

Version No. 002
Supported Residential Services (Private Proprietors) Act 2010

No. 49 of 2010

Version incorporating amendments as at
1 June 2013

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Version No. 002

Supported Residential Services (Private Proprietors) Act 2010

No. 49 of 2010

Version incorporating amendments as at
1 June 2013

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

The main purposes of this Act are—

- (a) to provide for a registration regime for private supported residential services in Victoria;
- (b) to provide for minimum standards of accommodation and personal support provided to residents of private supported residential services for their care and well-being;
- (c) to provide appropriate enforcement mechanisms to give effect to the standards of accommodation and personal support, and obligations on proprietors, and the principles on which they are based;
- (d) to make consequential amendments to the **Health Services Act 1988** and other Acts.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

- (2) If a provision of this Act does not come into operation before 1 July 2012, it comes into operation on that day.

3 Definitions

- (1) In this Act—

application for approval of alterations or extensions means an application made under section 25;

application for cancellation of registration means an application made under section 28;

application for registration means an application made under section 14;

application for variation of registration means an application made under section 20;

approved manager means a person approved by the Secretary as a manager of a supported residential service under section 70;

authorised officer means a person appointed under section 130;

certificate of registration means a certificate issued under section 17;

close associate, in relation to a proprietor, means—

- (a) if the proprietor is a natural person—
- (i) the spouse, domestic partner, parent, child or sibling of the proprietor; or
 - (ii) the parent, child or sibling of the spouse or domestic partner of the proprietor; or
 - (iii) a body corporate of which the proprietor is a director or secretary;

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- (b) if the proprietor is a body corporate—
- (i) a director or secretary of the body corporate or of a related body corporate; or
 - (ii) the spouse, domestic partner, parent, child or sibling of a person referred to in subparagraph (i); or
 - (iii) the parent, child or sibling of the spouse or domestic partner of a person referred to in subparagraph (i); or
 - (iv) a related body corporate;
- (c) in either case referred to in paragraph (a) or (b), an agent or employee of the proprietor;

community visitor means a person appointed under section 182;

compliance notice means a notice issued under section 160;

condition report means a report required under section 100(1);

Department means the Department of Health;

Note

See also section 38AAA of the **Interpretation of Legislation Act 1984**.

designated public hospital has the same meaning as it has in the **Health Services Act 1988**;

establishment fee means a fee to cover the costs of assessing a resident's needs and preparing a support plan;

interim support plan means a plan prepared under section 56(1);

money of a resident does not include money paid to the proprietor of the service on account of fees and expenses payable by the resident for accommodation or services provided by the proprietor;

nearest relative in relation to a person means—

- (a) the spouse or domestic partner of that person; or
- (b) if that person does not have a spouse or domestic partner, the relative of that person first listed in the following subparagraphs who has attained the age of 18 years, the elder or eldest of 2 or more relatives described in any subparagraph being preferred to either or any of those relatives regardless of sex—
 - (i) son or daughter;
 - (ii) father or mother;
 - (iii) brother or sister;
 - (iv) grandfather or grandmother;
 - (v) grandson or granddaughter;
 - (vi) uncle or aunt;
 - (vii) nephew or niece;

order to vacate means an order requiring a resident to vacate a supported residential service;

person includes an unincorporated association, a firm and a partnership;

person nominated means the person nominated by the resident to receive information relating to the resident's accommodation and personal support received at the supported residential service;

personal support means the provision of one or more of the following—

- (a) assistance with personal hygiene, toileting or dressing;
- (b) assistance to achieve and maintain mobility;
- (c) support to seek out and maintain contact with health professionals, social networks, family, friends and the community;
- (d) emotional wellbeing support;
- (e) assistance with or supervision in administering medication;
- (f) assistance with eating and maintaining adequate nutrition;

prohibited transaction has the meaning given in section 4;

proprietor means a person who is the owner of the business or undertaking providing accommodation and support at the premises of a supported residential service;

Public Advocate has the same meaning as it has in the **Guardianship and Administration Act 1986**;

register means the register established and maintained under section 39;

registered medical practitioner means a person registered under the Health Practitioner National Law to practise in the medical profession (other than as a student);

registration means registration as a supported residential service under Division 2 of Part 3;

registration criteria means the criteria specified in section 15(2);

registration statement means a statement requested under section 36;

related body corporate has the same meaning as in the Corporations Act;

reportable transaction means any transaction between a proprietor, or a close associate of a proprietor, and a resident of the supported residential service that involves real or personal property the value of which exceeds the prescribed amount, other than a transaction at market value that relates only to the provision of accommodation or special or personal support to the resident in accordance with this Act;

reservation fee means a fee to reserve a place at a supported residential service;

resident means a person who receives personal support and accommodation at a supported residential service and includes, in relation to a designated public hospital, a public hospital patient who is a resident of that hospital;

residential and services agreement means the agreement required under section 47(1);

resident's administrator means—

- (a) the resident's attorney appointed under a power of attorney or an enduring power of attorney to administer the resident's property; or
- (b) a person appointed by a court or tribunal as the administrator of the resident's property;

resident's guardian means the resident's guardian appointed—

- (a) under the **Guardianship and Administration Act 1986**; or
- (b) by a court;

resident's on-going support plan means a plan prepared under section 57;

security deposit means an amount of money paid in advance by a resident to a proprietor to cover potential losses that the proprietor may suffer as a result of—

- (a) the resident or the resident's visitor causing damage to the supported residential service; or
- (b) a failure to pay fees;

short-term accommodation means accommodation for not more than 3 consecutive months in total;

spouse of a person means the person to whom the person is married;

supported residential service has the meaning given in section 5;

undertaking means an undertaking given under section 156.

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- (2) In this Act, *domestic partner* of a person means—
- (a) a person who is in a registered relationship with the person; or
 - (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
 - (i) for fee or reward; or
 - (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation).
- (3) For the purposes of the definition of *domestic partner* in subsection (2)—
- (a) *registered relationship* has the same meaning as it has in the **Relationships Act 2008**; and
 - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
 - (c) a person is not a domestic partner of another person only because they are co-tenants.
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4 Meaning of *prohibited transaction*

- (1) A *prohibited transaction* means any of the following—
- (a) a gift from a resident, other than a gift the value of which is less than the prescribed amount;
 - (b) a transfer, by way of sale or exchange, of real or personal property from a resident for less than market value;
 - (c) a sale of real or personal property to a resident for more than market value;
 - (d) subject to subsection (2), a transaction with a resident, other than a transaction referred to in paragraphs (a) to (c), the value of which exceeds the prescribed amount that is not evidenced in a written agreement signed by the parties;
 - (e) subject to subsection (2), a transaction with a resident, other than a transaction referred to in paragraphs (a) to (c), the value of which exceeds the prescribed amount in relation to which the resident or the resident's administrator has not obtained independent financial or legal advice.
- (2) A transaction referred to in subsection (1)(d) or (1)(e) is not a prohibited transaction if—
- (a) the transaction relates only to the provision of accommodation or personal support to a resident of a supported residential service in accordance with this Act; or

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- (b) the resident gains a benefit or advantage (financial or otherwise), or does not suffer a financial detriment, from the transaction and the proprietor or close associate of the proprietor does not gain a benefit or advantage (financial or otherwise) from the transaction.

5 Meaning of *supported residential service*

- (1) A ***supported residential service*** means a premises where accommodation and personal support are privately provided or offered to residents for a fee or reward, whether or not registered under this Act, but does not include—
- (a) residential premises where accommodation and personal support or nursing care, or both, are provided to a person in respect of whom a residential care subsidy is payable under an Act of the Commonwealth;
 - (b) premises used for residential services within the meaning of the **Disability Act 2006**;
 - (c) premises used for an approved mental health service within the meaning of the **Mental Health Act 1986**;
 - (d) premises used for secure welfare services or out of home care services within the meaning of the **Children, Youth and Families Act 2005**;
 - (e) premises in which accommodation and personal support is provided to all residents under a funding and service agreement with the State or the Commonwealth or a public body where that agreement specifies requirements or standards for the provision of care;
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-
- (f) premises that are recorded in the register kept under section 38J of the **Retirement Villages Act 1986** and which satisfy the requirements of section 38L of that Act.

Note

See transitional arrangements in section 209(4) and (5).

- (2) In Division 2 of Part 4 and Part 9, *supported residential service* includes a designated public hospital.
-

PART 2—OBJECTIVE, PRINCIPLES AND RESIDENTS' RIGHTS

6 Objective of Act

The objective of this Act is to protect the safety and wellbeing of residents living in private supported residential services.

7 Principles

- (1) Residents of supported residential services have the same rights and responsibilities as other members of the community and should be empowered to exercise those rights and responsibilities.
- (2) For the purposes of subsection (1), the following principles apply—
 - (a) the individual rights of residents should be respected by recognising a resident's right to—
 - (i) privacy; and
 - (ii) freedom of expression; and
 - (iii) fair and equal treatment; and
 - (iv) dignity and respect; and
 - (v) freedom from abuse, neglect or exploitation;
 - (b) proprietors should support residents to live as independently as possible by—
 - (i) recognising the resident's right to make decisions, provided those decisions do not unreasonably affect the rights of others; and
 - (ii) supporting them to participate in decisions regarding the services they receive; and

-
- (iii) allowing them the right to choose their service providers; and
 - (iv) recognising their right to participate in activities involving a degree of risk;
 - (c) proprietors should support residents as far as possible by—
 - (i) providing residents with information that will assist in decision making; and
 - (ii) facilitating access to activities;
 - (d) proprietors should provide safe and comfortable surroundings and ensure that support services take account of the needs of individual residents as far as possible.
- (3) For the purposes of administering this Act and for the provision of services to residents of supported residential services, this Act is to be interpreted, so far as possible, in a manner that gives effect to the principles specified in subsection (2).

S. 7(3)
amended by
No. 29/2011
s. 3(Sch.
item 93.1).

8 Reasonable restrictions

If a restriction on the rights of any resident set out in the principles in section 7 is necessary, and more than one option is available in implementing that restriction, the option chosen must be that which is the least restrictive of the resident's rights in the circumstances.

PART 3—REGISTRATION OF SUPPORTED RESIDENTIAL SERVICES

Division 1—Offences

9 Offence to operate unregistered supported residential service

A person must not operate a supported residential service if the supported residential service is not registered under this Act.

Penalty: 240 penalty units, in the case of a natural person;
1200 penalty units, in the case of a body corporate.

10 Offence to operate supported residential service if person is not the holder of a certificate of registration

A person must not operate a supported residential service if the person is not the holder for the time being of a certificate of registration for the supported residential service.

Penalty: 240 penalty units, in the case of a natural person;
1200 penalty units, in the case of a body corporate.

11 Offence to contravene condition of registration

A proprietor must not contravene a condition to which the registration of the supported residential service is subject.

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

12 Offences to provide excess beds or accommodation

- (1) A proprietor must not provide in the supported residential service more beds than the number of beds for which the supported residential service is registered.

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

- (2) A proprietor must not provide accommodation in the supported residential service for more persons than the number of beds for which the supported residential service is registered.

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

13 Offence to alter or extend premises without Secretary's approval

A proprietor must not carry out any alterations or extensions of the premises of a supported residential service without the approval of the Secretary under section 26.

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

Division 2—Registration of a supported residential service

14 Application for registration

- (1) A person who intends to be the proprietor of a supported residential service may apply to the Secretary for registration of premises as a supported residential service.
- (2) An application for registration must—
 - (a) contain the prescribed information; and
 - (b) be accompanied by the prescribed fee (if any); and
 - (c) be accompanied by the prescribed documents (if any).

15 Decision on application for registration

- (1) On receiving an application for registration, the Secretary must—
 - (a) register the premises to which the application relates as a registered supported residential service (whether or not subject to conditions); or
 - (b) refuse to register the premises to which the application relates.
- (2) In making a decision under subsection (1), the Secretary must consider—
 - (a) whether the building and site are suitable for use as a supported residential service;

Example

A building that was built with resident mobility in mind and has services such as transport nearby that residents may require.

-
- (b) whether the applicant has obtained the appropriate permits, or shown proof that the appropriate permits were obtained, to use the facility as a supported residential service;

Example

Building permits and planning permits.

- (c) whether the applicant, or each director and other officer of an applicant which is a body corporate who exercises control over the body corporate, has the relevant skills and knowledge to operate a supported residential service;

Examples

Skills include business skills. Knowledge includes knowledge of this Act and previous experience in a relevant industry.

- (d) whether the applicant has the financial capacity to operate a supported residential service;
- (e) whether the applicant has the relevant arrangements in place to operate a supported residential service;

Examples

Rostering arrangements or a staff recruitment plan.

- (f) whether or not the applicant is, or each director and other officer of an applicant which is a body corporate who exercises control over the body corporate are, otherwise a suitable person to carry on, exercise control over or manage a supported residential service;

-
- (g) in the case of an applicant who is required to employ a manager of the supported residential service under section 67 that—
- (i) an application to approve a manager has been made; and
 - (ii) the manager has been approved in accordance with this Act.

16 Notification of decision regarding registration

The Secretary must notify the applicant of his or her decision on the application for registration within the later of—

- (a) 60 days after receiving the application for registration, being an application in accordance with the requirements of section 14; or
- (b) if the Secretary has requested the applicant to give further information under Division 9, 28 days after the information last requested is given to the Secretary.

17 Issue of certificate of registration

If the Secretary registers premises as a supported residential service, the Secretary must issue a certificate of registration stating—

- (a) the name of the proprietor of the supported residential service; and
- (b) the address of the supported residential service; and
- (c) any conditions to which the registration is subject; and
- (d) the number of beds to which the registration relates.

18 Display of certificate of registration

A proprietor must cause the current certificate of registration to be displayed in a conspicuous place on the premises of the supported residential service in a manner that invites public attention.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

19 Duration of registration of supported residential services

Registration as a supported residential service remains in force until the registration is revoked or cancelled in accordance with this Act.

Division 3—Variation of registration

20 Application for variation of registration

- (1) A proprietor who intends to increase the number of beds to which the registration relates must first apply to the Secretary for a variation of the registration of the supported residential service.
- (2) A proprietor who seeks the variation of any condition to which the registration of the supported residential service is subject must apply to the Secretary for a variation of the registration.
- (3) An application for variation of registration must—
 - (a) include the prescribed information;
 - (b) be accompanied by the prescribed fee (if any);
 - (c) be accompanied by the prescribed documents.

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- (4) An applicant for variation of registration must—
- (a) at the time of making the application, give notice in writing of the application to any other person who has an interest in the land as registered proprietor or landlord;
 - (b) give to the Secretary any further information relating to the application that the Secretary requests under Division 9 within the time specified in the request.

21 Decision on application for variation of registration

- (1) On receiving an application for variation of registration, the Secretary must—
 - (a) approve the application, whether or not subject to conditions; or
 - (b) refuse the application.
- (2) In making a decision under subsection (1), the Secretary must consider—
 - (a) the relevant registration criteria;
 - (b) in the case of an application under section 20(1), whether the proprietor has the relevant operating arrangements in place to operate the supported residential service with a higher number of residents;
 - (c) in the case of an application under section 20(2), whether there is an appropriate ground for varying the condition of the registration.

22 Notification of decision regarding application for variation of registration

The Secretary must notify the applicant of his or her decision on an application for variation of registration within the later of—

- (a) 60 days after receiving the application for variation of registration; or

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- (b) if the Secretary has requested the applicant to give further information under Division 9, 28 days after the information last requested is given to the Secretary.

23 Secretary may vary registration

- (1) The Secretary may vary the registration of a supported residential service if the Secretary considers that the registration should be varied by—
 - (a) altering the number of beds for which it is registered; or
 - (b) imposing a condition on, or amending or removing an existing condition of, that supported residential service.
- (2) Before exercising a power under subsection (1), the Secretary must give notice to the proprietor.
- (3) After receiving notification under subsection (2), the proprietor may make submissions or objections to the Secretary on the proposed variation within 28 days of that notification.
- (4) The Secretary must consider any submission received under subsection (3) before making a decision to vary the registration.

24 Notification of decision on application for variation

The Secretary must notify the proprietor of the Secretary's decision to vary the registration—

- (a) if no submissions are received from the proprietor under section 23(3), within 28 days after giving notice to the proprietor under section 23(2); or
- (b) if the proprietor makes a submission in accordance with section 23(3), within 28 days after the Secretary receives the submission.

Division 4—Alterations or extensions

25 Application for approval of alterations or extensions

- (1) A proprietor who intends to undertake alterations of, or extensions to, the premises of the supported residential service must first apply to the Secretary for approval of the proposed alterations or extensions if the alterations or extensions would result in either of the following—
 - (a) an increase in the number of beds; or
 - (b) a foreseeable threat to the safety of residents or a significant disruption to residents.
- (2) An application for approval of alterations or extensions must be accompanied by—
 - (a) the prescribed fee (if any);
 - (b) the prescribed information;
 - (c) the prescribed documents (if any).
- (3) An applicant for approval of alterations or extensions must—
 - (a) at the time of making the application, give notice in writing of the application to any other person who has an interest in the land as registered proprietor or landlord;
 - (b) give to the Secretary any further information relating to the application that the Secretary requests under Division 9 within the time specified in the request.

26 Decision on application for approval of alterations or extensions

- (1) On receiving an application for approval of alterations or extensions, the Secretary must—
 - (a) approve the alterations or extensions (whether or not subject to conditions); or

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- (b) refuse to approve the alterations or extensions.
 - (2) In making a decision on an application for approval of alterations or extensions, the Secretary must consider—
 - (a) any relevant registration criteria;
 - (b) whether the proprietor has obtained appropriate permits for the building to be altered or extended;
 - (c) whether suitable arrangements are in place for residents during the building works.
 - (3) The Secretary must notify the applicant of the Secretary's decision on the application for approval of alterations or extensions within the later of—
 - (a) 60 days after receiving the application for approval of alterations or extensions; or
 - (b) if the Secretary has requested the applicant to give further information under Division 9, 28 days after the information last requested is given to the Secretary.

27 Completed works require variation of registration

On the completion of works to which an approval for alterations or extensions applied, the proprietor must apply to the Secretary in accordance with Division 3 for a variation of registration to ensure that the registration of the supported residential service reflects any changes made by those works.

Division 5—Cancellation of registration

28 Cancellation of registration by proprietor

- (1) A proprietor may apply to the Secretary to cancel the registration of the supported residential service.

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- (2) At the time of making the application for cancellation of registration, the applicant must give notice in writing of the application to any other person who has an interest in the land as registered proprietor or landlord.
 - (3) On receipt of an application for cancellation of registration, the Secretary must cancel the registration of the supported residential service.

29 Cancellation of registration by Secretary

- (1) If the Secretary is satisfied that the premises to which a registration relates are no longer being used as a supported residential service, the Secretary must give notice to the proprietor—
 - (a) that the Secretary intends to cancel the registration at the end of a period of not less than 28 days specified in that notice; and
 - (b) that the Secretary will consider any written submissions from the proprietor about the intended cancellation that are provided to the Secretary within 28 days of the date of the notice.
- (2) After considering any submissions provided by the proprietor in accordance with subsection (1)(b), or if no submissions are received, the Secretary must—
 - (a) decide whether to cancel the registration of the supported residential service; and
 - (b) provide notice in writing to the proprietor of the supported residential service of the decision.

Division 6—Changes in directors and officers

30 Ceasing to be director or officer of proprietor which is a body corporate

Subject to section 35, if a person ceases to be a director or other officer of a proprietor of a supported residential service that is a body corporate, the proprietor must notify the Secretary of that fact within 7 days of that person ceasing to be a director or officer.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

31 Appointment of new director or officer of proprietor which is a body corporate

- (1) If a person is appointed as a director or other officer of the proprietor of a supported residential service that is a body corporate, the proprietor must apply to the Secretary within 7 days of the appointment for approval of that person as a suitable person to carry on, exercise control over or manage a supported residential service.
- (2) An application under subsection (1) must—
 - (a) include the prescribed information; and
 - (b) be accompanied by the prescribed fee (if any); and
 - (c) be accompanied by the prescribed documents.

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- (3) The proprietor must give the Secretary any further information relating to the application under subsection (1) that the Secretary requests under Division 9 by the date specified in the request.

32 Secretary to decide suitability of new directors and officers

- (1) The Secretary must decide whether or not a person who is appointed as a director or other officer of a proprietor which is a body corporate, as notified under section 31, is a suitable person to carry on, exercise control over or manage a supported residential service.
- (2) In making a decision under subsection (1), the Secretary must consider—
- (a) whether the person has the relevant skills and knowledge to operate a supported residential service;
 - (b) whether the person is otherwise a suitable person to carry on, exercise control over or manage the supported residential service.

33 Notification of decision

The Secretary must notify the applicant of the Secretary's decision under section 32 within the later of—

- (a) 60 days after receiving the notification under section 31; or
 - (b) if the Secretary has requested the applicant to give further information under Division 9, 28 days after the information last requested is given to the Secretary.
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34 Offence to operate supported residential service with unapproved director or officer of body corporate proprietor

A proprietor which is a body corporate must not operate the supported residential service unless each director and each officer of that proprietor has been approved in accordance with this Division.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

35 Death or loss of capacity of sole proprietor

- (1) This section applies if the proprietor of a supported residential service—
- (a) is a natural person who—
 - (i) dies; or
 - (ii) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (b) is a body corporate having only a sole director, or a sole secretary, who is also the sole shareholder, and that director or secretary—
 - (i) dies; or
 - (ii) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**.
- (2) The following persons may apply to the Secretary to carry on the supported residential service for a limited time in accordance with this section—

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- (a) a person who is, or intends to become, the legal personal representative or executor of the deceased proprietor; or
 - (b) the guardian or administrator of the proprietor who is a represented person within the meaning of the **Guardianship and Administration Act 1986**.
 - (3) An application under subsection (2) may be made—
 - (a) within 60 days after the death or the person becoming a represented person, as the case requires; or
 - (b) any longer period that the Secretary allows.
 - (4) An application under subsection (2) must—
 - (a) contain the prescribed information; and
 - (b) be accompanied by the prescribed fee (if any); and
 - (c) be accompanied by the prescribed documents (if any).
 - (5) The Secretary must approve an application under this section unless the Secretary has any reason to believe that if the applicant, or if more than one applicant, any of the applicants, were to make an application for registration, the Secretary would refuse the application.
 - (6) On approving an application under this section, the applicant may carry on the supported residential service as the proprietor in accordance with this Act—
 - (a) in the case of a deceased proprietor, until the expiration of the period of one year after the death; or
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- (b) in the case of a represented person, for the period specified in the approval by the Secretary.
 - (7) An approval under this section—
 - (a) has effect as a variation of the registration and of the certificate of registration for the period to which the approval relates; and
 - (b) may be subject to any conditions that the Secretary considers appropriate.

Division 7—Registration statements

36 Secretary may request registration statements

- (1) For the purposes of considering whether the registration of a supported residential service should remain in force, the Secretary may request the proprietor to give to the Secretary a registration statement.
- (2) A request under subsection (1)—
 - (a) may be made at any time;
 - (b) must be in writing.
- (3) A registration statement must contain the prescribed information.
- (4) The Secretary may request a proprietor who has given a registration statement to provide any further information in relation to the registration statement that the Secretary requires.
- (5) An applicant must provide any information requested by the Secretary under subsection (4) by the date stated in the request.

37 Proprietor must provide registration statement within 28 days

The proprietor must provide a registration statement to the Secretary within 28 days of receiving the request from the Secretary.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

38 Consideration of registration statement

- (1) On receipt of a registration statement from a proprietor, the Secretary—
 - (a) must consider the information provided in or accompanying the registration statement; and
 - (b) must determine, as appropriate, whether the proprietor and the supported residential service each continues to meet the registration criteria.
- (2) After considering the information provided in or accompanying the registration statement—
 - (a) the Secretary may take any action that the Secretary is empowered to take under this Act in relation to a supported residential service that the Secretary considers is appropriate to take to deal with any matter disclosed in or by the registration statement;
 - (b) the Secretary may recommend to the Minister that the Minister take any action that the Minister is empowered under this Act to take in relation to a supported residential service that is appropriate to take to deal with any matter disclosed in or by the registration statement.

Division 8—Register

39 Register of supported residential services

- (1) The Secretary must establish and maintain a register of supported residential services.
- (2) The purpose of the register is to provide a consolidated, publicly available list of supported residential services to inform members of the public as to the supported residential services available.
- (3) The Secretary—
 - (a) may keep the register in any form the Secretary thinks fit;
 - (b) may publish the register or any part of the register on the Internet.
- (4) The Secretary must cause to be recorded in the register in respect of each supported residential service in Victoria—
 - (a) the name of the supported residential service;
 - (b) the address of the supported residential service;
 - (c) the name of the proprietor of the supported residential service;
 - (d) in the case of a proprietor that is a body corporate, the name of each director and officer of that body corporate.
- (5) The Secretary may amend, vary or remove an entry in the register of supported residential services at any time.

40 Inspection of register of supported residential services

Any person may—

- (a) inspect the register of supported residential services kept under section 39;
- (b) make a copy of, or take extracts from, the register of supported residential services.

Division 9—General

41 Secretary may require further information

- (1) The Secretary may request any applicant under this Part to provide any further information in relation to the relevant application that the Secretary requires in order to make a decision on the application.
- (2) An applicant must provide any information requested by the Secretary under subsection (1) by the date stated in the request.

42 Applications withdrawn in certain circumstances

- (1) In respect of any application under this Part, the applicant may give notice in writing to the Secretary requiring that a decision be made if—
 - (a) the Secretary has made 2 or more requests for further information; and
 - (b) not less than 28 days have elapsed since the last request referred to in paragraph (a).
- (2) If—
 - (a) the Secretary has made 2 or more requests for further information; and
 - (b) the applicant has failed to provide the requested information within 28 days after the last request referred to in paragraph (a); and

(c) the applicant has not given notice to the Secretary under subsection (1)—

the Secretary may give notice in writing to the applicant requiring that the requests be complied within 14 days after the date of the notice or the application will be taken to have been withdrawn.

(3) An application under this Part is taken to be withdrawn if an applicant fails to comply with a request for further information within 14 days of the date of a notice given under subsection (2).

43 New certificate of registration to be issued in certain circumstances

If the Secretary makes a decision under this Part that has the effect of altering the information contained in a certificate of registration, the Secretary must issue to the proprietor a new certificate of registration that reflects those changes.

PART 4—OPERATION OF SUPPORTED RESIDENTIAL SERVICES

Division 1—Information for prospective residents and new resident contact information

44 Information for prospective residents

A proprietor must provide prospective residents who seek information about the supported residential service with a document containing information about the prescribed matters.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

45 Person nominated

- (1) Within 48 hours of a resident's admission to a supported residential service, the proprietor must ask the resident if the resident wishes to have a person nominated.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

Note

The role of a person nominated is independent of and additional to the role of any existing guardian or administrator appointed under the **Guardianship and Administration Act 1986**.

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- (2) If the resident has a person nominated, the proprietor must record the name and contact details of the person nominated.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

- (3) A proprietor must take reasonable steps to ensure that the details referred to in subsection (2) are kept up to date.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

46 Details of resident's guardian or resident's administrator to be recorded

- (1) If the resident has a resident's guardian, the proprietor must record the name and contact details of the resident's guardian.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

- (2) If the resident has a resident's administrator, the proprietor must record the name and contact details of the resident's administrator.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

- (3) A proprietor must take reasonable steps to ensure that the details referred to in subsection (1) or (2) are kept up to date.

Penalty: 10 penalty units, in the case of a natural person;

50 penalty units, in the case of a body corporate.

Division 2—Residential and services agreements

47 Preparation and copies of residential and services agreements

- (1) Within 48 hours of a resident's admission to the supported residential service, the proprietor must cause to be prepared in consultation with the resident and the person nominated (if any) a written agreement in an appropriate language containing the prescribed information of the nature of services to be provided to that resident in the supported residential service.

Penalty: 60 penalty units, in the case of a natural person;

300 penalty units, in the case of a body corporate.

- (2) Within 48 hours of a resident's admission to a supported residential service, the proprietor must provide the resident with a copy of the residential and services agreement in relation to that resident.

Penalty: 60 penalty units, in the case of a natural person;

300 penalty units, in the case of a body corporate.

48 Changes to residential and services agreements

- (1) Subject to subsections (2) and (3), if a proprietor proposes to change a term of a residential and services agreement in relation to a resident, the proprietor must notify the resident of the proposed change at least 7 days before the proposed change is to take effect.

Penalty: 20 penalty units, in the case of a natural person;

100 penalty units, in the case of a body corporate.

- (2) If a residential and services agreement provides that any changes to that agreement are to be notified to the resident in writing, the proprietor must ensure that a written notice is provided to the resident and the person nominated (if any).

Penalty: 20 penalty units, in the case of a natural person;

100 penalty units, in the case of a body corporate.

- (3) If a change to a residential and services agreement includes an increase in the fees that a resident is required to pay, the proprietor must give the resident at least 28 days notice of that change.

Penalty: 20 penalty units, in the case of a natural person;

100 penalty units, in the case of a body corporate.

49 Residential and services agreement not to be inconsistent with Act

The proprietor must ensure that a residential and services agreement does not include any information or matters that are inconsistent with a right or entitlement conferred, or an obligation

imposed, on a resident by this Act or the regulations.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

50 Residential and services agreement to be signed by resident etc.

- (1) A proprietor must provide the residential and services agreement in relation to a resident to that resident or the person nominated (if any) for signature by the resident.
- (2) A residential and services agreement that a resident has signed must be returned to the proprietor as soon as practicable after it is received and signed.

51 Termination by agreement

A residential and services agreement terminates when agreed by the proprietor and the resident.

52 Termination after order to vacate is made

- (1) If a notice to vacate has been given by a proprietor, the residential and services agreement ends on the termination date specified in the order to vacate (if any) made by VCAT.
- (2) If a notice of intention to vacate has been given by a resident, the residential and services agreement ends on the termination date specified in the notice of intention to vacate.

53 Termination on death or abandonment

- (1) A residential and services agreement in respect of a resident ends on the death of that resident.
- (2) A residential and services agreement ends if the resident abandons his or her room.

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- (3) For the purposes of subsection (2), a resident abandons his or her room if the resident leaves it without any intention of returning and—
- (a) without first giving notice of intention to vacate to the proprietor; or
 - (b) without first obtaining the agreement of the proprietor.
- (4) For the purposes of subsection (3), a resident may be regarded as having no intention of returning if—
- (a) the resident has not occupied the supported residential service for a period of at least 14 days and has not paid any fees for that period; or
 - (b) the resident has left the supported residential service and in all the circumstances it would be unreasonable to expect him or her to return.

54 Termination on moving out

A residential and services agreement ends if a resident moves out of the supported residential service, whether or not the resident has given notice of intention to vacate.

55 Termination with consent

If a resident vacates a supported residential service with the consent of the proprietor, the residential and services agreement ends immediately when that resident vacates the supported residential service.

Division 3—Support plans

56 Interim support plan

(1) Within 48 hours after a person becomes a resident, the proprietor must cause to be prepared in relation to the resident a written document to be called the resident's interim support plan that includes—

- (a) the immediate health and personal support needs of the resident; and
- (b) the services to be provided to the resident to assist with those needs.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

(2) The proprietor must ensure that a resident's interim support plan is carried out in accordance with the plan as prepared.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

(3) When requested, the proprietor must cause a resident's interim support plan to be made available to—

- (a) the resident;
- (b) the person nominated;
- (c) the resident's health service providers.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

57 Resident's on-going support plan

(1) Within 28 days after a person becomes a resident, the proprietor, in consultation with the resident and, if appropriate, the person nominated, must cause the resident's interim support plan to be reviewed and expanded into a written document to be called the resident's on-going support plan that includes—

(a) the on-going health and personal support needs of the resident; and

(b) the services to be provided to the resident to assist with those needs.

Penalty: 60 penalty units, in the case of a natural person;

300 penalty units, in the case of a body corporate.

(2) The proprietor must cause a resident's on-going support plan to be reviewed and updated at least once every 6 months.

Penalty: 60 penalty units, in the case of a natural person;

300 penalty units, in the case of a body corporate.

(3) If the resident's health and personal support needs change, the proprietor must ensure that the on-going support plan is reviewed and changed as necessary to meet those changed needs of the resident.

Penalty: 60 penalty units, in the case of a natural person;

300 penalty units, in the case of a body corporate.

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- (4) The proprietor must ensure that any change to a resident's on-going support plan is prepared in consultation with the resident and, if appropriate, the person nominated.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

- (5) The proprietor must ensure that consultation occurs with the resident's health service providers in the preparation of—
- (a) a resident's on-going support plan; and
 - (b) any changes made to that plan.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

- (6) The proprietor must ensure that a resident's on-going support plan is carried out in accordance with that plan as prepared.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

- (7) When requested, the proprietor must cause a resident's support plan and any changes made to it to be made available to—

- (a) the resident;
- (b) the person nominated;
- (c) the resident's health service providers.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

58 Notification of certain matters to person nominated

- (1) This section applies if there is a person nominated for a resident or a resident's guardian.
- (2) The proprietor must ensure that the person nominated or resident's guardian is informed as soon as practicable of any significant sign of deterioration in the health status of the resident.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

- (3) The proprietor must ensure that the person nominated or resident's guardian is informed as soon as practicable of any injury to the resident.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

- (4) The proprietor must ensure that the person nominated or resident's guardian is informed as soon as practicable of any risk taking behaviour by a resident which threatens the safety of—

- (a) the resident; or
- (b) other residents or staff.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

- (5) The proprietor must ensure that the person nominated or resident's guardian is informed as soon as practicable of any proposal to relocate the resident to another bedroom within the supported residential service.

Penalty: 10 penalty units, in the case of a natural person;

50 penalty units, in the case of a body corporate.

- (6) The proprietor must ensure that the person nominated or resident's guardian is informed as soon as practicable of any intention to terminate the residency of the resident.

Penalty: 10 penalty units, in the case of a natural person;

50 penalty units, in the case of a body corporate.

- (7) The proprietor must ensure that the person nominated or resident's guardian is informed as soon as practicable of the death of the resident.

Penalty: 60 penalty units, in the case of a natural person;

300 penalty units, in the case of a body corporate.

Division 4—Health and support standards and offences

59 Accommodation and personal support standards

The proprietor must comply with the prescribed accommodation and personal support standards.

Penalty: 240 penalty units, in the case of a natural person;

1200 penalty units, in the case of a body corporate.

60 Offence not to monitor health care issues

- (1) If the proprietor is, or ought reasonably to be, aware that a resident is in need of more health care than can be provided at the supported residential service, the proprietor must take all reasonable steps to ensure that the appropriate health care is provided to the resident.

Penalty: 600 penalty units or 5 years imprisonment or both for an individual;
3000 penalty units, in the case of a body corporate.

- (2) An offence against subsection (1) is an indictable offence.

- (3) If the proprietor is unsuccessful in securing the provision of appropriate health care for a resident after taking all reasonable steps to ensure that the appropriate health care is provided to the resident, the proprietor must notify the Secretary without delay of the needs of the resident.

Penalty: 240 penalty units, in the case of a natural person;
1200 penalty units, in the case of a body corporate.

61 Offence not to monitor personal support issues

- (1) If the proprietor is, or ought reasonably to be, aware that a resident is in need of more personal support than can be met within the scope of that resident's residential and services agreement, the proprietor must take all reasonable steps to ensure that the appropriate personal support is provided to the resident.

Penalty: 600 penalty units or 5 years imprisonment or both for an individual;
3000 penalty units, in the case of a body corporate.

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- (2) An offence against subsection (1) is an indictable offence.
 - (3) If the proprietor is unsuccessful in securing the provision of appropriate personal support after taking all reasonable steps to ensure that the appropriate personal support is provided to the resident, the proprietor must notify the Secretary without delay of the needs of the resident.

Penalty: 240 penalty units, in the case of a natural person;
1200 penalty units, in the case of a body corporate.

62 Enquiries, assessment and further care

- (1) The Secretary must make enquiries and assess how a resident's needs may best be met if the Secretary—
 - (a) receives a notification from a proprietor under section 60(3) or 61(3); or
 - (b) receives a report from an authorised officer that a resident of a supported residential service appears to be in need of health care, personal support or other care that the supported residential service is unable to provide.
- (2) In exercising a function under subsection (1), the Secretary may request a report from a registered medical practitioner or other relevant health professional or care professional to inform the enquiry and assessment.

- (3) A registered medical practitioner or other health professional or care professional who has prepared a report on request from the Secretary under subsection (2) is authorised to disclose the resident's personal or medical information to the Secretary to the extent necessary to enable an assessment to be made.
- (4) If possible, the enquiry and assessment under this section must occur in consultation with the resident and the person nominated (if any).
- (5) Following an assessment under this section, if the Secretary considers that further care should be provided to the resident, the Secretary must take appropriate steps to refer the resident to appropriate health professionals or care professionals.
- (6) Without limiting subsection (5), steps taken by the Secretary may include arrangements to relocate the resident.

Division 5—Medication

63 Medication of residents

- (1) A proprietor must, in accordance with the regulations, take reasonable steps to maintain adequate standards of storage, distribution and administration of residents' medication.

Penalty: 600 penalty units or 5 years imprisonment or both, in the case of a natural person;
3000 penalty units, in the case of a body corporate.
- (2) An offence against subsection (1) is an indictable offence.

Division 6—Staffing

64 Minimum staff requirement

- (1) The proprietor must ensure that an adequate number of appropriately trained staff are employed in the supported residential service in accordance with the regulations.

Penalty: 240 penalty units, in the case of a natural person;

1200 penalty units, in the case of a body corporate.

- (2) The proprietor must, in accordance with the regulations, ensure that an adequate number of appropriately trained staff are on duty in the supported residential service to ensure that the proprietor can comply with the personal support requirements under this Act.

Penalty: 240 penalty units, in the case of a natural person;

1200 penalty units, in the case of a body corporate.

- (3) The proprietor must, in accordance with the regulations, ensure that an adequate number of appropriately trained ancillary staff are on duty in the supported residential service to ensure that the staff employed to provide personal support to the residents of the supported residential service are not unduly hindered in providing that support.

Penalty: 240 penalty units, in the case of a natural person;

1200 penalty units, in the case of a body corporate.

65 Offence to employ unsuitable persons

A proprietor must not appoint or continue to employ in a supported residential service a person as a member of staff who is engaged in the special or personal support needs of residents if that person is not a suitable person, having regard to guidelines issued by the Secretary in relation to the employment of persons in a supported residential service.

Penalty: 240 penalty units, in the case of a natural person;
1200 penalty units, in the case of a body corporate.

66 Requirement for criminal record checks of staff

A proprietor must ensure that a criminal record check is undertaken in accordance with the regulations in respect of a prospective employee of the supported residential service before that person is employed.

Penalty: 240 penalty units, in the case of a natural person;
1200 penalty units, in the case of a body corporate.

67 Requirement to employ manager

A proprietor must employ a person to manage the supported residential service if at any time the proprietor, or in the case of a proprietor that is a body corporate any of the directors, is not ordinarily on site to carry out, direct or undertake the day to day operation of the supported residential service.

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

68 Requirement to apply to Secretary for approval of manager

- (1) If a proprietor employs a person to manage a supported residential service for the purposes of section 67 or for any other reason, the proprietor must apply to the Secretary for approval of the person as a suitable person to be a manager of a supported residential service within 7 days of that employment.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

- (2) An application under subsection (1) must—
- (a) contain the prescribed information; and
 - (b) be accompanied by the prescribed fee (if any); and
 - (c) be accompanied by the prescribed documents (if any).
- (3) An application under subsection (1) may be made at any time, including when an application for registration is made.

69 Further information

- (1) The Secretary may request an applicant under section 68 to provide any further information in relation to the application that the Secretary requires in order to make a decision on the application.
- (2) An applicant must provide any information requested by the Secretary under subsection (1) by the date stated in the request.

70 Decision on application for approval of manager

- (1) On receiving an application for approval of a manager under section 68, the Secretary must—
 - (a) approve the manager of the supported residential service; or
 - (b) refuse to approve the manager of the supported residential service.
- (2) In making a decision under subsection (1), the Secretary must consider—
 - (a) whether the person appointed has the relevant knowledge and skills to be a manager of a supported residential service; and
 - (b) whether the person is otherwise a suitable person to be a manager of a supported residential service.

71 Notification of decision about approval of manager

The Secretary must notify the applicant of the Secretary's decision under section 70(1) within the later of—

- (a) 60 days after receiving the application to which the decision relates, being an application that complies with the requirements of section 68(2); or
- (b) if the Secretary has requested the applicant to give further information under section 69, 28 days after the information last requested is given to the Secretary.

72 Secretary may cancel approval of manager

The Secretary may cancel the approval of a person as a manager of a supported residential service if the Secretary believes on reasonable grounds that the person—

- (a) no longer has the relevant knowledge and skills to be a manager of a supported residential service; or
- (b) is otherwise no longer a suitable person to be a manager of a supported residential service.

73 Effect of approval or disapproval of manager

- (1) An approval of a manager under this Division only applies in respect of the specific supported residential service for which the manager is approved.
- (2) If the Secretary refuses to approve a person to be a manager of a supported residential service, the proprietor must ensure that the person appointed as manager does not continue as the manager of the supported residential service.

Penalty: 240 penalty units, in the case of a natural person;
1200 penalty units, in the case of a body corporate.

- (3) If the Secretary cancels the approval of a person as a manager of a supported residential service, the proprietor must ensure that the person appointed as manager does not continue as the manager of the supported residential service.

Penalty: 240 penalty units, in the case of a natural person;
1200 penalty units, in the case of a body corporate.

74 Acting manager

- (1) This section applies if a proprietor is required to employ a manager of a supported residential service under section 67.
- (2) The proprietor must notify the Secretary within 7 days if an approved manager—
 - (a) ceases to be a manager of the supported residential service; or
 - (b) is absent on leave; or
 - (c) is otherwise unable to perform the role of manager.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

- (3) If there is no more than one approved manager of a supported residential service, the proprietor must appoint a person to be the acting manager of the supported residential service if that approved manager—
 - (a) ceases to be the manager of the supported residential service; or
 - (b) is absent on leave; or
 - (c) is otherwise unable to perform the role of manager.

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

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- (4) If there is no more than one approved manager of a supported residential service, the proprietor must not fail, without reasonable excuse, to appoint a new manager within 28 days, or another period approved in writing by the Secretary, if that approved manager—
- (a) ceases to be the manager of the supported residential service; or
 - (b) is absent on leave; or
 - (c) is otherwise unable to perform the role of manager.

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

Division 7—Complaints

75 Procedures for resident complaints

- (1) A proprietor must, in accordance with the regulations, institute and operate a system to receive and deal with complaints from residents or complaints made on behalf of residents.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

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- (2) A proprietor must take all reasonable steps to ensure that a resident is not adversely affected because a complaint has been made by the resident or on behalf of the resident.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

Division 8—Reporting and records

76 Requirement to keep prescribed records

- (1) A proprietor must maintain an accurate and up to date record of prescribed incidents that complies with subsection (5).

Penalty: 20 penalty units, in the case of a natural person;
100 penalty units, in the case of a body corporate.

- (2) A proprietor must maintain an accurate and up to date record of prescribed resident information that complies with subsection (5).

Penalty: 20 penalty units, in the case of a natural person;
100 penalty units, in the case of a body corporate.

- (3) A proprietor must maintain an accurate and up to date record of prescribed staff information that complies with subsection (5).

Penalty: 20 penalty units, in the case of a natural person;
100 penalty units, in the case of a body corporate.

- (4) A proprietor must maintain an accurate and up to date record of staff rosters that complies with subsection (5).

Penalty: 20 penalty units, in the case of a natural person;

100 penalty units, in the case of a body corporate.

- (5) A record under this section must—

(a) include the prescribed particulars; and

(b) be kept in the prescribed manner.

77 Records and reporting of prescribed reportable incidents

- (1) A proprietor must maintain an accurate and up to date record of prescribed reportable incidents that complies with subsection (2).

Penalty: 20 penalty units, in the case of a natural person;

100 penalty units, in the case of a body corporate.

- (2) A record under subsection (1) must—

(a) include the prescribed particulars; and

(b) be kept in the prescribed manner.

- (3) A proprietor must notify the Secretary of any prescribed reportable incident that occurs on the premises of, or in relation to, the supported residential service within the prescribed reporting time.

Penalty: 60 penalty units, in the case of a natural person;

300 penalty units, in the case of a body corporate.

78 Proprietor to keep records for 7 years

The proprietor must retain the records kept under this Division at the supported residential service for a period of 7 years.

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

PART 5—MONEY AND PROPERTY OF RESIDENTS

Division 1—Money of residents

79 Management or control of resident's money by proprietor

- (1) A proprietor must not manage or control money of a resident without the written consent of the resident.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

- (2) A proprietor who manages or controls money of a resident must not manage or control more than the prescribed amount of that money at any one time.

Penalty: 20 penalty units, in the case of a natural person;
100 penalty units, in the case of a body corporate.

- (3) A proprietor who manages or controls money of a resident must keep a copy of the written consent for that management or control.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

80 Records of expenditure to be kept

- (1) A proprietor who manages or controls money of a resident must maintain an accurate and up to date record of—

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- (a) any incoming money that the proprietor manages or controls on behalf of the resident; and
 - (b) any expenditure of the money that the proprietor manages or controls on behalf of the resident.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

- (2) A proprietor who manages or controls money of a resident must ensure that records kept under subsection (1) individually itemise each transaction made on behalf of the resident.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

81 Statements and access to records

- (1) A proprietor who manages or controls money of a resident must provide the resident with an itemised statement setting out any income received and expenditure incurred on behalf of a resident since the previous statement—

- (a) on request; or
- (b) at least once every 3 months.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

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- (2) A proprietor who manages or controls money of a resident must give access to the resident's financial records held by the proprietor to the resident or the person nominated (if any) on request.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

82 Proprietor may give directions relating to resident's money

- (1) In managing or controlling money of a resident under section 79, a proprietor may direct any employee of the supported residential service to handle or deal with the money.
- (2) A proprietor must not give directions under subsection (1) in relation to the money of a particular resident if the proprietor does not have the written consent of that resident to manage or control that money.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

- (3) A proprietor must not give directions under subsection (1) in relation to the money of a particular resident requiring or allowing an employee to do anything that would, if done by the proprietor, contravene section 79 or 80.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

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- (4) An employee of a supported residential service must only handle or deal with money of a resident in accordance with directions given to the employee under subsection (1).

Penalty: 60 penalty units.

- (5) A proprietor must not give a direction to handle, deal with, manage or control money of a resident to a close associate of the proprietor other than an employee.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

- (6) Subject to subsections (1) and (5), a close associate of a proprietor must not handle, deal with, manage or control money of a resident.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

83 Proprietor or close associate not to be person nominated

- (1) A proprietor must not accept an appointment as a person nominated, resident's guardian or resident's administrator in respect of any resident of the supported residential service of which he or she is the proprietor.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

- (2) A close associate of a proprietor must not accept an appointment as a person nominated, resident's guardian or resident's administrator in respect of any resident of the supported residential service of which he or she is a close associate of the proprietor.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

- (3) Subsections (1) or (2) do not apply—
- (a) if the proprietor or close associate of the proprietor is the resident's nearest relative; or
 - (b) if a court or tribunal makes an order appointing the proprietor or close associate of the proprietor as a resident's administrator or a resident's guardian.

Division 2—Prohibited transactions and reportable transactions

84 Proprietor or close associate not to enter into prohibited transactions

A proprietor, or a close associate of a proprietor, must not enter into a prohibited transaction with a resident of the supported residential service.

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

85 Reportable transactions

- (1) A proprietor must give notice to the Secretary in accordance with this section of any reportable transaction to which the proprietor is a party within the reporting period.

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

- (2) A close associate of a proprietor must give notice to the Secretary in accordance with this section of any reportable transaction to which the close associate is a party within the reporting period.

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

- (3) A notice under subsection (1) or (2) must be in writing and include—

- (a) if there is one, a copy of the written agreement for the reportable transaction; or
- (b) if the reportable transaction involves property the value of which exceeds the amount prescribed for the purposes of the definition of *reportable transaction* in section 3(1), evidence of—
- (i) the market value of the property involved in the reportable transaction; and
- (ii) the independent financial or legal advice obtained by the resident or the resident's administrator in respect of the reportable transaction.

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- (4) In this section, *reporting period* means—
- (a) the period of 14 days after the entering into of a reportable transaction; or
 - (b) if a different period is prescribed as the reporting period, that period.

86 Cooling off period

- (1) A resident may rescind a prohibited transaction in relation to real or personal property or a reportable transaction between the resident and the proprietor, or a close associate of the proprietor within the cooling off period.
- (2) During the cooling off period, a proprietor, or a close associate of the proprietor, as the case requires, who is a party to a transaction must not have any other dealings with the property to which the transaction relates.

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

- (3) In this section, *cooling off period*, in relation to a transaction, whether or not a prohibited transaction or reportable transaction, means the period ending 5 days after the day on which the transaction was entered into.
- (4) This section applies despite anything to the contrary in any Act other than the **Charter of Human Rights and Responsibilities Act 2006**.

87 Remedies

- (1) This section applies to a resident—
 - (a) who is a party to a prohibited transaction; or

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- (b) whose real or personal property has been dealt with by a proprietor, or a close associate of a proprietor, in contravention of section 84.
- (2) A resident to whom this section applies may apply to a court of competent jurisdiction for a declaration that the transaction which the resident entered into with the proprietor, or close associate of the proprietor, as the case requires, of the supported residential service is void.
- (3) If the transaction relates to real or personal property that is no longer in the possession of the proprietor, or close associate of the proprietor, as the case requires, the resident may also apply to the court referred to in subsection (2) to recover the value of the property, less any consideration already received by the resident, as a debt from the proprietor or the close associate.
- (4) If the transaction relates to real or personal property that is still in the possession of the proprietor, or close associate of the proprietor, as the case requires, the resident may also apply to the court referred to in subsection (2) for an order that the proprietor or close associate return the property to the resident.
- (5) The rights of a resident under this section are in addition to any other rights that the resident may have under any other Act, the common law or at equity.

88 Proprietor to notify Secretary of offences

- (1) If a proprietor becomes aware that a close associate of the proprietor has engaged in, or is engaging in, conduct that may constitute an offence against this Part, the proprietor must—

- (a) within 2 days after becoming aware of the conduct, notify the Secretary of the conduct; and
- (b) provide information about the identity of the relevant close associate.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

- (2) In this section, *engage in conduct* means—
- (a) to do an act; or
 - (b) to omit to do an act.

Division 3—Fees, charges and security deposits

89 Offence to request certain payments

- (1) A proprietor must not request a resident to pay any amount other than—
- (a) a security deposit;
 - (b) a fee paid in advance in accordance with this Act;
 - (c) a reservation fee;
 - (d) an establishment fee;
 - (e) a fee in respect of the resident's accommodation and personal support;
 - (f) an amount intended to cover an item or service purchased at the supported residential service.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

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- (2) A proprietor must not accept from a resident any amount other than—
- (a) a security deposit;
 - (b) a fee paid in advance in accordance with this Act;
 - (c) a reservation fee;
 - (d) an establishment fee;
 - (e) a fee in respect of the resident's accommodation and personal support;
 - (f) an amount intended to cover an item or service purchased at the supported residential service.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

90 Offence to request or accept security deposit that exceeds a specified amount

- (1) A proprietor must not request a resident to pay a security deposit greater than—
- (a) the equivalent of one month's fees; or
 - (b) if an amount is prescribed for the purposes of this subsection, that prescribed amount.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

- (2) A proprietor must not accept from a resident a security deposit greater than—
- (a) the equivalent of one month's fees; or

- (b) if an amount is prescribed for the purposes of this subsection, that prescribed amount.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

91 Offence to request or accept fees in advance that exceed a specified amount

- (1) A proprietor must not request a resident to pay a fee in advance greater than—

- (a) the equivalent of one month's fees; or
(b) if an amount is prescribed for the purposes of this subsection, that prescribed amount.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

- (2) A proprietor must not, unless the resident requests in writing, accept in respect of a resident a fee in advance greater than—

- (a) the equivalent of one month's fees; or
(b) if an amount is prescribed for the purposes of this subsection, that prescribed amount.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

92 Offence to request or accept reservation fee that exceeds a specified amount

- (1) A proprietor must not request a resident to pay a reservation fee greater than—

- (a) the equivalent of 2 weeks fees; or

(b) if an amount is prescribed for the purposes of this subsection, that prescribed amount.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

(2) A proprietor must not accept from a resident a reservation fee greater than—

(a) the equivalent of 2 weeks fees; or

(b) if an amount is prescribed for the purposes of this subsection, that prescribed amount.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

93 Offence to request or accept establishment fees that exceed a specified amount

(1) A proprietor must not request a resident to pay an establishment fee greater than—

(a) the equivalent of 2 weeks fees; or

(b) if an amount is prescribed for the purposes of this subsection, that prescribed amount.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

(2) A proprietor must not accept from a resident an establishment fee greater than—

(a) the equivalent of 2 weeks fees; or

(b) if an amount is prescribed for the purposes of this subsection, that prescribed amount.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

94 Offence not to provide prescribed statement in respect of fees etc.

Within 7 days of receiving a security deposit, an establishment fee, a fee paid in advance or a reservation fee in respect of a resident, a proprietor must provide the resident and the person nominated (if any) with a statement containing the prescribed information.

Penalty: 20 penalty units, in the case of a natural person;
100 penalty units, in the case of a body corporate.

95 Offence not to put money into trust account

Within 7 days of receiving a security deposit, an establishment fee, a fee paid in advance in accordance with section 91(2) or a reservation fee in respect of a resident, a proprietor must place the security deposit, reservation fee, establishment fee or fee paid in advance into a trust account held at an ADI.

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

Note

The **Interpretation of Legislation Act 1984** provides that an *ADI* means an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth.

96 Records of money held in trust account

A proprietor who has placed a security deposit, an establishment fee, a fee paid in advance or a reservation fee in respect of a resident into a trust account must maintain separate records, in accordance with the regulations, in relation to the funds of each resident whose funds are held in that trust account.

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

97 Fees etc. to remain in trust until required

- (1) A proprietor who has placed a reservation fee, an establishment fee or a fee paid in advance into a trust account must not withdraw any amount from that account unless—
- (a) it is withdrawn for the purpose of returning the amount the resident or the person who made the payment on behalf of the resident;
or
 - (b) the proprietor is entitled to retain the amounts or part of the amounts in accordance with this Act and the withdrawal occurs on or after the commencement of the period to which the payment of the amount relates.

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

- (2) A proprietor who has placed a security deposit into a trust account must not withdraw any amount of that security deposit from that account unless—

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- (a) it is withdrawn for the purpose of returning the amount the resident or the person who made the payment on behalf of the resident; or
 - (b) the proprietor is entitled to retain the amount or part of the amount of the security deposit in accordance with section 98.

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

98 Retention of security deposit by proprietor

- (1) A proprietor is only entitled to retain a security deposit if—
 - (a) the resident has left the supported residential service and an amount of fees has accrued due and is unpaid; or
 - (b) the proprietor reasonably believes that the proprietor is entitled to an amount of the security deposit as compensation for loss or damage suffered by the proprietor on account of—
 - (i) damage caused to the supported residential service by the resident or the resident's visitor, other than fair wear and tear; or
 - (ii) the loss of goods belonging to the proprietor, caused by the resident or the resident's visitor; or
 - (c) the resident has consented to the proprietor retaining the amount after the proprietor has given the resident a statement setting out—
 - (i) the deductions; and
 - (ii) the purpose of the deductions; and

(iii) the remaining balance of the security deposit.

(2) Subsection (1) does not entitle a proprietor to retain any amount of a security deposit in excess of the actual loss or shortfall suffered by the proprietor.

99 Offence not to return security deposit within 14 days

A proprietor must return to a resident any part of the security deposit that the proprietor is not entitled to retain under section 98 within 14 days of the resident leaving the supported residential service.

Penalty: 20 penalty units, in the case of a natural person;

100 penalty units, in the case of a body corporate.

100 Condition report

(1) If a resident or a proposed resident pays a security deposit, the proprietor must give the resident or proposed resident 2 copies of a condition report signed by or on behalf of the proprietor specifying the state of repair and general condition of—

(a) the resident's room; and

(b) the common areas; and

(c) the furniture in the resident's room and the common areas.

Penalty: 10 penalty units, in the case of a natural person;

50 penalty units, in the case of a body corporate.

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- (2) The proprietor must give the condition report as soon as practicable before a resident or a proposed resident begins living at the supported residential service.

Penalty: 10 penalty units, in the case of a natural person;

50 penalty units, in the case of a body corporate.

- (3) Within 3 days after a resident's arrival at the supported residential service, the resident or person nominated must return one copy of the condition report to the proprietor—
- (a) signed by the resident; and
 - (b) with an endorsement—
 - (i) to the effect that the resident agrees with the whole of the report; or
 - (ii) that identifies any matters in the report with which the resident does not agree.

101 Condition report is evidence of state of repair

- (1) For the purposes of this Act, a statement in a condition report is conclusive evidence of the state of repair or general condition of the resident's room and the common areas and the furniture within those areas on the day specified in the condition report, if the report is—
- (a) signed by or on behalf of the proprietor; and
 - (b) signed by the resident.
- (2) Subsection (1) does not apply to—
- (a) a state of repair or general condition that could not reasonably have been discovered on a reasonable inspection of the room; or

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- (b) a statement with which the resident disagrees under an endorsement on the condition report.

102 Statement relating to use of reservation fees

- (1) Before receiving a reservation fee in respect of a proposed resident, the proprietor must provide written information to the proposed resident or a person acting on behalf of the proposed resident stating—
- (a) how the amount to be received will be applied; and
 - (b) the circumstances in which the payment or a part of it may be forfeited by the proposed resident.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

- (2) The information provided under subsection (1) must not be inconsistent with this Act.

103 Proprietor must explain fees and charges to resident

A proprietor must ensure that all expenses and fees charged to a resident are individually itemised and explained to the resident.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

104 Reservation fees must be applied or refunded

- (1) If a proposed resident is admitted to a supported residential service, the proprietor must deduct any reservation fee paid from the fees payable to the proprietor under the residential and services agreement.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

- (2) If a proposed resident is not admitted to a supported residential service, the proprietor must refund any part of a reservation fee that has not been forfeited in accordance with the written information provided under section 94 within 7 days of a request from—

- (a) the proposed resident; or
(b) a person acting on behalf of the proposed resident.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

105 Application to VCAT for refund of security deposit etc.

A resident or a person acting on behalf of a resident may apply to VCAT for an order directing the proprietor to refund the security deposit, fee paid in advance, establishment fee or reservation fee to the resident if the proprietor does not refund a security deposit, a fee paid in advance, an establishment fee or a reservation fee in accordance with this Act.

106 VCAT orders

On an application under section 105, VCAT may—

- (a) make an order that the proprietor is entitled to retain the money or amount that is the subject of the application, including specifying the amount to which the proprietor is entitled; or
 - (b) make an order that the proprietor is not entitled to retain the money or amount that is the subject of the application and must refund the money or amount, including specifying the amount which the proprietor is to refund; or
 - (c) dismiss the application.
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PART 6—NOTICES TO VACATE

Division 1—General

107 Contents of notice to vacate

A notice to vacate given by a proprietor must—

- (a) specify the date on which the resident is to leave the supported residential service;
- (b) specify the ground on which the notice is given;
- (c) be signed and dated by the proprietor or on behalf of the proprietor;
- (d) state that the resident may appeal the notice to vacate to VCAT.

108 Giving of notice to vacate

- (1) A notice to vacate must be given to—
 - (a) the resident; and
 - (b) the person nominated (if any).
- (2) In the case of a notice to vacate under section 110, 114, 115, 116 or 117, the proprietor must also notify the Secretary within the prescribed time of the notice to vacate being given.

Division 2—Notice to vacate given by proprietor

109 Proprietor proposes to cease carrying on the supported residential service

- (1) A proprietor may give a resident a notice to vacate the supported residential service if the proprietor proposes to cease conducting or carrying on business as a supported residential service at the premises.

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- (2) A notice to vacate under subsection (1) must specify a termination date is not less than 28 days after the date on which the notice is given.

110 Resident endangers safety of other persons

- (1) A proprietor may give a resident a notice to vacate the supported residential service if the resident by act or omission causes danger to any other resident or staff member of the supported residential service.
- (2) A notice to vacate under subsection (1) may specify a termination date that is—
- (a) the date on which the notice is given; or
 - (b) a later date.

111 Non-payment of fees

- (1) A proprietor may give a resident a notice to vacate the supported residential service if the resident's fees are more than 14 days in arrears.
- (2) A notice under subsection (1) must specify a termination date that is not less than 14 days after the date on which the notice is given.

112 Use of supported residential service for illegal purpose

- (1) A proprietor may give a resident a notice to vacate the supported residential service if the resident has used the supported residential service or permitted its use for any purpose that is illegal at common law or under any Act.
- (2) A notice to vacate under subsection (1) must specify a termination date that is not less than 2 days after the date on which the notice is given.

113 Repairs or demolition

- (1) Subject to subsection (3), a proprietor may give a resident a notice to vacate the supported residential service if—
 - (a) the proprietor intends to repair, renovate, reconstruct or demolish the supported residential service immediately after the termination date; and
 - (b) the proprietor has obtained all the necessary permits and consents to carry out the work; and
 - (c) the work cannot be properly carried out unless the resident vacates the supported residential service.
- (2) A notice to vacate under subsection (1) must specify a termination date that is not less than 60 days after the date on which the notice is given.
- (3) If the proposed repairs, renovations or reconstruction will affect a resident's room but will not affect all the rooms in the supported residential service, the proprietor must not give the notice to vacate under subsection (1) unless—
 - (a) the proprietor has first offered another equivalent room to the resident; and
 - (b) the resident has refused to occupy that room in place of the resident's current room.

114 Resident in need of more health care than available

- (1) A proprietor may give a resident a notice to vacate the supported residential service if—
 - (a) the resident is in need of more health care than can be arranged by the supported residential service; and

-
- (b) the proprietor has complied with the proprietor's obligations under section 60(3); and
 - (c) the Secretary has completed the Secretary's enquiries and assessment under section 62.
- (2) A notice to vacate under subsection (1) must specify a termination date that is not less than 14 days after the date on which the notice is given.

115 Resident in need of more personal support than available

- (1) A proprietor may give a resident a notice to vacate the supported residential service if—
- (a) the resident is in need of more personal support than can be provided by the supported residential service; and
 - (b) the proprietor has complied with the proprietor's obligations under section 61(3); and
 - (c) the Secretary has completed the Secretary's enquiries and assessment under section 62.
- (2) A notice to vacate under subsection (1) must specify a termination date that is not less than 14 days after the date on which the notice is given.

116 Serious damage

- (1) A proprietor may give a resident a notice to vacate the supported residential service if the resident intentionally or recklessly causes or allows serious damage to any part of the supported residential service.
- (2) A notice to vacate under subsection (1) may specify a termination date that is—
- (a) the date on which the notice is given; or
 - (b) a later date.

- (3) For the purposes of subsection (1), notice to vacate may be given if a series of acts of damage, which may not individually be serious damage, may amount to serious damage because of the frequency of the acts.

117 Serious interruption to quiet and peaceful enjoyment

- (1) A proprietor may give a resident a notice to vacate the supported residential service if the resident seriously interrupts the quiet and peaceful enjoyment of the supported residential service by other residents.
- (2) A notice to vacate under subsection (1) may specify a termination date that is—
- (a) the date on which the notice is given; or
 - (b) a later date.
- (3) For the purposes of subsection (1), notice to vacate may be given if a series of acts of interruption of the quiet and peaceful enjoyment of the supported residential service by other residents, which may not individually be a serious interruption, may amount to serious interruption because of the frequency of the acts.

118 Offence not to provide proper notice

A proprietor must not require a resident to vacate a supported residential service without providing appropriate notice to vacate in accordance with this Division.

Penalty: 20 penalty units, in the case of a natural person;
100 penalty units, in the case of a body corporate.

Note

See also section 77.

Division 3—Notice by resident

119 Notice of resident's intention to vacate supported residential service

- (1) A resident who intends to vacate a supported residential service must give notice of intention to vacate to the proprietor within the relevant time period under subsection (2).
- (2) The required period for a notice of intention to vacate is—
 - (a) if the residential and services agreement specifies a notice period, not less than the notice period specified in that agreement; or
 - (b) in any other case, not less than 2 days.
- (3) For the purposes of subsection (1), an intention to be temporarily absent from a supported residential service is not to be taken as an intention to vacate the supported residential service.

Examples

A holiday or for hospitalisation.

- (4) Nothing in this section affects a proprietor's right to issue a notice to vacate under sections 109 to 117.
- (5) Subsection (1) does not apply to a resident of a supported residential service whose occupation of the supported residential service is by an agreement for short-term accommodation only.

120 Offence to require more than 28 days notice of intention to leave supported residential service

A proprietor must not require a resident to give more than 28 days notice of a resident's intention to vacate the supported residential service.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

Division 4—Enforcement

121 Resident may apply to VCAT

- (1) A resident who has received a notice to vacate under Division 2 may apply to VCAT challenging the validity of the notice to vacate on one or more of the following grounds—
 - (a) that the notice to vacate has a defect on the face of it;
 - (b) that the notice to vacate was not issued in accordance with this Act;
 - (c) that the ground on which the notice to vacate was issued is not established.
- (2) Subject to subsection (3), an application under subsection (1) must be made within 28 days after the notice to vacate is received.
- (3) An application under subsection (1) in respect of a notice to vacate given under section 110, 116 or 117 must be made within 5 days after the notice to vacate is received.

122 What can VCAT order?

- (1) In considering an application under section 121, VCAT may—
 - (a) determine whether or not the notice to vacate is valid; or
 - (b) dismiss the application.
- (2) If VCAT determines that the notice to vacate is valid, VCAT—
 - (a) must confirm the notice to vacate; and
 - (b) may issue an order to vacate.
- (3) If VCAT determines that the notice to vacate is not valid, the notice to vacate ceases to have any effect.

123 Application by proprietor for order to vacate

- (1) A proprietor may apply to VCAT for an order to vacate if—
 - (a) the proprietor has given the resident a notice to vacate; and
 - (b) the resident has not vacated the supported residential service.
- (2) A proprietor may apply to VCAT for an order to vacate if—
 - (a) the resident has given the proprietor a notice of intention to vacate the supported residential service; and
 - (b) the resident has not vacated the supported residential service.

124 Time for application for order to vacate

An application under section 123 for an order to vacate may be made not later than 28 days after the date on which the notice to vacate or the notice of intention to vacate is to take effect.

125 VCAT must make order to vacate in certain circumstances

- (1) VCAT must make an order requiring a resident to vacate a supported residential service on the day specified in the order to vacate if satisfied—
 - (a) in the case of an application where notice to vacate has been given by the proprietor, that—
 - (i) the proprietor was entitled to give the notice to vacate; and
 - (ii) the notice to vacate has not been withdrawn; and
 - (b) in the case of an application where a notice of intention to vacate has been given by a resident, that the proprietor acted reasonably by relying on the notice of intention to vacate; and
 - (c) that the proprietor has complied with section 72 of the **Victorian Civil and Administrative Tribunal Act 1998**; and
 - (d) that the resident is still residing at the supported residential service after the termination date specified in the notice to vacate or notice of intention to vacate, as the case requires.
- (2) If an application for an order to vacate is made under section 123(2)—
 - (a) the application must be heard within 14 days after the application is made; and
 - (b) any order to vacate must be made within 7 days of that hearing.

126 Application for order to vacate to be dismissed or adjourned in certain circumstances

- (1) VCAT may dismiss or adjourn an application for an order to vacate if—
 - (a) the application is in respect of a notice to vacate given under section 111; and
 - (b) VCAT considers that satisfactory arrangements have been or can be made to avoid financial loss to the proprietor.
- (2) An adjournment under subsection (1) may be on any terms VCAT thinks fit.
- (3) On the resumption of an adjourned hearing, VCAT—
 - (a) may make an order to vacate if the resident has continued to accrue arrears of fees during the adjournment period; and
 - (b) must dismiss the application if the resident—
 - (i) has paid all the arrears which were the subject of the original application; and
 - (ii) has accrued no further arrears of fees from the time of the application to the date of resumption of the adjourned hearing.

127 Order to vacate not to be made in certain circumstances

Despite section 125, VCAT must not make an order to vacate if—

- (a) the application for the order to vacate is in respect of a notice to vacate given under section 117; and

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- (b) VCAT is satisfied that—
- (i) the interruption to quiet and peaceful enjoyment of the supported residential service has ceased; and
 - (ii) the disturbance is not a recurrence and will not be repeated.

128 Contents of an order to vacate

An order to vacate must include—

- (a) the day by which the resident must vacate the supported residential service (being a day not more than 30 days after the day on which the order to vacate is made and not earlier than the date specified under section 107(a)); and
- (b) a direction to the resident to vacate the supported residential service by the day specified in the order to vacate; and
- (c) a direction to the principal registrar of VCAT to issue a warrant to remove the resident from the supported residential service on the application of the proprietor; and
- (d) a warning that, if the resident fails to comply with the direction under subsection (1)(b), he or she may be forcibly removed from the supported residential service by—
 - (i) a member of the police force; or
 - (ii) an authorised person executing a warrant.

129 Issue of warrant to remove resident

- (1) A person who obtains an order to vacate under this Division may apply to the principal registrar of VCAT for a warrant to remove the resident—

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- (a) immediately, if the order to vacate so provides; or
 - (b) within 6 months after the date of the order to vacate if the resident fails to comply with the order to vacate.
- (2) A warrant must be executed within the time stated in the order to vacate, which must not exceed 30 days after the date of issue of the warrant.
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PART 7—MONITORING AND ENFORCEMENT

Division 1—Authorised officers

130 Secretary may appoint authorised officers

- (1) Subject to subsection (2), the Secretary, by instrument, may appoint a person employed under Part 3 of the **Public Administration Act 2004** to be an authorised officer for the purposes of this Act.
- (2) The Secretary must not appoint a person to be an authorised officer unless the Secretary is satisfied that the person is suitably qualified or trained to be an authorised officer for the purposes of this Act.
- (3) An appointment of a person as an authorised officer may—
 - (a) specify the functions, duties or powers under this Act or the regulations in respect of which that person is an authorised officer; and
 - (b) be made subject to any conditions that the Secretary considers appropriate.

131 Identity cards

- (1) The Secretary must issue an identity card to each authorised officer.
- (2) An identity card issued to an authorised officer must—
 - (a) contain a photograph of the authorised officer; and
 - (b) contain the signature of the authorised officer; and
 - (c) be signed by the Secretary.

132 Directions

- (1) The Secretary may give a direction to an authorised officer in relation to—
 - (a) the performance of the authorised officer's functions or duties; or
 - (b) the exercise of the authorised officer's powers under this Act or the regulations.
- (2) A direction given under subsection (1)—
 - (a) may be of a general nature; or
 - (b) may specify that the direction relates to a specific matter or specified class of matter.

133 Production of identity card

- (1) An authorised officer must produce his or her identity card for inspection before exercising a power under this Act or the regulations.
- (2) An authorised officer must produce his or her identity card for inspection if asked to do so by the occupier of any premises during the exercise of a power under this Act or the regulations.
- (3) If an authorised officer does not comply with a request under subsection (2), the authorised officer must immediately cease exercising the power under this Act or the regulations.

Division 2—Powers of entry

134 Power to enter—monitoring compliance

- (1) Subject to subsection (2), an authorised officer may enter, at any time, without a warrant and with any assistants reasonably required, any premises that an authorised officer believes is a registered supported residential service for the purposes of—
 - (a) monitoring compliance with this Act or the regulations; or

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- (b) investigating a possible contravention of this Act or the regulations.
 - (2) An authorised officer must not, under subsection (1), enter any part of the premises that is the residential premises of the proprietor unless that authorised officer—
 - (a) has first given notice of his or her intention to the proprietor and given the proprietor an opportunity to be present; and
 - (b) has obtained the consent of the proprietor to enter that part of the premises.

135 Power to enter unregistered premises with consent

An authorised officer may enter, at any time with the consent of the occupier and with any assistants reasonably required, any premises that the authorised officer has a reasonable suspicion is operating as a supported residential service in contravention of section 9.

136 Entry to unregistered premises—search warrant

- (1) An authorised officer may apply to a magistrate for the issue of a search warrant in relation to particular premises if the authorised officer believes on reasonable grounds that a person is carrying on business at those premises as a supported residential service in contravention of section 9.
- (2) A magistrate may issue a search warrant if the magistrate is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that a person is carrying on business at the premises as a supported residential service in contravention of section 9.

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- (3) A search warrant issued under this section must—
- (a) be directed to a named authorised officer;
and
 - (b) authorise him or her, and any assistants he or she reasonably requires, to enter the premises, or the part of the premises, named or described in the warrant to search for any article, thing or material of a kind named or described in the warrant which there is reasonable grounds to believe will afford evidence as to the commission of an offence against section 9.
- (4) In addition to any other requirement, a search warrant issued under this section must state—
- (a) the offence suspected;
 - (b) the premises to be searched;
 - (c) any conditions to which the warrant is subject;
 - (d) whether entry is authorised to be made at any time of the day or night or during specified hours;
 - (e) that the warrant authorises entry on only one occasion;
 - (f) a day, not later than 7 days after the warrant is issued, on which it ceases to have effect.

137 Investigating an offence—search warrant

- (1) An authorised officer may apply to a magistrate for the issue of a search warrant in relation to particular premises if the officer believes on reasonable grounds that there is, or may be within the next 72 hours, a particular thing (including a document) at the premises that may afford evidence of the commission of an offence against this Act or the regulations.

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- (2) A magistrate may issue the search warrant if the magistrate is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that there is, or may be within 72 hours, a particular thing (including a document) at the premises that may afford evidence of the commission of an offence against this Act or the regulations.
- (3) The search warrant may authorise a named authorised officer and any assistants the authorised officer considers necessary—
- (a) to enter the premises or part of the premises named or described in the warrant; and
 - (b) to search for the thing named or described in the warrant.
- (4) In addition to any other requirement, a search warrant issued under this section must state—
- (a) the offence suspected;
 - (b) the premises to be searched;
 - (c) a description of the thing for which the search is to be made;
 - (d) any conditions to which the warrant is subject;
 - (e) whether entry is authorised to be made at any time or during specified hours;
 - (f) that the warrant authorises entry on only one occasion;
 - (g) a day, not later than 7 days after the warrant is issued, on which it ceases to have effect.

138 Search warrants—general

- (1) Subject to subsection (3), a search warrant issued under this Division must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
- (2) The rules that apply to search warrants set out in the **Magistrates' Court Act 1989** extend and apply to search warrants under this Division.
- (3) Despite section 78 of the **Magistrates' Court Act 1989**, a search warrant must not authorise an authorised officer to arrest a person.

Division 3—Procedure for entry

139 Announcement before exercising power of entry

Before entering any premises in the exercise of a power under this Act or the regulations, an authorised officer must—

- (a) announce that he or she is an authorised officer who is authorised under this Act to enter the premises; and
- (b) give any person in the premises a reasonable opportunity to allow entry to the premises.

140 Notice required if power of entry exercised without proprietor or occupier being present

- (1) If an authorised officer exercises a power of entry under this Act without the proprietor or occupier being present, the authorised officer must, on departing the premises, leave a notice setting out—
 - (a) the time of entry;
 - (b) the purpose of entry;
 - (c) a description of all things done while on the premises;

- (d) the time of departure;
 - (e) the procedure for contacting the Secretary for further details of the entry.
- (2) Subsection (1) does not apply if the premises are—
- (a) abandoned; or
 - (b) vacant land; or
 - (c) public land.

141 Announcement before entry on warrant

- (1) Subject to subsection (2), before executing a search warrant, the authorised officer named in the warrant, or a person assisting the authorised officer, must—
- (a) announce that he or she is authorised by the warrant issued under this Act to enter the premises; and
 - (b) give any person at the premises an opportunity to allow that entry.
- (2) Subject to any terms or conditions in the warrant, an authorised officer, or person assisting the authorised officer, need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is needed to ensure—
- (a) the health or safety of any person; or
 - (b) that the effective execution of the warrant is not frustrated.

142 Copy of warrant to be given to occupier

If an occupier or apparent occupier is present at the premises when a search warrant is being executed, an authorised officer executing the warrant must—

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- (a) identify himself or herself to that person by producing his or her identity card for inspection; and
 - (b) give that person a copy of the execution copy of the warrant.

Division 4—Powers after entry

143 General powers of authorised officers

- (1) An authorised officer who enters any premises under the powers conferred by this Act or under a warrant may do any of the following—
 - (a) inspect, examine or make enquiries at the premises;
 - (b) examine or inspect any thing (including a document or part of a document) at the premises;
 - (c) bring any equipment or materials to the premises that may be required;
 - (d) seize any thing (including a document) at the premises if the authorised officer believes on reasonable grounds that—
 - (i) the seizure is required to determine whether there has been a contravention of this Act or the regulations; or
 - (ii) the seized thing may be used as evidence in a possible prosecution for a contravention of this Act or the regulations; or
 - (iii) the seizure is required to minimise a risk to the health of any person; or
 - (iv) it is necessary to seize the thing in order to prevent its concealment, loss or destruction;

- (e) take a sample of, or from, any thing at the premises for examination, analysis, measurement or testing;
- (f) analyse, measure or test any thing at the premises with equipment brought to the premises or already at the premises;
- (g) take any photographs or make any audio or visual recordings at the premises;
- (h) make copies of, or take extracts from, any document kept at the premises;
- (i) use or test any equipment at the premises;
- (j) do any other thing that is reasonably necessary for the purpose of the authorised officer performing or exercising his or her functions or powers under this Act or the regulations.

(2) In doing any thing referred to in subsection (1), an authorised officer may be assisted by any person.

144 Power to direct persons to produce documents, operate equipment or answer questions

- (1) An authorised officer who enters any premises under section 134 may direct a person at the premises to—
- (a) produce a document or part of a document located at the premises that is in the person's possession or control;
 - (b) operate equipment to access information from that equipment;
 - (c) answer any questions put by the authorised officer.

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- (2) A person must not contravene a direction under subsection (1) without a reasonable excuse.
- Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.
- (3) Before directing a person to produce a document or part of a document or to answer questions under subsection (1), an authorised officer must—
- (a) warn the person that a refusal or failure to comply with the direction, without reasonable excuse, is an offence; and
 - (b) inform the person that he or she may refuse or fail to answer any question if answering the question would tend to incriminate them.
- (4) A person is not liable to be prosecuted for an offence against subsection (2) if the authorised officer concerned failed to comply with section 133 and subsection (3).

145 Authorised officers to give receipts for seized things and samples taken

- (1) If an authorised officer seizes a thing, or takes a sample of, or from, a thing at any premises under this Division, the authorised officer must give a receipt in the prescribed form for the thing to the person in charge of the thing or the premises from which it was taken.
- (2) If for any reason it is not practicable for an authorised officer to comply with subsection (1), the authorised officer may—
- (a) leave the receipt at the premises in a conspicuous position and in a reasonably secure way; or

- (b) send the receipt to the occupier of the premises where the thing was seized or the sample was taken.

146 Copies of seized documents

If an authorised officer retains possession of a document seized from a person under this Division, within 21 days of the seizure the authorised officer must give the person a copy of the document certified as correct by the authorised officer.

147 Retention and return of seized documents or things

- (1) If an authorised officer seizes a document or other thing under this Division, the authorised officer must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the document or thing seized has not been returned within 3 months after it was seized, the authorised officer must take reasonable steps to return it unless—
 - (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
 - (b) the Magistrates' Court makes an order under section 148 extending the period during which the document or thing may be retained.

148 Magistrates' Court may extend 3 month period

- (1) An authorised officer may apply to the Magistrates' Court for an extension (not exceeding 3 months) of the period for which the authorised officer may retain a document or thing seized under this Division—

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- (a) within 3 months after the seizure; or
 - (b) if an extension has been granted under this section, before the end of the period of the extension.
- (2) The Magistrates' Court may order the extension of the period during which a seized document or thing may be retained if it is satisfied—
- (a) that retention of the document or thing is necessary in the interests of justice; and
 - (b) that the total period of retention does not exceed 12 months; and
 - (c) that retention of the document or other thing is necessary—
 - (i) for the purposes of an investigation into whether a contravention of this Act or the regulations has occurred; or
 - (ii) to enable evidence of a contravention of this Act or the regulations to be obtained for the purposes of a proceeding under this Act.
- (3) At least 7 days prior to the hearing of an application under this section, notice of the application must be sent to the proprietor of the document or thing described in the application.

149 Court may order destruction of seized documents or things

- (1) The Secretary may apply to a court for an order permitting destruction of a document or other thing seized by an authorised officer under this Division if—

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- (a) the authorised officer is not able to return it to its owner, after taking reasonable steps to do so in accordance with section 147; or
 - (b) the thing is dangerous.
- (2) On an application under subsection (1), a court may make—
- (a) an order permitting the destruction of a document or other thing if satisfied that it is appropriate to do so; and
 - (b) any other order that it considers to be appropriate, including, but not limited to, an order relating to the payment by the owner of the document or other thing of the costs of, and any costs incidental to, the destruction of the document or other thing.
- (3) At least 7 days prior to the hearing of an application under this section, notice of the application must be sent to—
- (a) the owner of the document or other thing described in the application; or
 - (b) the person from whom the document or other thing described in the application were seized.

150 Protection against self-incrimination

- (1) Subject to subsection (2), a natural person may refuse or fail to give information or do any other thing that the person is required to do by or under this Act or the regulations if giving the information or doing the other thing would tend to incriminate the person.
- (2) Subsection (1) does not apply to—
 - (a) the production of a document or part of a document that the person is required by this Act or the regulations to produce; or

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- (b) the giving of a person's name or address in accordance with this Act or the regulations.

151 Police assistance

On the request of an authorised officer, a member of the police force may assist the authorised officer in the performance of the duties of the authorised officer.

Division 5—Offences and complaints

152 Offence to obstruct or hinder

A person must not, without reasonable excuse, obstruct or hinder an authorised officer who is exercising a power under this Act or the regulations.

Penalty: 60 penalty units.

153 Offence to impersonate authorised officer

A person who is not an authorised officer must not, in any way, hold himself or herself out to be an authorised officer.

Penalty: 60 penalty units.

154 Complaints

- (1) Any person may complain to the Secretary about the exercise of a power by an authorised officer under this Act or the regulations.
- (2) A complaint to the Secretary under subsection (1) may be made—
 - (a) in writing; or
 - (b) in any other form approved by the Secretary.
- (3) The Secretary must—
 - (a) investigate any complaint made to the Secretary in accordance with subsection (2); and

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- (b) provide a written report to the complainant on the results of the investigation.

Division 6—Infringements

155 Infringement notice

- (1) An authorised officer may issue an infringement notice to a person who the authorised officer has reason to believe has committed an offence against this Act or the regulations that is prescribed to be an infringement offence.
 - (2) An offence referred to in subsection (1) for which an infringement notice may be issued is an infringement offence within the meaning of the **Infringements Act 2006**.
 - (3) The infringement penalty for an infringement offence prescribed under subsection (1) is the prescribed infringement penalty in relation to that offence.
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PART 8—FURTHER ENFORCEMENT PROVISIONS

Division 1—Undertakings

156 Undertakings

- (1) The Secretary may accept an undertaking given by a proprietor if the Secretary believes that the proprietor has contravened a provision of this Act or the regulations.
- (2) An undertaking under subsection (1) must—
 - (a) be in writing; and
 - (b) specify the non-compliance issue or alleged contravention; and
 - (c) specify the actions the proprietor is required to undertake; and
 - (d) specify the period within which those actions must be completed; and
 - (e) include any other relevant matter agreed to by the Secretary and the proprietor.
- (3) The proprietor may withdraw or vary an undertaking at any time with the prior written consent of the Secretary.

157 Compliance with and effect of undertaking

- (1) Whilst an undertaking is in force and being complied with—
 - (a) no proceeding may be brought for an offence against this Act or the regulations constituted by the contravention or alleged contravention to which the undertaking relates; and
 - (b) no other enforcement action available to the Secretary or the Minister under this Act may be taken in respect of any contravention or

alleged contravention to which the undertaking relates.

- (2) If a proprietor fulfils an undertaking in full, at the expiry of the undertaking, no proceeding may be brought for the offence against this Act or the regulations constituted by the contravention or alleged contravention to which that undertaking related.
- (3) If a proprietor partially fulfils an undertaking, at the expiry of the undertaking, no proceeding may be brought for the offence against this Act or the regulations constituted by the contravention or alleged contravention to which that undertaking related so far as the undertaking has been partially fulfilled.

158 Proprietor to display undertaking

A proprietor who gives an undertaking must cause a copy of that undertaking to be displayed in a conspicuous place on the premises of the supported residential service in a manner that invites public attention.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

159 Secretary may maintain list of undertakings

- (1) The Secretary may—
 - (a) maintain a list of undertakings; and
 - (b) record each undertaking in that list.
- (2) A list of undertakings must include the following—
 - (a) the name and address for service of the person who gave the undertaking;

- (b) the date of the undertaking;
 - (c) a copy of the undertaking.
- (3) A list of undertakings—
- (a) must be publicly available; and
 - (b) may be published on the Internet; and
 - (c) may be inspected by any person at any reasonable time, without charge.

Division 2—Compliance notices

160 Secretary may issue compliance notice

- (1) The Secretary may issue a compliance notice to a proprietor requiring the proprietor to remedy a matter specified in the compliance notice if the Secretary believes on reasonable grounds that the proprietor has contravened or is contravening a provision of this Act or the regulations.
- (2) The Secretary may issue a compliance notice to a proprietor requiring the proprietor to remedy a matter specified in the compliance notice if the Secretary believes on reasonable grounds that the proprietor has contravened an undertaking.

161 Content of compliance notice

- (1) A compliance notice must—
 - (a) state the basis for the Secretary's belief regarding the contravention to which the compliance notice relates; and
 - (b) specify the provision of this Act or the regulations that the Secretary believes has been or is being contravened; and
 - (c) specify a date by which the proprietor is required to comply with the compliance notice and remedy the contravention or the

- matters or activities causing the contravention; and
- (d) state the penalty for contravening the compliance notice; and

Note

The penalty for contravention of the compliance notice is set out in section 162.

- (e) specify any further action that the Secretary may take if the contravention is not remedied; and
- (f) state that the proprietor may seek review of the issue of the compliance notice or any of its terms at VCAT.

- (2) A compliance notice must be in writing.

162 Proprietor must comply with compliance notice

A proprietor to whom a compliance notice is issued must comply with the compliance notice.

Penalty: 240 penalty units, in the case of a natural person;
1200 penalty units, in the case of a body corporate.

163 Proprietor must display compliance notice

A proprietor to whom a compliance notice is issued must cause a copy of that compliance notice to be displayed in a conspicuous place on the premises of the supported residential service in a manner that invites public attention.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

164 Compliance with and effect of compliance notice

- (1) Whilst a compliance notice is in force and being complied with—
 - (a) no proceeding may be brought for an offence against this Act or the regulations constituted by the contravention or alleged contravention to which the compliance notice relates; and
 - (b) no other enforcement action available to the Secretary or the Minister under this Act may be taken in respect of any contravention or alleged contravention to which the compliance notice relates.
- (2) If a proprietor fulfils all the requirements of a compliance notice, at the expiry of the compliance notice, no proceeding may be brought for the offence against this Act or the regulations constituted by the contravention or alleged contravention to which that compliance notice related.
- (3) If a proprietor partially complies with a compliance notice, at the expiry of the compliance notice, no proceeding may be brought for the offence against this Act or the regulations constituted by the contravention or alleged contravention to which that part of the compliance notice related so far as that compliance notice has been partially fulfilled.

165 Secretary may maintain list of compliance notices

- (1) The Secretary may—
 - (a) maintain a list of compliance notices; and
 - (b) record each compliance notice in that list.

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- (2) A list of compliance notices must include the following—
- (a) the name and address for service of the person to whom the compliance notice was issued;
 - (b) the date of the compliance notice;
 - (c) a copy of the compliance notice.
- (3) A list of compliance notices—
- (a) must be publicly available; and
 - (b) may be published on the Internet; and
 - (c) may be inspected by any person at any reasonable time, without charge.

Division 3—Censure, suspension and revocation

166 Censure

- (1) If the Minister is satisfied that at least one of the following applies in respect of a supported residential service, the Minister may censure the proprietor in accordance with this section—
- (a) the proprietor has failed to carry on the supported residential service in accordance with this Act, the regulations or any condition of registration;
 - (b) the proprietor has been convicted of an offence against this Act, the **Health Services Act 1988** or the regulations made under either of those Acts;
 - (c) the proprietor is or was operating a supported residential service that is or was not registered under this Act.

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- (2) If the Minister proposes to censure the proprietor, before making a decision on the matter the Minister must—
 - (a) give notice to the proprietor of the Minister's proposal; and
 - (b) consider any submissions, whether oral or in writing, made to the Minister by the proprietor within 7 days after the giving of the notice.
 - (3) If the Minister decides to censure the proprietor, the Minister must—
 - (a) give notice of the censure to the proprietor; and
 - (b) cause to be tabled in each House of the Parliament within 7 sitting days of the House after the notice is given to the proprietor—
 - (i) a copy of the notice; and
 - (ii) a report of the circumstances leading to the censure; and
 - (iii) a copy of any written submissions made by the proprietor.
 - (4) The powers of the Minister under this section may be exercised concurrently with any other powers under this Part.
 - (5) Any notice by the Minister under this section must be in writing.

167 Suspension of admissions

- (1) If the Minister is satisfied that at least one of the following applies in respect of a supported residential service, the Minister may direct that the admission of residents to the supported residential service be suspended in accordance with this section—

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- (a) the proprietor has failed to carry on the supported residential service in accordance with this Act, the regulations or any condition of registration;
 - (b) the proprietor has been convicted of an offence against this Act, the **Health Services Act 1988** or the regulations made under either or both Acts;
 - (c) the proprietor or the premises of the supported residential service no longer meet the registration criteria.
- (2) If the Minister decides that the admission of residents to a supported residential service should be suspended, the Minister, in writing, may direct the proprietor to suspend admissions immediately or on and after a specified date.
- (3) If the Minister decides that the admission of residents to a supported residential service should be suspended, the Minister must—
- (a) invite any submissions, whether oral or in writing, to be made to the Minister by the proprietor within 7 days after the giving of the direction; and
 - (b) consider any submissions made under paragraph (a); and
 - (c) decide whether or not the suspension should be withdrawn or confirmed and if confirmed, the period for which the suspension should operate; and
 - (d) give notice of the Minister's decision to the proprietor.

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- (4) A direction to suspend admissions has effect immediately or on and after the specified date, as the case requires, and continues in force until—
- (a) if an application is made to VCAT and VCAT determines that the suspension ceases to have effect—the date fixed by VCAT; or
 - (b) the Minister revokes the direction.
- (5) A proprietor must comply with a direction under subsection (1).

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

168 Revocation of registration

- (1) If the Minister is satisfied that at least one of the following applies in respect of a supported residential service, the Minister may revoke the registration of the supported residential service in accordance with this section—
- (a) the proprietor has failed to carry on the supported residential service in accordance with this Act, the regulations or any condition of registration;
 - (b) the proprietor has been convicted of an offence against this Act, the **Health Services Act 1988** or the regulations made under either or both Acts;
 - (c) the proprietor or the premises of the supported residential service no longer meet the registration criteria.

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- (2) If subsection (1) applies, the Minister may give notice in writing to the proprietor—
- (a) revoking the registration on the expiration of 14 days after the day on which the notice is given; or
 - (b) stating the Minister's intention to revoke the registration unless satisfactory arrangements are made to remedy any failure to comply, or to be able to continue to comply, with this Act, the regulations or any conditions of registration within the period (being not less than 14 days) specified in the notice.
- (3) In determining whether to give a notice under subsection (2), the Minister must consider—
- (a) the conduct of the proprietor;
 - (b) the seriousness of any contraventions of this Act, the regulations or any conditions applying to registration;
 - (c) the seriousness of any failure to comply with any compliance notice or any undertaking;
 - (d) in the case of repeated contraventions in relation to matters referred to in paragraphs (b) or (c), the volume of the contraventions;
 - (e) whether any such contraventions could have been avoided by the exercise of reasonable care;
 - (f) any circumstances that may prevent the proprietor from being able to continue to carry on the supported residential service in accordance with this Act, the regulations or any conditions of registration.

Division 4—Appointment of an administrator

169 Displacement of other laws—appointment of administrator

- (1) Sections 170 to 181 are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 5 of that Act.

Note

Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision for the purposes of that section, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not operate to the extent necessary to avoid the inconsistency.

- (2) This Division applies despite anything to the contrary in the **Co-operatives Act 1996** or the **Associations Incorporation Act 1981**.

170 Minister may appoint administrator of supported residential service

- (1) Subject to subsections (2) and (3), the Minister may appoint a person to be the administrator of a supported residential service if—
- (a) the Minister revokes, or serves notice of intention to revoke, the registration of the supported residential service; or
 - (b) the Minister believes on reasonable grounds that the appointment of an administrator to the supported residential service is necessary to protect the interests of the residents of the supported residential service; or

Examples

Examples of this include where the well-being of residents or residents' rights are, or are likely to be compromised; minimum standards of accommodation

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- and personal support services are not being met or there is significant or repeated non-compliance with this Act or the regulations.
- (c) the supported residential service is operating without registration; or
 - (d) the Secretary cancels the registration of the supported residential service; or
 - (e) the proprietor or, in the case of a proprietor that is a body corporate, the sole director or the secretary dies or becomes incapable of managing and operating the supported residential service; or
 - (f) the proprietor has failed to appoint a manager in accordance with this Act.
- (2) An appointment under subsection (1) must not be made unless the Minister—
- (a) has consulted with the proprietor or, in the case of the death or incapacity of the proprietor or the sole director or secretary of a proprietor that is a body corporate, the proprietor's legal representative, unless reasonable efforts to consult have been unsuccessful; and
 - (b) is satisfied that it is necessary to appoint an administrator to ensure that accommodation and personal support continue to be provided to residents of the supported residential service in accordance with this Act or the regulations, whether or not by the relocation of the residents.
- (3) The Minister may appoint an administrator of a supported residential service at the request of the proprietor.
- (4) An appointment of an administrator must be in writing.
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171 Period of appointment

- (1) Subject to section 175, the appointment of an administrator under section 170 has effect—
 - (a) if the administrator is appointed at the request of the proprietor, for the period agreed by the Minister and the proprietor; and
 - (b) in any other case, subject to subsection (2), for the period, not exceeding 180 days, determined by the Minister.
- (2) Before the expiry of the period for which the appointment of an administrator has effect determined by the Minister, the Minister may extend the period of the appointment for any further period that the Minister considers to be reasonably required to complete the administration.

172 Functions and powers of administrator

- (1) The functions of an administrator of a supported residential service are—
 - (a) to manage and operate the service, taking into account the principles set out in Part 2 and the accommodation and personal support standards prescribed under this Act; and
 - (b) to ensure that suitable accommodation and special or personal support for residents of the supported residential service is provided—
 - (i) at the supported residential service; or
 - (ii) if necessary, by relocation to another supported residential service.

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- (2) During the appointment of an administrator of a supported residential service, an administrator may do any thing necessary or desirable for the purpose of carrying out his or her function as an administrator in the name of, or as agent of, the proprietor.
- (3) Without limiting subsection (1) or (2), an administrator of a supported residential service may—
- (a) enter and occupy the supported residential service;
 - (b) manage and operate the supported residential service;
 - (c) put into place a financial management system in relation to the supported residential service including—
 - (i) receiving fees from or on behalf of a resident in respect of the resident's accommodation and personal support at the supported residential service;
 - (ii) receiving money from or on behalf of a resident as an allowance for a resident and appropriately distributing that money to the resident or using it for the benefit of the resident;
 - (iii) establishing and maintaining a trust account at an ADI into which money received from or on behalf of residents may be paid;
 - (iv) making payments in relation to the exercise of any power of the administrator;

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- (d) inspect and take possession of any document in connection with the operation and management of the supported residential service;
 - (e) use, repair or replace any equipment or facilities in the supported residential service;
 - (f) prepare and distribute to the residents for consumption any food stored at the supported residential service;
 - (g) enter into or renew any contract for the provision of goods or services or any lease contract or any contract of insurance in relation to the operation and management of the supported residential service;
 - (h) engage new members of staff or dismiss members of staff of the supported residential service;
 - (i) appoint or engage any legal practitioner, accountant or other professionally qualified person to assist the administrator;
 - (j) by notice in writing, require a report containing the information specified in the notice as to the business affairs of the proprietor to be prepared by—
 - (i) the proprietor; or
 - (ii) any employee of the proprietor; or
 - (iii) in the case of a proprietor that is a body corporate, a director or an officer of the proprietor.

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- (4) In carrying out his or her functions and exercising any power as an administrator, an administrator must comply with—
- (a) any direction given by the Secretary; and
 - (b) any guidelines issued by the Secretary in relation to administrators of supported residential services.
- (5) If a person is appointed as administrator of a supported residential service, any contract, agreement or arrangement for the provision of equipment or services or the use of premises for the purposes of carrying on the supported residential service continues in force despite the appointment.
- (6) If a person has been appointed as an administrator of a supported residential service, a resident may make payments in relation to the resident's accommodation and personal support at the supported residential service to the administrator.

173 Financially unviable supported residential service

- (1) Subject to subsection (2), an administrator appointed to manage and operate a supported residential service is not required to continue to manage or operate that supported residential service if the administrator, after undertaking an assessment, determines that it is not financially viable to continue managing and operating that supported residential service.
- (2) An administrator must not cease managing and operating a supported residential service that is not financially viable until the administrator has relocated all residents of that supported residential service to other suitable accommodation.

174 Proprietor to pay Secretary costs incurred by appointment of administrator

A person who is or has been the proprietor of a supported residential service for which an administrator has been appointed is liable to pay to the Secretary the amount determined by the Secretary as the amount of costs incurred—

- (a) in connection with the appointment of the administrator; or
- (b) by the administrator in connection with the management and operation of the supported residential service.

175 Additional matters—failure to appoint manager in accordance with Act

- (1) This section applies if an administrator is appointed in accordance with section 170(1)(f).
- (2) The appointment of an administrator is automatically terminated if the Secretary—
 - (a) approves a person as a manager of the supported residential service under Division 6 of Part 4; and
 - (b) that person is employed in accordance with this Act.
- (3) An administrator of a supported residential service must not relocate any resident of the supported residential service unless—
 - (a) the relocation is for the purposes of ensuring that the resident receives appropriate personal support or health care; or
 - (b) the resident has requested the relocation; or
 - (c) the proprietor has consented.

s. 176

S. 176
amended by
No. 29/2011
s. 3(Sch.
item 93.2).

176 Offence to remove equipment or other property

During the appointment of an administrator of a supported residential service, a person must not, without the consent of the administrator, remove from the supported residential service any equipment or other property (whether or not owned by the proprietor) which is reasonably necessary for the proper and efficient functioning of the supported residential service.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

S. 177
amended by
No. 29/2011
s. 3(Sch.
item 93.3).

177 Offence to hinder and obstruct administrator

A person must not, without reasonable excuse, hinder or obstruct an administrator of a supported residential service carrying out his or her functions or exercising a power under this Division.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

S. 178(1)
amended by
No. 29/2011
s. 3(Sch.
item 93.4).

178 Disposal of interests

- (1) During the appointment of an administrator of a supported residential service, a person must not, without the consent of the administrator, dispose of any interest of the proprietor in the premises of the supported residential service, whether a freehold interest, a lease or a licence or similar proprietary interest.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

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- (2) An administrator of a supported residential service must not unreasonably withhold consent to a disposal of an interest referred to in subsection (1).

179 Entering or exercising rights under contracts

- (1) During the appointment of an administrator of a supported residential service, the proprietor must not, without the consent of the administrator, enter into any contract relating to the supported residential service.

S. 179(1)
amended by
No. 29/2011
s. 3(Sch.
item 93.5).

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

- (2) During the appointment of an administrator of a supported residential service, the proprietor must not, without the consent of the administrator, terminate any contract relating to the supported residential service.

S. 179(2)
amended by
No. 29/2011
s. 3(Sch.
item 93.6).

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

- (3) During the appointment of an administrator of a supported residential service, the proprietor must not, without the consent of the administrator, vary any contract relating to the supported residential service.

S. 179(3)
amended by
No. 29/2011
s. 3(Sch.
item 93.7).

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

s. 180

S. 179(4)
amended by
No. 29/2011
s. 3(Sch.
item 93.8).

- (4) During the appointment of an administrator of a supported residential service, the proprietor must not, without the consent of the administrator, exercise any other right under any contract relating to the supported residential service.

Penalty: 60 penalty units, in the case of a natural person;

300 penalty units, in the case of a body corporate.

- (5) An administrator of a supported residential service must not unreasonably withhold consent under this section.

180 Issuing notices to vacate to residents

S. 180(1)
amended by
No. 29/2011
s. 3(Sch.
item 93.9).

- (1) During the appointment of an administrator of a supported residential service, the proprietor must not, without the consent of the administrator, issue any notice to vacate to a resident.

Penalty: 60 penalty units, in the case of a natural person;

300 penalty units, in the case of a body corporate.

- (2) An administrator of a supported residential service must not unreasonably withhold consent to the issuing of a notice to vacate to a resident.

181 Compensation

- (1) A person who suffers loss as a result of—
(a) the appointment of an administrator; and
(b) the operation of section 172(5) or section 176—

is entitled to be paid the compensation that the Minister, on the recommendation of the Secretary, determines.

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- (2) Any liability of the Secretary under this Division shall be paid from the Consolidated Fund which is hereby to the necessary extent appropriated accordingly.
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PART 9—COMMUNITY VISITORS

182 Appointment of community visitors

The Governor in Council may appoint persons nominated by the Minister as community visitors for each region.

183 Terms and conditions of appointment

- (1) Each community visitor—
 - (a) holds office for a period of 3 years from the date of appointment;
 - (b) is eligible for re-appointment;
 - (c) is entitled to be paid fees and travelling and other allowances as are from time to time fixed by the Governor in Council;
 - (d) is not, in respect of the office of community visitor, subject to the **Public Administration Act 2004**.
- (2) The Governor in Council, in the instrument of appointment of a person as a community visitor, may specify terms and conditions of appointment in addition to those specified in subsection (1).
- (3) A person must not be appointed as a community visitor for a region if the person—
 - (a) is an officer or employee of the Department or a person who holds any other appointment with the Department; or
 - (b) has any interests which conflict or may conflict with the best interests of residents of a supported residential service in that region.
- (4) In nominating persons for appointment as community visitors for a region, the Minister must ensure that both men and women are adequately represented.

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- (5) The Governor in Council, on the recommendation of the Minister, may remove a community visitor from office.
 - (6) A person may resign from the office of community visitor in writing signed by that person and delivered to the Governor in Council.

184 Functions of a community visitor

The functions of a community visitor appointed for a region are to visit any supported residential service in the region and query—

- (a) whether services are being delivered to residents in accordance with the principles of this Act and the accommodation and personal support standards prescribed under this Act;
- (b) the status of any complaint made by or on behalf of a resident and the progress of its resolution, if applicable;
- (c) any other issue or concern raised with the community visitor by or on behalf of a resident.

185 Panels

Any 2 community visitors for a region constitute a panel of community visitors for that region.

186 Visiting supported residential services

- (1) A community visitor or a panel of community visitors for a region may visit a supported residential service in the region with or without any previous notice at the times and for the periods that the community visitor or panel thinks fit.

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- (2) The Minister may direct a community visitor or a panel of community visitors for a region to visit a supported residential service in the region at the times that the Minister directs.

187 Powers of community visitors

- (1) A community visitor when visiting a supported residential service in the region may—
- (a) enter and look at any part of the premises of the supported residential service;
 - (b) speak with any resident of the supported residential service who wishes to speak to the community visitor;
 - (c) ask questions of any employee of the supported residential service relating to any resident's care;
 - (d) look at any records required to be kept on the premises by or under this Act.
- (2) Subsection (1)(d) does not authorise a community visitor to look at—
- (a) a resident's medical records unless the resident consents; or
 - (b) personnel records unless the relevant member of staff consents.

188 Offence to unreasonably refuse assistance

A proprietor or any member of the staff or management of a supported residential service must not unreasonably refuse or neglect to give a community visitor any reasonable assistance that the community visitor requires to perform or exercise any of the community visitor's powers or functions effectively.

Penalty: 20 penalty units.

189 Offence not to give full and true answers

A proprietor or any member of the staff or management of a supported residential service must not refuse or fail to give full and true answers to the best of that person's knowledge to any questions asked by a community visitor in the performance or exercise of any power or function under this Act.

Penalty: 20 penalty units.

190 Offence to assault, obstruct or threaten community visitor

A proprietor or any member of the staff or management of a supported residential service must not assault, obstruct or threaten a community visitor in the performance or exercise of any power or function under this Act.

Penalty: 60 penalty units.

191 Request to see a community visitor

- (1) A resident of a supported residential service or any person on behalf of a resident of a supported residential service may request the proprietor to arrange for the resident to be seen by a community visitor.
- (2) The proprietor, within 2 days after receiving a request under subsection (1), must advise one of the community visitors for the region that a request has been made.

Penalty: 20 penalty units.

192 Record of visits

A proprietor must keep a record in the prescribed form of visits by community visitors.

Penalty: 10 penalty units.

193 Community (Residential Services) Visitors Board

- (1) There is established a Board to be known as the Community (Residential Services) Visitors Board.
- (2) The Community (Residential Services) Visitors Board consists of—
 - (a) the Public Advocate; and
 - (b) two community visitors elected by community visitors in accordance with the regulations.
- (3) The functions of the Community (Residential Services) Visitors Board are—
 - (a) to represent community visitors; and
 - (b) to prepare and circulate publications explaining the role of community visitors; and
 - (c) to supervise the training of community visitors; and
 - (d) to prepare an annual report.

194 Reports

- (1) The community visitors for a region at least twice a year must submit a joint report to the Public Advocate on visits made by them to supported residential services since the last report under this section.
- (2) The Public Advocate may report to the Secretary upon becoming aware of any issues of concern regarding residents of a supported residential service.
- (3) The Minister may require a panel of community visitors to report to the Minister on any matter specified by the Minister at the time and in the manner directed by the Minister.

195 Annual report of community visitors

- (1) The Community (Residential Services) Visitors Board must as soon as practicable after the end of each financial year and not later than the following 30 September submit to the Minister a report on the activities of community visitors during the financial year.
- (2) The Minister must cause the annual report prepared under subsection (1) to be laid before the Legislative Council and the Legislative Assembly before the expiration of the 14th sitting day of the Legislative Council or the Legislative Assembly, as the case may be, after the annual report has been received by the Minister.

196 Secrecy

- (1) Subject to subsection (2), a person who is or has been, at any time, a community visitor must not, either directly or indirectly—
 - (a) make a record of; or
 - (b) divulge or communicate to any person; or
 - (c) make use of—

any information, that is or was acquired by the person because the person is or was appointed as a community visitor, for any purpose, except to the extent necessary for the person—
 - (d) to perform any official duties; or
 - (e) to perform or exercise any function or power under this Act.

Penalty: 60 penalty units.
- (2) Subsection (1) does not prevent a person from—
 - (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act; or

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- (b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or the exercise of a power referred to in that subsection; or
- (c) producing a document or divulging or communicating information that is expressly authorised or permitted by any Act to be produced, divulged or communicated; or
- (d) producing a document or divulging or communicating information with the prior consent of the person to whom it relates or, if that person has died, with the consent of the senior available next of kin of that person.
- (3) In this section—
- court* includes any board, tribunal or person authorised to receive evidence;
- senior available next of kin* has the same meaning as in the **Human Tissue Act 1982**.
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PART 10—GENERAL

197 Power to bring proceedings

An authorised officer or a member of the police force may bring proceedings for an offence against this Act or the regulations.

198 Extension of time limit for proceedings for certain offences

Despite anything to the contrary in any Act, other than the **Charter of Human Rights and Responsibilities Act 2006**, proceedings may be commenced within 3 years after the commission of an alleged offence against the following provisions—

- (a) section 13, 58, 59 or 77;
- (b) Divisions 6 and 7 of Part 4;
- (c) Part 5.

199 False and misleading statements

- (1) A person must not, in purported compliance with this Act or the regulations, knowingly give information or make a statement that is false or misleading in a material particular.

Penalty: 60 penalty units.

- (2) A person must not knowingly make a false or misleading entry in a document required by this Act or the regulations to be kept by or in relation to a supported residential service.

Penalty: 60 penalty units.

200 Damaging or destroying documents etc.

A person must not, without lawful authority, destroy or damage any notice or document given, prepared or kept in accordance with this Act.

Penalty: 60 penalty units.

201 Offences by corporations and partnerships etc.

- (1) If a corporation is guilty of an offence against this Act or the regulations, any officer of the corporation who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence is also guilty of that offence and liable to the penalty for that offence.
- (2) If in a proceeding for an offence against this Act or the regulations it is necessary to establish the intention of a corporation, it is sufficient to show that an employee or agent of the corporation had that intention.
- (3) A statement made by an officer of a corporation is admissible as evidence against the corporation in any proceeding against the corporation for an offence against this Act or the regulations.
- (4) In this section, *officer*—
 - (a) in relation to a corporation within the meaning of the Corporations Act, has the same meaning as in section 9 of that Act; and
 - (b) in relation to a corporation that is not a corporation within the meaning of that Act, means any person (by whatever name called) who is concerned or takes part in the management of the corporation—
but does not include an employee of the corporation.

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- (5) If this Act or the regulations provide that a person, being a firm, partnership or an unincorporated association, is guilty of an offence, that reference to the person—
- (a) in the case of a partnership, is to be read as a reference to each member of the partnership; and
 - (b) in the case of any other unincorporated body, is to be read as a reference to each member of the committee of management of the body.

202 Evidentiary matters

In any proceedings for an offence against this Act or the regulations, in the absence of evidence to the contrary, it must be presumed that the person bringing the proceedings is authorised to bring the proceedings.

203 Service of notices and other documents

- (1) Any notice or other document under this Act or the regulations required or authorised to be given or served to or upon any person may be served by—
- (a) giving it or serving it personally on the person; or
 - (b) sending it by post or electronic communication to the person at that person's usual or last known place of residence or business; or
 - (c) leaving it at that person's usual or last known place of residence with a person on the premises who is apparently at least 16 years old; or

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- (d) leaving it at that person's usual or last known place of business with a person who is apparently employed at the premises and who is apparently at least 16 years old.
- (2) Any notice or other document required to be given to or served on a proprietor may if the name of the proprietor is not known be addressed to the proprietor by the description of the "proprietor".
- (3) If there is more than one proprietor, it is sufficient if the notice or other document is served on any one of them and the name of any one of them is specified with the addition of the words "and others".
- (4) This section is in addition to, and not in derogation from, sections 109X and 601CX of the Corporations Act.

204 Delegation

- (1) The Minister, by instrument, may delegate any power, function or duty of the Minister under this Act or the regulations to any person or class of persons employed under Part 3 of the **Public Administration Act 2004** except—
- (a) this power of delegation; or
 - (b) a power under section 166.
- (2) The Secretary, by instrument, may delegate any power, function or duty of the Secretary under this Act or the regulations to any person or class of persons employed under Part 3 of the **Public Administration Act 2004** except this power of delegation.
- (3) A delegation under subsection (1) or (2) may be made—
- (a) in relation to a person or class of persons specified in the instrument of delegation; or

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- (b) in relation to the holder, or the holder from time to time, of an office specified, or of each office in a class of offices specified, in the instrument of delegation.

205 Functions and duties of Secretary

- (1) For the purposes of ensuring that the objectives and principles of this Act are met, the Secretary may—
- (a) develop policies and guidelines with respect to the accommodation and personal support provided by supported residential services and any matters relevant to this Act;
 - (b) encourage safety and improvement in the quality of accommodation and personal support provided by supported residential services;
 - (c) do anything else the Secretary considers appropriate.
- (2) For the purposes of ensuring that the objectives and principles of this Act are met the Secretary may—
- (a) collect, analyse and use data to enable the Secretary to perform the Secretary's functions under this or any other Act; and
 - (b) require the proprietor or any other person to provide statistical data within 14 days of a written request by the Secretary to do so.

206 Review of decisions

- (1) A person whose interests are affected by any of the following decisions of the Secretary may apply to VCAT for review of a decision—
- (a) to approve or refuse to approve an application under this Act; or

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- (b) to impose conditions on the approval of an application or a registration under this Act; or
 - (c) to vary the registration of a supported residential service; or
 - (d) that a proposed proprietor or a proposed manager, in the case of a natural person, does not meet the registration criteria;
 - (e) that a director of a proposed proprietor, in the case of a proprietor that is a body corporate, does not meet the registration criteria;
 - (f) to issue a compliance notice, or the terms of a compliance notice;
 - (g) to determine the amount payable to the Secretary by way of costs incurred under section 174.
- (2) A person whose interests are affected by any of the following decisions by the Minister may apply to VCAT for review of a decision—
- (a) to suspend admissions to a supported residential service; or
 - (b) to revoke or cancel the registration of a supported residential service; or
 - (c) to appoint an administrator of a supported residential service; or
 - (d) to extend the period of the appointment of an administrator of a supported residential service.
- (3) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made; or
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- (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

207 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
- (a) prescribing maximum fees for accommodation and personal support in supported residential services;
 - (b) prescribing requirements with respect to safety, cleanliness, accommodation, hygiene, nutrition, comfort, privacy and respectful treatment;
 - (c) prescribing the standards for accommodation and personal support in supported residential services;
 - (d) prescribing emergency management procedures to be complied with, including—
 - (i) fire precautions;
 - (ii) the provision of equipment, access and fire escapes;
 - (e) prescribing requirements for staffing of supported residential services, including but not limited to—
 - (i) appointments;
 - (ii) numbers;
 - (iii) required qualifications;
 - (iv) first aid training;

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- (v) on-going training, rostering and staffing arrangements;
 - (f) prescribing requirements regarding criminal record checks of staff, including but not limited to—
 - (i) who may access the personal information contained in those checks; and
 - (ii) to whom it may be disclosed; and
 - (iii) responsibilities for applying for or providing those checks and paying for those checks;
 - (g) prescribing requirements for the provision and maintenance of facilities, equipment, furnishings and fittings in supported residential services;
 - (h) prescribing requirements for suitable storage facilities for food and medicines;
 - (i) prescribing requirements for meal arrangements;
 - (j) prescribing requirements for the supervision of medication administration;
 - (k) prescribing requirements for or the prohibition of advertising in supported residential services, including prohibiting the use of the words "supported residential service";
 - (l) prescribing requirements in relation to advising the person nominated, or other persons concerned, of the condition of a resident;
 - (m) prescribing requirements for the provision of and display of information and documents in supported residential services;
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- (n) prescribing records to be kept or maintained by supported residential services, including—
- (i) the form of records;
 - (ii) the time when or period within which entries are to be made in the records;
- (o) prescribing requirements for a complaints system;
- (p) prescribing returns or other documents or information to be made or given to the Secretary by proprietors of supported residential services;
- (q) prescribing penalties not exceeding 20 penalty units for a contravention of the regulations;
- (r) prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
- (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstances;
 - (c) may require matters affected by the regulations to be—
 - (i) in accordance with specified standards or specified requirements; or
 - (ii) approved by, or to the satisfaction of, a specified person or body or a specified class of persons or bodies; or
 - (iii) as specified in both subparagraphs (i) and (ii);
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- (d) may apply, adopt or incorporate any matter contained in any document whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time or as amended from time to time;
 - (e) may confer a discretionary authority or impose a duty on a specified person or body or class of persons or bodies;
 - (f) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person;
 - (g) may provide in a specified case or class of cases for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations—
 - (i) whether unconditionally or on specified conditions; and
 - (ii) either wholly or to such an extent as is specified.
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**PART 11—TRANSITIONAL PROVISIONS AND
CONSEQUENTIAL AMENDMENTS**

Division 1—Transitional provisions

208 Interpretation of Legislation Act 1984

Nothing in this Division affects or limits the operation of the **Interpretation of Legislation Act 1984** unless the contrary intention appears.

209 Supported residential services registered under Health Services Act 1988 before commencement

- (1) Subject to subsections (4) and (5), a supported residential service registered under Part 4 of the **Health Services Act 1988** immediately before the commencement of this Act is taken, on and from that commencement, to be a supported residential service registered under this Act.
- (2) Subject to subsections (4) and (5), on and from the commencement of this Act, a period of registration of a supported residential service specified under section 85(h) or 91(c) of the **Health Services Act 1988** is taken to be indefinite, subject to this Act, in relation to a supported residential service to which subsection (1) applies, despite anything to the contrary in a certificate of registration or a certificate of renewal of registration.
- (3) On and from the commencement of this Act, the number of beds, any conditions of registration and any other particulars of registration of a supported residential service under the **Health Services Act 1988** are taken to be the particulars applying to the registration under this Act.

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- (4) A supported residential service registered under Part 4 of the **Health Services Act 1988** immediately before the commencement of this Act which is also, immediately before that commencement, premises which are recorded in the register kept under section 38J of the **Retirement Villages Act 1986** and which satisfy the requirements of section 38L of that Act—
- (a) despite section 5(1)(f) is taken, on and from that commencement, to be a supported residential service registered under this Act for a period of 2 years from that commencement; and

Note

Section 5(1)(f) provides that premises which are recorded in the register kept under section 38J of the **Retirement Villages Act 1986** and which satisfy the requirements of section 38L of that Act are not a supported residential service within the meaning of this Act.

- (b) by the end of that 2 year period the proprietor must either—
- (i) request that the Secretary cancel the registration of the supported residential service under this Act; or
- (ii) arrange for the premises to cease to be recorded in the register kept under section 38J of the **Retirement Villages Act 1986** in accordance with the requirements of section 38L of that Act.
- (5) If subsection (4) applies and, at the end of the 2 year period from the commencement of this Act, a proprietor has not complied with subsection (4)(b)(i) or (ii), the registration of the supported residential service under this Act by virtue of subsection (4)(a) is cancelled by virtue of this section.

210 Pre-commencement applications

- (1) An application for an approval in principle under Division 1 of Part 4 or an application for variation under section 92(2)(c)(i) of the **Health Services Act 1988** that is made before the commencement of this Act in respect of which no decision has been made before that commencement must be decided in accordance with the applicable provisions of the **Health Services Act 1988** as if those provisions had not been repealed.
- (2) An application for registration under section 82 or an application for variation under section 92(2)(c)(ii), (iii) or (iv) of the **Health Services Act 1988** that is made before the commencement of this Act in respect of which no decision has been made before that commencement is taken, on and from that commencement—
 - (a) to be an application for registration or an application for variation of registration, as the case requires, under this Act; and
 - (b) must be decided in accordance with this Act.
- (3) An application for renewal of a registration of a supported residential service under the **Health Services Act 1988** that is made before the commencement of this Act in respect of which no decision has been made before that commencement, or to which section 88(5) of that Act applies—
 - (a) must be decided in accordance with the applicable provisions of the **Health Services Act 1988** as if those provisions had not been repealed; and
 - (b) without limiting section 209(1), on and from that renewal, is taken to be a supported residential service registered under this Act.

211 Administrators

On and from the commencement of this Act, an administrator of a supported residential service appointed under section 103 of the **Health Services Act 1988** is taken to be an administrator appointed to that supported residential service under this Act with the powers and obligations of an administrator under this Act.

212 Disciplinary action

- (1) The Secretary may exercise any of the Secretary's powers under Division 2 of Part 8 of this Act in respect of any act or omission of the proprietor of a supported residential service before, on or after the commencement of this Act.
- (2) The Minister may exercise any of the Minister's powers under Division 3 or 4 of Part 8 of this Act in respect of any act or omission of the proprietor of a supported residential service before, on or after the commencement of this Act.

213 Community visitors

- (1) A community (residential services) visitor appointed by the Governor in Council under Part 5 of the **Health Services Act 1988** before the commencement of this Act is taken to be a community visitor appointed under Part 9 of this Act, with—
 - (a) the functions of a community visitor set out in this Act; and
 - (b) the terms and conditions of appointment—
 - (i) provided by this Act; and
 - (ii) as specified in the instrument of appointment under section 124(2) of the **Health Services Act 1988** as in force immediately before its repeal, which are taken to be terms of

conditions of appointment under this Act.

- (2) The term of office of a person to whom subsection (1) applies continues for the period of the term of office for which the person was appointed as a community (residential services) visitor under the **Health Services Act 1988**.
- (3) Until such time as the Governor in Council fixes fees and travelling and other allowances under section 183(1)(c), the fees and travelling and other allowances of a community visitor under this Act are the fees and travelling and other allowances fixed under section 124 of the **Health Services Act 1988** as in force immediately before its repeal.

214 Community (Residential Services) Visitors Board

- (1) On and from the commencement of this Act, the Community (Residential Services) Visitors Board established under Part 5 of the **Health Services Act 1988**—
 - (a) subject to paragraph (b), is taken to be the same body as it was immediately before that commencement, despite the repeal of Part 5 of that Act and no decision, matter or thing is to be affected because of that repeal; and
 - (b) continues in existence as if established under section 193.
- (2) On and from the commencement of this Act, all property vested in the Community (Residential Services) Visitors Board under Part 5 of the **Health Services Act 1988**, may, after that date, be used or invested by the Community (Residential Services) Visitors Board in accordance with this Act.

- (3) On and from the commencement of this Act, the members of the Community (Residential Services) Visitors Board in office under Part 5 of the **Health Services Act 1988** immediately before its repeal—
- (a) are taken to be the members of the Community (Residential Services) Visitors Board appointed under Part 9; and
 - (b) continue in office on the same terms and conditions as those on which they were originally appointed for the remainder of their original terms as if appointed under Part 9.

215 Authorised officers

- (1) On and from the commencement of this Act, an authorised officer appointed under the **Health Services Act 1988** in relation to Part 4 of that Act whose appointment is in force immediately before that commencement, is taken without further appointment to be an authorised officer appointed under this Act—
- (a) with the functions, duties and powers set out in this Act; and
 - (b) for a period corresponding to the remaining period of that person's appointment as an authorised officer under the **Health Services Act 1988** in relation to Part 4 of that Act.
- (2) An identity card issued to an authorised officer to whom subsection (1) applies is to be taken, on and from the commencement of this Act, to be an identity card issued under this Act until an identity card under this Act is issued to the authorised officer.

S. 215(1)
amended by
No. 29/2011
s. 3(Sch.
item 93.10).

216 Prescribed statement to be given in respect of fees received before commencement of Act

S. 216
amended by
No. 29/2011
s. 3(Sch.
item 93.11).

Within 28 days after the commencement of this Act, a proprietor who has received a security deposit, a fee paid in advance, an establishment fee or a reservation fee in respect of a resident on or before that commencement must provide the resident and the person nominated (if any) with a statement containing the information prescribed under section 94.

Penalty: 20 penalty units, in the case of a natural person;
100 penalty units, in the case of a body corporate.

217 Proprietor to put money received before commencement of this Act into trust account after that commencement

S. 217
amended by
No. 29/2011
s. 3(Sch.
item 93.12).

Within 28 days after the commencement of this Act, a proprietor who has received a security deposit, a fee paid in advance, an establishment fee or a reservation fee in respect of a resident on or before that commencement must place the security deposit or any remaining balance of a reservation fee, an establishment fee or a fee paid in advance into a trust account in accordance with Division 3 of Part 5 of this Act.

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

218 Regulations dealing with transitional matters

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of this Act, including the repeals and amendments made by this Act.
- (2) Regulations made under this section may—
 - (a) have a retrospective effect to a day on or from the date that this Act receives the Royal Assent; and
 - (b) be of limited or general application; and
 - (c) leave any matter or thing to be decided by a specified person or class of person; and
 - (d) provide for the exemption of persons or things or a class of persons or things from any of the regulations made under this section.
- (3) Regulations under this section have effect despite anything to the contrary—
 - (a) in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**); or
 - (b) in any subordinate instrument.

Pt 11 Divs 2, 3
(Headings
and
ss 219–233)
repealed by
No. 49/2010
s. 234.

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Division 4—Repeal of amending provisions

234 Repeal of Divisions 2 and 3

Divisions 2 and 3 of this Part are **repealed** on
1 June 2013.

Note

The repeal of Divisions 2 and 3 of this Part of this Act does not affect the continuing operation of the amendments made by those Divisions (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 9 June 2010

Legislative Council: 24 June 2010

The long title for the Bill for this Act was "A Bill for an Act to regulate private supported residential services, to make consequential amendments to the **Health Services Act 1988** and several other Acts and for other purposes."

The **Supported Residential Services (Private Proprietors) Act 2010** was assented to on 24 August 2010 and came into operation on 1 July 2012: section 2(2).

2. Table of Amendments

This Version incorporates amendments made to the **Supported Residential Services (Private Proprietors) Act 2010** by Acts and subordinate instruments.

Supported Residential Services (Private Proprietors) Act 2010, No. 49/2010

Assent Date: 24.8.10

Commencement Date: S. 234 on 1.6.13: s. 234

Current State: This information relates only to the provision/s amending the **Supported Residential Services (Private Proprietors) Act 2010**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11

Commencement Date: S. 3(Sch. 1 item 93) on 22.6.11: s. 2(1)

Current State: This information relates only to the provision/s amending the **Supported Residential Services (Private Proprietors) Act 2010**

Endnotes

3. Explanatory Details

No entries at date of publication.