment must cause to be kept in the prescribed manner and to be retained for the prescribed period the prescribed particulars of -*
 - a) *persons who receive care in the establishment and the type of care received; and*
 - b) *staff employed in the establishment.*
- (2) *A person must not during the prescribed period destroy or damage any records kept for the purposes of sub-section (1).*

Provision of information

It is not unreasonable for persons considering becoming a resident of an SRS to seek, and be provided with, adequate and accurate information relating to the facility which may become their home. Indeed, the Act identifies *informed choice* as a principle to be given effect with respect to residents of SRS³⁹.

Similarly, it is not unreasonable for referral agencies, and others in the community who have a role in recommending accommodation options to vulnerable people, to seek such information.

The provision of information proposals set out the minimum information considered necessary in order that an appropriately informed choice can be made by (or on behalf of) prospective residents.

The overwhelming majority of SRS have information of the type proposed readily available for prospective residents and other interested parties. The format of that information does vary according to the marketing and promotion strategies at

³⁹ *Health Services Act 1988*, section 10(a).

different facilities with some facilities developing internet sites and 'glossy', printed brochures whilst others rely on hand typed and photocopied pages. Whilst requiring that sought information be provided, the proposal does not seek to unnecessarily prescribe or otherwise limit the style of presentation that proprietors may choose.

From time to time, however, individual proprietors have failed to provide appropriate and accurate information to prospective residents in breach of the relevant requirements of the Sunsetting Regulations. This has resulted in significant confusion about what is, or is not, to be provided by the facility; different standards of care than anticipated; and additional, unexpected out of pocket expenses for vulnerable residents. In a number of cases it has also resulted in SRS proprietors being successfully prosecuted, with at least 13 individual charges being proven.

Residential statements

This proposal also add detail to section 106(2) of the Act by requiring that the same information as that provided to a prospective resident is incorporated into the residential statement once the decision has been made to move in.

From time to time there have been problems with the residential statement arrangements at individual facilities which has led to proprietors being counselled about their responsibilities. On occasion, proprietors have even been prosecuted for breaches of the residential statement requirements with more than thirty individual charges being proven.

Resident records

This proposal lists the resident record which is to be maintained, defines the particulars of that record, and defines the period for which the particulars are to be kept. The principle resident record is the Register of Residents and the minimum information to be recorded in that record is:

- Full name;
- Date of birth;
- Sex;
- Nationality;
- Languages spoken;
- Religious preference (if any);
- Name and contact details of resident's relative or next of kin, guardian (if any) or administrator (if any);
- Name and contact details of resident's medical practitioner and other health service providers (if any);
- Name and contact details of referring body if known;
- Pension number and type of pension;

- Date of admission; and
- Room number.

While it would seem to be prudent business practice to maintain information of the type required by this proposal, there have been problems at individual SRS from time to time. On at least ten occasions proprietors have been prosecuted for breaches of the residential statement requirements of the Sunsetting Regulations with more than twenty individual charges being proven.

Staff records

This proposal lists the staff record which is to be maintained, defines the particulars of that record, and defines the period for which the particulars are to be kept. The principle staff record is the Register of Staff and the minimum information to be recorded in that record is:

- Full name;
- Date of birth;
- Date of employment;
- Date employment terminated; and
- Qualification, if any.

These details are all required to be kept by the proprietor for other purposes and so impose no additional cost other than storage for the prescribed period. In many cases the information will be maintained electronically already and so longer term storage costs will be negligible.

Despite this, there have been problems at individual facilities at various times. These have led to a range of actions being taken by the Department, from counselling the proprietors about their responsibilities under the Act and regulations to prosecution on at least four occasions.

Accident records

The accident record proposal is one that would appear to be normal, prudent business practice, but one which, unfortunately, is not always well understood. On a small number of occasions proprietors have been prosecuted when serious incidents involving harm to residents have occurred in facilities without any report or record of those incidents being made.

Record of transfer

It is important that essential details relating to a resident's care needs, and the reason for transfer to another health care facility, are communicated effectively to

ensure continuity of care and the identification of relevant information concerning the resident's accommodation, care and social needs.

Appropriate documentation ensures that any significant behavioural problems or health status deterioration which are stated by the proprietor to justify a transfer can be verified against the requirements of section 107 of the Act. That section states that the proprietor *must take all reasonable steps to ensure that the appropriate health care is provided to the resident* when the residents needs exceed those that can be provided for at the facility. These requirements apply to the medical and mental health needs of the resident.

Despite the importance associated with the transfer forms, there have been at least 12 successful prosecutions since 1993 related to 28 breaches of the transfer form requirements of the Sunsetting Regulations.

Community visitor records

Section 122 of the Act requires that the person in charge of an SRS *must keep a record in the prescribed form of visits by visitors*. The community visitor records proposal prescribes that form as a schedule to the regulations.

Chapter 10: Submissions

Submissions are sought from industry participants, interested parties and the general public. Submissions on any aspect of the Proposed Regulations will be considered though there are particular questions that the Ministerial Advisory Committee is seeking to have addressed in those submissions.

The questions for which specific responses are sought are:

1. Given that the Act requires that certain matters be prescribed by regulation, do the Proposed Regulations adequately address the requirements of the Act?
2. Do the proposed Regulations provide for all the essential requirements for the well being of residents?
3. What, if any, additional matters are there that should be included in the Proposed Regulations?
4. What, if any, matters have been included in the Proposed Regulations that should not have been?
5. What, if any, are the appropriate level of fees to be charged at the various stages of the administrative pathway?

Submissions should be made in writing, be marked confidential and be addressed to:

**Executive Officer, Ministerial Advisory Committee
Health Services (SRS) Regulations RIS
c/o Aged Care Branch, DHS
Level 10, 555 Collins Street
MELBOURNE VIC 3000**

Or sent in Microsoft Word compatible electronic form to:

srs.mac@dhs.vic.gov.au

**Submissions should be received not later than 4.00 pm on:
Friday 12 October 2001.**

Individuals or organizations wishing to make a verbal presentation should contact the Executive Officer on (03) 9616 7467, or at the above email address, not later than 4.00 pm on Friday 14 September 2001.

ATTACHMENT

Proposed *Health Services (Supported Residential Services) Regulations 2001.*