

Regulatory practice framework

Supported residential services

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Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.

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Introduction

Supported residential services (SRS) are privately-operated services providing accommodation and personal support for people of varying ages and support needs.

SRS must be registered under the *Supported Residential Services (Private Proprietors) Act 2010* (the Act). The Victorian Government, through the Department of Health and Human Services (the department), registers all SRS and monitors compliance with the Act and the *Supported Residential Services (Private Proprietors) Regulations 2012* (the Regulations).

The department carries out its regulatory activities in accordance with a robust outcomes and risk-based decision-making framework.

Principles of the framework

Seven principles inform the regulatory practice framework:

Focus on outcomes: Regulatory practice should achieve intended change in behaviour of those regulated and focus on outcomes for residents.

Effectiveness and efficiency: Regulatory practice should protect the safety and wellbeing of residents, ensure minimum standards and create certainty for all involved, while not necessarily restricting innovation or responsiveness to individual situations. The resources expended and the costs imposed by regulatory practice should be justified in terms of the benefits to the Victorian community.

Proportionate: The department's regulatory response should be proportionate to the problem that it is intended to address and be based on an assessment of risk.

Impartial: The department will act within its powers, with integrity and without any real or perceived conflicts of interest.

Fairness: Regulatory practice should maintain a balance between protecting the interests of residents and imposing obligations on people responsible for the provision of services to those residents.

Accessibility: Regulatory practice and associated documentation and decision-making processes should be open, clear and understandable to all involved.

Flexibility and responsiveness: Regulatory practice should provide timely responses to emerging issues and sector trends so that risks can be managed and work practices can be adjusted accordingly.

Resident-focused legislation

The objective of the legislative framework is to protect the safety and wellbeing of residents living in private supported residential services in Victoria.

Residents have the same rights and responsibilities as all Victorians and should be empowered to exercise those rights and responsibilities. The Act embodies the Charter of Human Rights, and specifically recognises residents' rights to:

- privacy
- freedom of expression
- fair and equal treatment
- dignity and respect
- freedom from abuse, neglect or exploitation.

Regulatory activity focuses on achieving good outcomes for residents, while protecting their wellbeing and safety, and includes building the capacity of proprietors to comply through guidance and advice, monitoring compliance and enforcement.

Proprietors are responsible for complying with the legislation, even if they are not involved in the day-to-day operation of the SRS. They are also responsible for complying with a range of workplace, health, safety, business, design and consumer legislation and standards. Where the department becomes aware of concerns in such areas, it may take a referral, support and/or facilitation role in line with its overall vision of supporting and enhancing the wellbeing of all Victorians.

Role of the Department of Health and Human Services

The department registers all SRS, monitors risk of harm and compliance with the legislation, and takes necessary action.

The Act provides powers for the Minister and the Secretary to make decisions about registration and related applications and to enforce compliance. These powers have been delegated to various departmental staff under s. 204 of the Act.

Authorised officers:

- are departmental staff appointed by the Secretary to the department (or delegate) to exercise powers and functions outlined in Part 7 of the Act
- are empowered to attend and enter SRS premises without notice or consent for the purposes of monitoring compliance or investigation
- may issue infringement notices and official warnings for prescribed infringeable offences.

In addition to their statutory powers, authorised officers, and other departmental staff, are responsible for receiving and responding to complaints and notifications about SRS.

Outcomes and risk-based regulatory approach

The department uses an outcomes and risk-based approach to regulate the SRS sector, in line with contemporary international best-practice regulation and whole of Victorian Government regulation policy.

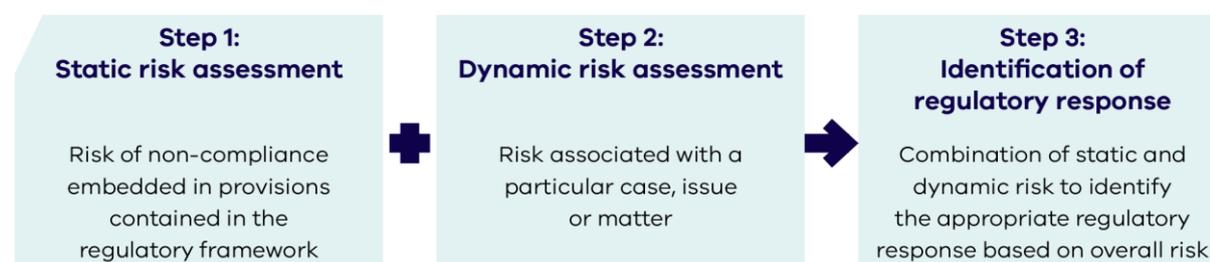
Outcomes and risk-based regulation:

- identifies outcomes the department seeks through regulation, for example, improving services, capacity building, and sending strong messages to the sector about the department's expectations and tolerances
- provides for regulatory responses that are commensurate with risk
- provides for the use of a range of regulatory responses that are both informal and formal
- places a strong emphasis on building the sector's capacity through guidance and advice to drive continuous quality improvement
- does not unnecessarily scrutinise low-risk issues by eliminating unnecessary inspections and only intervening where there is a clear case for action
- targets monitoring and inspection activity towards proprietors with a history of non-compliance
- requires judgement and sound decision making to determine areas of higher risk for contingency planning
- does not unduly use punishment as a response to non-compliance
- provides a clear and effective procedure for escalation of regulatory responses when a non-compliance issue remains unresolved
- provides for intelligence-led regulatory responses that identify and respond to systemic non-compliance.

Outcomes and risk-based decision-making framework

The application of the department's outcomes and risk-based approach to regulation to determine appropriate regulatory response in relation to a particular case, issue or matter involves three main steps, as shown in Figure 2.

Figure 2: Overview of risk-based approach



Step 1: Static risk assessment

The department has undertaken an assessment of the 'static risk' for each compliance obligation contained within the legislative framework. This assessment has involved consideration of the relative likelihood of non-compliance with each obligation and the consequence of non-compliance with that obligation.

Step 2: Dynamic risk assessment

Case-specific factors are used to assess 'dynamic risk' and ensure that the particulars of the case, issue or matter are taken into account.

Step 3: Identification of regulatory response

For each case, issue or matter under consideration, the combinations of the static risk assessment and the dynamic risk assessment leads to an overall risk assessment and identification of the relevant response or regulatory intervention, commensurate with the overall risk.

Key regulatory practices

The key regulatory activities undertaken by the department are:

- registering SRS and approving proprietors and managers as suitable to manage SRS
- establishing an annual compliance plan for information, guidance and capacity building of SRS proprietors
- monitoring compliance
- regulatory intervention and enforcement
- encouraging voluntary compliance and cooperation.

Registering SRS

The department is responsible for assessing various applications for registration of SRS or approvals for people that are directors or managers. The main types of applications are:

- registration of SRS
- approval of directors or officers of proprietors who are a body corporate
- approval of a proposed manager or change to a manager of a registered SRS
- variations to registration including changes to number of beds
- proposed building works at a registered SRS.

The department will assess all applications against the legislated requirements and minimum standards for each application. Risks considered in the assessment process include:

- an applicant's financial viability
- security of tenure
- complexity and number of residents
- suitability of proprietor, including required police checks, experience and references
- suitability of proposed accommodation or building works.

The regulatory responses available to the department in applying the risk-based approach to the assessment of applications will depend upon the particular type of application that has been made and may include:

- granting the application
- seeking further information
- imposing conditions
- refusing the application.

Annual compliance plan

The department uses the outcomes and risk-based regulatory framework to develop priority compliance areas for guidance and advice to proprietors, monitoring and stakeholder engagement.

The plan ensures the department is proactive in identifying high-risk or emerging issues and establishing strategies for managing risk, encouraging voluntary compliance and capacity building.

The activities prioritised in the annual compliance plan are based on an assessment of risk, compliance data and other regulatory intelligence.

The plan can also include the planned strategic response to issues raised in the Community Visitors Annual Report, Ministerial Statements of Expectations or reports from other external bodies.

Monitoring compliance

The department monitors compliance with the legislation through:

- proactive planned monitoring inspections
- non-compliance follow-up inspections
- reactive inspections in response to complaints, incidents, community visitor notifications and notices to vacate
- establishment meetings conducted four to six weeks following a new registration or change of ownership.

The department uses targeted compliance review audit tools for planned monitoring and may also be used, in full or in part, for reactive monitoring. The audit tools focus on specific legislative obligations such as accommodation and personal support standards, and have been developed with regard to the International Standard ISO 19011:2011 *Guidelines for auditing management systems*.

Responsive intervention and enforcement

'Regulatory intervention' describes the department's response to a potential, alleged or actual non-compliance with the legislation.

An authorised officer may identify that a proprietor is at risk of non-compliance if aspects of a proprietor's operations are technically compliant with the Act and regulations, but there is a concern that the proprietor may become non-compliant in the future. In these instances, the authorised officer may provide guidance and advice, and may continue to monitor the situation to minimise the risk of non-compliance occurring.

The department's response to an instance of non-compliance is intended to remedy non-compliance (if possible), to influence and change behaviour and to build capacity of proprietors to deliver improved outcomes for residents.

Encouraging voluntary compliance and cooperation

An important objective underlying this policy statement is to help develop a strong culture of compliance and cooperation among proprietors and managers of SRS.

Responsibility rests with SRS proprietors to comply with obligations under the legislative framework. Proprietors are encouraged to review the effectiveness of their compliance policies, systems and processes. Encouraging voluntary compliance is important for improving outcomes for residents and building capacity in the sector.

Where non-compliance occurs the department will consider an appropriate response by considering the risk of the non-compliance, the proprietor's compliance history and the attitude of the proprietor to the non-compliance. Proprietors should always cooperate with the department to rectify non-compliance. The department will work with proprietors to resolve non-compliance and to help build capacity so that practices improve for the benefits of residents.