

Future directions for supported residential services (SRS)

Discussion sheet 4:

Resident protections – money

The current SRS regulatory scheme is being updated. Changes are proposed to the existing scheme to enhance protection for people living in SRS and to ensure the scheme is contemporary and provides flexibility to meet the needs of the industry into the future.

Residents and their families have the right to know what happens to the money they pay as part of a security deposit or advanced fee when entering a facility and how they can reclaim the balance to which they are entitled when they leave. Residents also have the right to know that their money will be safe and managed in a responsible manner while they are living in an SRS.

What we know

- Earlier reforms in this area have been well received by residents and their families. However, there is confusion about what payments can be requested and how these payments are currently protected under the *Health Services Act 1988*.
- New situations have emerged that require changes to the legislation to ensure residents' finances are protected. For example, some SRS have introduced security deposits and there are no protections in place for such payments.

New directions – proposals for legislative reform

All existing provisions for the protection of residents' money will be retained in the new Act.

As outlined in *Discussion sheet 2 (Scope of legislation)*, payments for property rights can only be made where the SRS is registered as both an SRS and a retirement village. Such payments are protected under the provisions of the *Retirement Villages Act 1986*. If a proprietor accepts money for property rights without giving residents the protections under the Retirement Village Act or fails to register the SRS facility as a retirement village, penalties will apply under both sets of legislation.

Changes are proposed to provide greater protection for other payments made in advance.

Proposal: Security deposits paid by a resident to an SRS must not exceed two months' fees.

A security deposit is an amount of money paid in advance to cover a potential loss to the proprietor resulting from damage caused by the resident to the premises, or from a default in fee payment. The department has received complaints from residents and their families about the lack of clarity about arrangements for security deposits. This proposal ensures that no more than the equivalent of

two months' fees is accepted as a deposit and that arrangements regarding the return of the deposit are clarified up front.

Changes will be made to the legislation to require proprietors to specify details on the amount of the deposit, conditions of the deposit and conditions of any refund in the new residential and services agreement (RSA).

Information relating to disputes over the return of the security deposit should also be included in the RSA.

Residents can apply to the Victorian Civil and Administrative Tribunal (VCAT) for any problems related to the return of the security deposit.

Proposal: Fees paid in advance will be set at a maximum of two months' fees.

It is clear that the arrangements for fees paid in advance are also not well understood. Under this proposal, fees paid in advance by a resident will be set at a maximum of two months' fees.

Changes will be made to the legislation to require proprietors to specify details on the amount of the money to be paid in advance, and the return of the balance of fees in the new RSA.

This proposal will reduce confusion over what monies can be paid on entry to an SRS and provide extra protections regarding the return of these monies.

Residents or proprietors can apply to VCAT in cases of dispute.

Proposal: Entry fees will be prohibited.

Payments made to gain admission to an SRS that are neither security deposits nor fees in advance (often called entry fees) will not be allowed. This proposal does not apply if the SRS is offering property rights under the Retirement Villages Act.

Feedback from residents and their families during the consultation phase highlighted the fact that they did not understand the arrangements or purpose of entry fees and how to recover monies when they leave the SRS. This provision will eliminate any misunderstandings.

Entry fees will be prohibited under any circumstances, whether refundable or not, and however described. If entry fees are charged, such payments are prohibited transactions and existing powers to undo prohibited transactions will apply.

This requirement will not be imposed retrospectively.

What's new?

The table below summarises the requirements that will be retained from the existing regulatory scheme and new requirements being proposed.

Status	Requirements
Retained	Proprietors managing a resident's discretionary spending money or 'pocket money' is limited to a maximum of one month's fees. <i>Date of effect: current, and to be included in new legislation.</i>
Retained	Prohibited and reportable transactions remain as stated in the Act, for instance, a proprietor or close associate cannot accept gifts of over \$100 in value from a resident. <i>Date of effect: current, and to be included in new legislation.</i>
Retained	A ban on proprietors or close associates being the guardian or administrator for a resident. <i>Date of effect: current, and to be included in new legislation.</i>

Retained	Powers to undue transactions that are prohibited. <i>Date of effect: current, and to be included in new legislation.</i>
New	Security deposits paid by a resident must be no more than the equivalent of two months' fees and must be stated in the RSA. <i>Date of effect: immediately after the legislation is passed.</i>
New	Fees paid in advance by a resident must be no more than the equivalent of two months' fees and must be stated in the RSA. <i>Date of effect: immediately after the legislation is passed.</i>
New	Payment in the nature of an entry fee is a prohibited transaction. <i>Date of effect: immediately after the legislation is passed.</i>
New	Payments made by a resident for property rights must be protected under the Retirement Villages Act. <i>Date of effect: six months after the legislation is passed.</i>

How will it work?

Case study 1

When Mr Smith entered Graceland SRS in June 2002, the proprietor asked him to put down the equivalent of one month's fees (\$1,250) as a security against any damage to his room. Mr Smith duly paid the money and details of the arrangement were set out in the residential statement* Mr Smith signed on entry. In September 2008, Mr Smith's health deteriorated significantly. Following assessment by the local aged care assessment service, a Commonwealth residential care placement in a high care home was recommended. Mr Smith's family organised a place and he moved in early October 2008. Mr Smith's family then approached the SRS proprietor for a refund of the security deposit. As detailed on the SRS residential statement, the proprietor refunded the deposit minus the cost for steam cleaning the carpet in Mr Smith's former room.

*Residential statements will be re-named 'residential and services agreements' (RSA).

Case study 2

Mrs Brown has been operating an SRS for several years and after undertaking some refurbishments to the facility decides to offer rooms for sale to residents for between \$150,000 and \$250,000. Several residents take up the offer. During an inspection at the facility, the SRS authorised officers discover that a resident has purchased a room. On investigation, it is established that none of the requirements regarding registration as a retirement village have been met. The proprietor may be liable to be prosecuted under both the SRS legislation and the retirement village legislation. In addition, under powers in the retirement village legislation, the resident who purchased the room may rescind the contract.

Implementation

Information sheets will be developed to help both proprietors and residents understand the new provisions.

Frequently asked questions

Q.1 Can I be asked to pay money before I go into an SRS, and if so, how much?

A. You may be asked to pay:

- fees in advance: up to two months' fees is permitted.
- a security deposit: an equivalent of two months' fees is permitted, but conditions about the deposit and its return must be set out in the RSA.

Entry fees are prohibited.

If you are buying your accommodation, the transaction must comply with the Retirement Villages Act. Make sure you get legal advice!

Q.2 Can the proprietor of a SRS take care of my money?

A. The current legislation states that a proprietor cannot act as the guardian or administrator for a resident and this provision will remain. Ask a trusted family member or friend to be your legal representative, or ask for a guardian to be formally appointed at VCAT.

Proprietors can look after a resident's spending money up to a limit of one month's fees, but rules apply. You must provide written consent; the proprietor must keep proper records of money received and spent, and must update you at least quarterly or at your request.

Proprietors may have the capacity to look after some personal effects such as valuables or important documents but this may vary between SRS. You should check what is available before bringing these items in.