

Future directions for supported residential services (SRS)

## Discussion sheet 6:

# Resident protections – security of tenure

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.

**For more than 6000 Victorians, SRS are their homes. It is therefore important that they feel safe, secure and able to live their lives as they choose, while respecting the wishes and rights of other residents and staff. Ensuring that both proprietors and residents give adequate notice will provide greater security of tenure for residents.**

### What we know

- Under current regulations, the residential statement must include the grounds for eviction and the notice period that proprietors should give to residents. As well, it should include the notice period that residents leaving the service should give to proprietors.
- The only notice period currently stated in legislation relates to SRS closures, where proprietors are obliged to give residents 28 days' notice.

### New directions – proposals for legislative reform

It is proposed that all existing requirements regarding the provision of notices be retained.

It is also proposed to establish statutory notice periods for proprietors seeking to evict residents and for residents seeking to leave the SRS. These would be linked to a range of circumstances. These periods have been modelled on the notice periods included in the *Residential Tenancies Act 1997* and also consider the needs of SRS residents for accommodation and personal care support.

No notice will be required when residents temporarily leave the SRS such as on a holiday or if admitted to hospital. In this case, provided the resident's fees are up to date, the proprietor would be obliged to keep the resident's bed available as per the residential and services agreement.

These notice provisions will not apply to residents staying at SRS on a short term basis, such as for respite care, who must have a termination date and/or set notice periods as part of the agreement for their stay.

**Proposal: To improve security of tenure for SRS residents by establishing statutory notice periods for proprietors seeking to evict residents and for residents seeking to leave the SRS.**

This proposal will specify the minimum notice periods that must be given in a range of circumstances.

If a resident wishes to leave the SRS, he/she will be required to give the proprietor notice of at least two days unless specified in the new residential and services agreement (RSA).<sup>1</sup> A proprietor cannot ask for more than 28 days' notice for residents wishing to leave the SRS. This will ensure residents are not asked to provide excessive notice periods.

In order to protect other residents, and in situations where usual ways of managing such matters have not been successful, a proprietor will be able to give a resident immediate notice to vacate if he/she is violent or is putting himself/herself or other people in danger. In these circumstances, the resident will be required to leave. A resident may appeal to the Victorian Civil and Administrative Tribunal (VCAT) to dispute the grounds or validity of the notice. The proprietor may apply to VCAT for an order of possession if the resident refuses to leave the premises. The ultimate decision about whether the resident can return will rest with VCAT.

It is important to balance the safety of other residents against the need for alternative accommodation by a resident who is being violent. Accordingly, such events have been included in the definition of a 'serious incident'<sup>2</sup> and, as such, proprietors will need to notify the department.

Other new arrangements include specified periods of notice to vacate for other matters such as if fees are in arrears for more than seven days (two days' notice required), if the resident has breached a VCAT order or if the room is used for an illegal purpose.

A period of 60 days' notice to vacate is proposed where reconstruction, demolition or the sale of a SRS arises.

Where a proprietor considers that the care needs of a resident exceeds what can be provided at the SRS, the proprietor must initiate an assessment of the resident's needs, either through ACAS or their GP. If alternative accommodation is required, and the usual ways in resolving this issue with the resident/family fail, the proprietor must advise the Secretary and may give immediate notice to the resident only after suitable alternative accommodation has been arranged.

Both residents and proprietors will have access to VCAT if they wish to apply/appeal a notice to vacate.

## What's new?

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

Status	Requirements
Retained	All existing requirements regarding security of tenure including provision of notices and rental increases will be retained.  <i>Date of effect: current, and to be incorporated in new legislation.</i>
New	Notice periods for a resident leaving the SRS must be a minimum of two days. Proprietors cannot ask for more than 28 days' notice for residents leaving the SRS.  <i>Date of effect: immediately after the legislation is passed.</i>
New	Notice to vacate may be given in cases where a resident's care and support needs exceed a proprietor's capacity to provide, but the proprietor must first take steps to relocate that resident to a more appropriate service and notify the Secretary accordingly. The notice to vacate can only take effect after appropriate alternate accommodation arrangements have been found.  <i>Date of effect: immediately after the legislation is passed.</i>

<sup>1</sup> The new residential and services agreement (RSA) replaces the old residential statement (see *Discussion sheet 6*).

<sup>2</sup> Serious incidents are discussed in *Discussion sheet 5: Complaints and incident reporting*.

New	<p>Immediate notice* to leave may be given for:</p> <ul style="list-style-type: none"> <li>• violent behavior</li> <li>• putting self or other people in danger.</li> </ul> <p>The resident must leave immediately.</p> <p>The resident may apply to VCAT to dispute the grounds or validity of the notice.</p> <p>The proprietor can apply to VCAT if the resident refuses to leave the premises.</p> <p>The ultimate decision about whether the resident can return will rest with VCAT.</p> <p>The department must be notified if this provision is used.</p> <p><i>Date of effect: six months after the legislation is passed.</i></p>
New	<p>A minimum period of two days' notice to vacate may be given for:</p> <ul style="list-style-type: none"> <li>• resident fees more than seven days in arrears</li> <li>• resident breach of a VCAT compliance order</li> <li>• a room being used by a resident for an illegal purpose.</li> </ul> <p><i>Date of effect: six months after the legislation is passed.</i></p>
New	<p>60 days' notice to vacate may be given for:</p> <ul style="list-style-type: none"> <li>• planned reconstruction, repairs or renovations</li> <li>• demolition</li> <li>• sale with vacant possession.</li> </ul> <p>All necessary permits must have been obtained for reconstructions, repairs, renovations and demolition. An alternative room must be offered if available.</p> <p><i>Date of effect: six months after the legislation is passed.</i></p>

\* Eviction is one of the events defined as a serious incident of which proprietors must advise the Secretary within 24 hours of the incident occurring.

## How will it work?

### Case study 1

Mary, aged 82, has been living alone at home with some support services. She has had problems with her blood pressure and was admitted to hospital following a fall in which she sustained minor injuries. While in hospital her medication requirements were reviewed and adjusted. She has recovered to a significant degree, but her doctor is reluctant to discharge her home until her condition is fully stabilised, as there is no one to provide her with general assistance with showering and other personal tasks. The hospital has an arrangement with nearby Bonny Lodge SRS, which will accept residents like Mary on a short-term basis, and provide qualified staff to monitor her health issues. She will also receive assistance with showering and personal hygiene if required.

On admission to Bonny Lodge Mary receives a written residential and services agreement that confirms she is receiving short-term care, what the care will consist of, and when it will end. Mary understands that she is only liable to pay fees up to the end date, and that she doesn't need to give any further notice. The proprietor knows how long Mary will be at Bonny Lodge, and can plan the staffing requirements for the stay and manage the demand for admissions.

## Case study 2

Ben is 46 years old and receives an invalid pension. He suffers from schizophrenia, for which he is treated by his local GP. Ben does not receive casework support; he tends to be isolated, and needs encouragement to participate in community activities. Ben needs prompting to take his medication; his needs are for long-term accommodation, with a little bit of support. Ben wants to remain within the community that he knows.

Ben found a place at a local SRS and receives a residential and services agreement that tells him the services he is to receive and his rights and responsibilities as a resident. There is no end date to this agreement, but there are provisions telling Ben (among other things) how and when his fees will be adjusted and how much notice he is entitled to receive if he is asked to leave. The statement also tells Ben how much notice he must give if he wants to leave. Ben will be entitled to formal notice to vacate if the proprietor requires him to leave. Ben has rights to dispute a notice at VCAT.

## Implementation

There may be some short-term costs to proprietors to implement processes for issuing a notice to vacate and making an application to VCAT. There may also be some costs to residents wishing to appeal a decision to VCAT.

Fact sheets for residents and proprietors regarding their rights and obligations will be developed.

Training sessions will be held for proprietors to help familiarise them with their new obligations.

## Frequently asked questions

### **Q. 1 What if I am asked to leave an SRS?**

**A.** Generally speaking, you will be entitled to receive written notice. The amount of notice will depend on the reason for asking you to leave. Information about how much notice you will be given should be in your residential and services agreement but, if it is not, you are entitled to at least the minimum periods stated in the Act. Residents who are asked to leave or vacate an SRS will now have rights and timelines to appeal notices via VCAT.

### **Q.2 How can I dispute an eviction notice? Can someone help support me with the appeal?**

**A.** Under the new proposals a resident can dispute an eviction notice via VCAT. If a resident requires help to lodge an application, a family member or friend may support them to do this.

### **Q.3 Will I have a lease agreement or contract outlining my tenancy rights?**

**A.** Details of a resident's occupancy rights must be included in the residential and services agreement (formerly called a residential statement), which both the prospective resident and proprietor must agree and sign. Residents will be given a copy of this agreement.