

# Supported Residential Services

## Background

Supported Residential Services (SRS) provide accommodation for people who need assistance with day-to-day living, which can include people with acquired brain injuries, age-related illnesses, mental and physical disabilities.

While SRS are not covered by the [Residential Tenancies Act 1997](#) (RTA), they are governed by the [Supported Residential Services \(Private Proprietors\) Act 2010](#) (SRS Act). In some circumstances, disputes between residents and service providers may be heard at the Victorian Civil and Administrative Tribunal (VCAT).

The [Supported Residential Services \(Private Proprietors\) Regulations 2012](#) (SRS Regulations) provide minimum standards for accommodation and personal support to residents in SRS.

SRS are regulated by the *Department of Health and Human Services (DHHS)*. Any reference to “the Secretary” in the SRS Act refers to the Department head of DHHS. Any concerns or offences should be referred to DHHS.

The Tenants Union of Victoria may assist residents of private SRS with their rights.

## What are the issues?

### Coverage

Residents in SRS are not covered by the RTA. [Section 3\(f\), RTA](#) includes supported residential services in the definition of a health or residential service. [Section 23, RTA](#) states that the RTA does not apply to health or residential services.

However, residents who reside in a SRS do have rights in relation to their residencies and some of these rights are contained in the SRS Act. The rights contained in the SRS Act are different to the RTA and tenant advocates should be aware of the separate legislation.

The SRS Act came into effect on 1 July 2012. The SRS Act does not apply to residencies that commenced prior to this time. Its purpose, which includes the provision of a registration regime for private SRS and minimum standards of accommodation and personal support for residents, is set out in [section 1, SRS Act](#).

Proprietors have the power to issue residents with notices to vacate on certain grounds under the SRS Act. A resident can challenge the validity of these notices at VCAT- time limits apply.

Residents of SRS do not have a right to take general disputes with their residential service to VCAT under the SRS Act. There are alternative pathways that may be open to residents to have a dispute heard at VCAT, as well as other pathways for advocacy and dispute resolution.

### Nominated persons and guardians

The SRS Act gives a resident the ability to nominate a person to receive notification about matters that concern the resident in the SRS under [section 45, SRS Act](#). This person is distinct from any guardian that has been appointed for the resident. “Person nominated” is defined

in [section 3, SRS Act](#).

A nominated person cannot be the proprietor or close associate of the proprietor ([section 83, SRS Act](#)). It can be an offence under the SRS act if a proprietor fails to supply certain information to nominated persons.

If a resident elects to nominate a person, they should be consulted in relation to:

- The preparation and copies of residential and services agreements ([section 47, SRS Act](#)), changes to copies of residential and services agreement ([section 48, SRS Act](#)), and any residential and service agreements to be signed by the resident ([section 50, SRS Act](#))
- Interim support plans ([section 56, SRS Act](#)) and on-going support plans ([section 57, SRS Act](#))
- Changes to the residents health, any injury, any risky or threatening behaviour, any relocation plans, any intention to terminate the residency, or the death of the resident ([section 58, SRS Act](#))
- Any assessment or enquiry in relation to the resident ([section 62, SRS Act](#)) and access to the resident's financial records ([section 81, SRS Act](#))

### **Guardians and administrators**

A resident's guardian is also defined in [section 3, SRS Act](#) as the appointed guardian under the [Guardian and Administration Act 1986](#) or by a court. Similar to a nominated person, the Supported Residential Service should keep a guardian informed of matters that relate to a residency, as listed above.

### **Notices to Vacate**

Residents can be served with notices to vacate under part 6 of the SRS Act. These notices must comply with [section 107, SRS Act](#), which specifies that the contents must include the date when a resident is to vacate, the grounds on which the notice to vacate is given, be signed and dated by on behalf of the proprietor, and must state that the resident has the right to appeal the notice to vacate at VCAT.

A nominated person must also be served with a copy of the Notice to Vacate in accordance with [section 108, SRS Act](#), if applicable.

While many of the sections in the SRS act are similar to the RTA, they do not mirror these provisions. Because of this, the precedents that apply to matters under the RTA will not apply to decisions under the SRS Act.

However, these precedents and similar arguments that exist under the RTA may be submitted to VCAT to be considered in SRS matters as persuasive cases. It will be up to VCAT to decide to what degree they wish to consider the case or to distinguish the case.

A notice to vacate under [section 107, SRS Act](#) is given on specific "grounds" rather than a reason, which differs from notices to vacate that are given under the RTA.

### **Grounds for notices to vacate**

The notices to vacate that can be given by a proprietor are contained in part 6, Division 2 of the SRS Act. These grounds include:

- [Section 109](#) – Proprietor proposes to cease carrying on the supported residential service;
- [Section 110](#) – Resident endangers the safety of other persons;

- [Section 111](#) – Non-payment of fees;
- [Section 112](#) – Use of Supported Residential Service for illegal purpose;
- [Section 113](#) – Repairs or Demolition;
- [Section 114](#) – Resident in need of more health care than available;
- [Section 115](#) – Resident in need of more personal support than available;
- [Section 116](#) – Serious damage;
- [Section 117](#) – Serious interruption to the quiet and peaceful enjoyment;

## What should you do?



A resident can challenge a notice to vacate under [section 121, SRS Act](#). These applications to VCAT are free. An application to challenge must be made within **28 days**, unless the notice is given under section 110, 116 or 117, which must be made within **5 days** of receiving the notice. If a notice is given under section 112 of the SRS Act, the resident does not have a right to apply to challenge.

If a resident does not move out in accordance with a notice to vacate, the proprietor will need an order to vacate from VCAT if they want the resident to leave. They can also apply for an order to vacate if the resident gives notice of intention to vacate and does not move out. The application should be made within 28 days of the date which the notice to vacate/intention to vacate was to take effect. These matters should be listed under the residential tenancies list.

[Regulation 59 of the SRS Regulations](#) requires that an SRS notifies the Secretary of a notice to vacate given under section 110, 114, 115, 116 or 117 of the Act by the end of the next business day.

### Case law and precedents

There is little case law available in relation to SRS notice to vacate. There are a number of similarities with the RTA. A tenant advocate may wish to consider the parallel sections and their relevant decisions to raise in a dispute as persuasive decisions, although not binding.

### Example: Section 110 – Resident endangers the safety of other persons

[Section 110, SRS Act](#) has similarities to [section 244, RTA](#), which sets out the grounds of a Danger notice to vacate for a tenant. There are three apparent differences in the wording of the sections:

- The wording of section 110, SRS Act omits the word “visitor”; it must be the resident who causes a danger:
- “causes a danger” wording is different to “endangers the safety”: and
- The use of present tense indicates that the danger must be ongoing

The Supreme Court decision of the *Director of Housing v Pavletic* may be a relevant decision to refer to in section 110 SRS Act notices to vacate. *Pavletic* relates to a notice to vacate for Danger under the RTA. This decision may assist in interpreting the legislation to require the danger be ongoing at the time that the notice was given.

### Other disputes

The SRS Act does not give a resident the right to take a general dispute to VCAT. However, a resident may be able to take a dispute with their SRS to VCAT under the civil claims list.

Section 8 of the *Australian Consumer Law and Fair Trading Act 2012* (ACLFTA) states that the *Australian Consumer Law* applies as a law of Victoria and is a part of the *Australian Consumer Law and Fair Trading Act 2012*.

The SRS provides services to the residents. Although the SRS act is not listed as a consumer act in schedule 1 of the ACLFTA, the relationship between the SRS provider and resident is arguably a consumer and trader relationship. Any dispute between these parties can be categorised as a consumer trader dispute in accordance with [section 182, ACLFTA](#).

Under [section 184, ACLFTA](#), VCAT can hear and determine consumer and trader disputes. Section 184 and [section 185, ACLFTA](#) set out the wide powers of VCAT in relation to these disputes, which include injunctive relief, mediation and ordering the payment of a sum of money.

### **Complaints**

[Regulation 40, SRS Regulations](#) require SRS to have a complaints system that ensures complaints are dealt with in a fair, reasonable, confidential and timely manner.

Residents, support people, family or anyone can make complaints to the *Department of Health and Human Services (DHHS)* if they do not believe their SRS has handled their complaint appropriately or if they have concerns about the specific SRS. DHHS can investigate and inspect the service as needed.

### **Community Visitors Program**

The Office of the Public Advocate (OPA) runs a community visitors program to visit SRS. They are trained on the SRS Act as well as relevant accommodation and support services that are relevant to residents and proprietors. Residents can contact the OPA and ask for a visit from a community visitor if they are concerned about the SRS.

## **Regulations and standards**

### **Minimum standards and personal care**

The SRS Regulations set out the minimum standards and personal care that SRS are to provide their residents. [Schedule 9, SRS Regulations](#) set out the standards in relation to many elements of residents' life in an SRS, including lifestyle, food and nutrition, health and wellbeing, and the physical environment that they reside in.

[Regulation 26](#) requires SRS to make an up-to-date copy of the regulations and the SRS Act available to residents, staff and visitors at all times. This regulation carries 10 penalty units if not complied with.

Prospective residents should be provided with detailed information about the SRS, as set out in [regulation 27](#) of the SRS Regulations. An example residential and services agreement is also provided for in [regulation 28](#).

### **Offence provisions**

SRS are subject to offence provisions, which are set out in a table in [schedule 11, SRS Regulations](#). These include failures to keep proper records and to inform the Secretary of relevant information. For example, it is an offence if SRS fails to provide an appropriate notice to vacate.

### SRS Public Register

DHHS has a [public register of SRS accommodation](#). This register is useful if a client is unsure of the type of accommodation that they are living in, or if an advocate wants to ensure that the property is governed by the SRS Act and Regulations.

### Resources

- [Supported Residential Services \(Private Proprietors\) Act 2010 \(Vic\)](#)
- [Residential Tenancies Act 1997 \(Vic\)](#)
- [Supported Residential Services \(Private Proprietors\) Regulations 2012 \(Vic\)](#)
- [Department of Health and Human Services SRS Information](#)
- [Department of Housing v Pavletic \[2002\] VSC 438 \(15 October 2002\)](#)
- [Community Visitors Program, Office of the Public Advocate \(as at 21 June 2016\)](#)

### Tenants Union Legal Service

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