

Development of New Legislation
to replace the *Supported Residential Facilities Act (1992)* and the
Supported Residential Facilities Regulations (1994)

Background Paper
June 2006



Government of South Australia

Department for Families
and Communities

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1. Introduction

1.1 Background

A priority of the South Australian Government is to review community based accommodation and support services for people with a range of disabilities including intellectual disability, psychiatric disability, physical and multiple disabilities. Vulnerable people who may also be homeless, on low incomes and have substance abuse issues are of particular concern.

In December last year, the Supported Accommodation Task Force was established by the Minister for Disability to develop an Accommodation and Personal Support Services Policy and Plan to respond to this priority. The Task Force is now seeking the community's views on:

- An **Accommodation and Personal Support Services Policy** to drive what we want in an accommodation and personal support services system;
- An **Accommodation and Personal Support Services Plan** to set out actions, timeframes and investment options for improving services and increasing accommodation and personal support options. The plan will cover any accommodation type that houses people who need personal care and support to maintain their tenancy and maximise their independence; and
- Development of new **accommodation legislation** to protect vulnerable people living in supported rental accommodation. This will underpin the reforms and ensure that quality services are provided within the accommodation and personal support services system.

People with disabilities, their families, carers, advocates, representative groups, service providers and the wider community are encouraged to have a say about these important pieces of work so that we can build better accommodation and personal support services that make a real difference to the lives of people with disabilities and their families.

This background paper is a companion document to the '**Accommodation and Personal Support for People with Disabilities in South Australia – Consultation Paper**'. It focuses specifically on the proposed accommodation legislation and considers a range of proposals for inclusion. It is suggested that it be read with the current legislation the *Supported Residential Facilities Act 1992* (SRF Act) and the two reports into Supported Residential Facilities and Boarding Houses.¹ Interested people can attend the consultations planned throughout South Australia or send written comments. More information about these is available on www.dfc.sa.gov.au/supportaccommodation or by phoning Ms Dorothy Stone on 08 8415 4306.

1.2 Policy Context

The Minister for Families and Communities, Housing and Disability Services, has requested work on the development of new accommodation legislation to replace the *Supported Residential Facilities Act of 1992* and the Supported Residential Facilities Regulations 205 of 1994 and 1996. The intention of the proposed legislation is to develop an improved protective regulatory framework for vulnerable people residing in SRFs, boarding houses and other like forms of congregate care. It aims to achieve this by:

- Monitoring the physical standards of the accommodation,
- Monitoring the quality of personal support services
- Making sure residents are protected from exploitation or harm.

The proposed legislation is in response to evidence that has demonstrated that the current legislation does not adequately protect the rights of residents who are among the most vulnerable in our community.²

¹ Department for Human Services "Somewhere to Call Home" and "Its No Palace"

² Ditto

It is also in response to changing trends in housing supply in recent years, which has seen the development of accommodation (with and without other services) not currently captured by existing legislation.

These emerging housing options may be boarding houses, caravan parks, and residential complexes for older people on low incomes or hotels and backpacker accommodation where the intended target population are usually holiday makers and tourists. None of these housing options are registered or known under any current licensing arrangements like the Supported Residential Facilities.

Such accommodation often does not meet community expectations in relation to regulatory protections for vulnerable residents who may use it as housing of the last resort. These accommodation options do not have clearly identified entry and exit processes, contractual and lease arrangements or complaints mechanisms because they fall through gaps in existing legislation.

1.3 *Developing new legislation*

The process for developing a new piece of legislation involves a number of steps before being tabled in Parliament and then a number of steps afterwards before it is finally passed as legislation and assented to by the Governor.

Before being passed, the legislation is referred to as a Bill. When the Bill becomes an Act of Parliament, Regulations may be drafted then or later to provide specific detail about certain aspects of the Act. These have to go through a similar Parliamentary process.

An Act does not become law until any regulations are assented to by the Governor. It is difficult to guess how long this process through Parliament might take, as members of the Government and the Opposition, may want to make changes and some may even be referred to a Parliamentary committee for further investigation.

In the case of the proposed new accommodation legislation, the process is still in the early stages. The Minister has received advice from the Department for Families and Communities (DFC), the Supported Residential Facilities Advisory Committee, Local Government and representations from a range of concerned citizens and stakeholders about vulnerable residents living in supported and unsupported congregate housing such as boarding houses and supported residential facilities. As a consequence, the Minister has asked the department to begin the development of new legislation that will provide better protection through improved physical standards, stronger licensing criteria and standards for personal care services.

This background paper has been written after researching legislation in other states, discussions with owners of relevant accommodation facilities, local councils, consumers and other interested parties.

A series of consultations will be held across South Australia to give everyone who is interested, an opportunity to comment on what should be in such legislation, what kinds of facilities should be included and what the proposed standards and licensing rules might be.

The next step will depend on the Minister's preference, based on the information provided through these consultations and advice from Parliamentary Counsel whose job it is to turn the findings into a draft Bill.

It is then a requirement for the community to see the draft Bill and provide further comments and views to the Minister before the final draft is tabled in Parliament.

When a Bill and any regulations become law, government departments, service providers and owners of the accommodation facilities will have to change their policies, practices and services to fit the legal requirements.

Although many people have been referring to the proposed new legislation as the 'accommodation act', no such Act exists and the name of the new Act is yet to be decided. However, sometimes for convenience, this term may be used in discussions.

2. What's happening in other States?

In the past decade, private supported-accommodation services in Victoria, NSW and Queensland have been reviewed and new legislation developed.

The following themes have emerged:

- Private low-income supported accommodation is decreasing
- Residents personal care needs have become more complex
- Issues about the viability of many private supported-accommodation services
- Levels of care for vulnerable people living in private supported residential facilities is not equal to other vulnerable groups
- Concerns regarding the kinds of services provided in private supported-accommodation
- A need for formal ways to look after the interests of residents.

2.1 Queensland

The Queensland Government introduced the *Residential Services (Accommodation) Act 2002* and the Residential Services (Accommodation) Regulations. This legislation applies to the residential services sector which is made up of boarding houses, aged care rental complexes, hostels and rooming style student's accommodation. The legislation was introduced with the *Residential Services (Accreditation) Act 2002* as part of a connected system of legislation, resident support and industry assistance to improve standards.

The aim of the *Residential Services (Accommodation) Act 2002* is to strike a balance between the interests of residents and service providers, by setting out all parties rights and responsibilities. It is administered by the Queensland Residential Tenancies Authority. The *Residential Services (Accreditation) Act 2002* is administered by the Queensland Office of Fair Trading, and provides for a mandatory accreditation and standards system.

The Queensland system has different levels of registration, monitoring and accreditation. There are three levels of accommodation, with graduated standards for registration and accreditation:

- Level 1 is for *accommodation only*
- Level 2 is for *accommodation and food services*
- Level 3 is for *accommodation, food and personal care services*

In Queensland, registration, inspection, review and accreditation for all facilities registered under their legislation is centrally administered.³

2.2 Victoria

In Victoria, most Supported Residential Services are private-for-profit congregate living homes similar to Supported Residential Facilities in South Australia. They are administered and registered by the Victorian Government's Department of Human Services (DHS) under the *Health Services Act 1988* and Regulations 2001. In 2004, the Victorian Government made changes to the *Health Services Act 1988*.⁴

The role of the Victorian DHS Supported Residential Services (SRS) Program is to:

- Register owners or proprietors to operate SRSs
- Make sure owners or proprietors provide appropriate standards of care and accommodation according to the legislation
- Provide information and education to help owners or proprietors

³ www.rta.qld.gov.au

⁴ www.health.vic.gov.au/srs

- Provide information to residents, their families and the general public
- Develop and implement policy.

Under the *Health Services Act 1988*, Community Visitors (who are volunteers appointed under the legislation) are able to report to the Department of Human Services and ask questions about standards of accommodation and care provided by SRSs. Community Visitors are mandated to receive complaints from residents and follow these up.

2.3 New South Wales

The NSW Department of Ageing, Disability and Home Care, administers the *Youth and Community Services Act 1973 (YACS Act)*, and Regulations 2000 which cover boarding houses also known as Licensed Residential Centres (LRC). Regional sections of the Department license and enforce the legislation. In October 1998, the NSW Government implemented a Boarding House Reform Strategy, with three main aims:

- To improve the standards of accommodation and support for residents
- To move high needs residents to other supported accommodation
- So LRC's remain viable accommodation with safety and affordability at an acceptable level.

The Department's role is guided by the following key principles:

- Making sure the health, safety and welfare of residents is looked after
- Encouraging better services by helping LRC owners provide accommodation of a standard required by legislation
- Working in partnerships with LRC owners and managers to have productive relationships with the industry
- Making sure that LRCs make good decisions and manage the LRCs well, including complaints
- Transparency in meeting the licensing and monitoring obligations.

In 2003, The Allen Consulting Group finalized a report to the NSW Government in which they recommended that the *Youth and Community Services Act 1973* be abolished and new legislation; the Shared Accommodation for People with Disabilities Act and associated Regulations, introduced in its place.⁵ This legislation is not finalized as yet.

2.4 Western Australia

In Western Australia, psychiatric hostels and group homes are located throughout the metropolitan area. Residents in psychiatric hostels have access to on-site personal care support 24 hours a day. Personal care includes assistance with meals, personal hygiene, care of environment, medications, assistance with challenging behaviours and financial management. The standard of support (personal care, community and clinical support) provided in all hostels and group homes, is monitored through a combination of self-assessment by hostel owners and external evaluation by the Office of the Chief Psychiatrist (OCP).

Private hospitals are defined in the *Hospitals and Health Services Act 1927* and include psychiatric hostels. The Department of Health develops and monitors building and operational standards for these licensed hostels. These are contained in the Hospitals (Licensing and Conduct of Private Psychiatric Hostels) Regulations 1997.

The Council of Official Visitors (COV) also has a role under the *Mental Health Act 1998* to report on conditions within licensed hostels and make sure that residents can comment on any aspect of their care. The Office of Mental Health works collaboratively with the DH, COV and OCP and the hostels sector to increase the availability of hostel accommodation that meets or exceeds minimum physical and personal care requirements.

⁵ Allen Consulting Group

In November 2002, the WA Department of Health released draft Standards “*Arrangements for Management, Staffing and Equipment Private Psychiatric Hostel*”⁶. The Standards covered governance, staffing, information management, finance, arrangements for the provision of care, facility function and use of space, equipment and infra-structure, medication, food safety, laundry, fire and security and preventative maintenance.

3. Current Legislation in South Australia

3.1 Description of Supported Residential Facilities

In South Australia, Supported Residential Facilities (SRFs) are mostly private-for-profit, multiple occupancy accommodation services. In South Australia these facilities are licensed under the SRF Act and Regulations, to provide accommodation and personal care for their residents. People living in SRFs generally have some form of disability that means they need help to function on a day-to-day basis.

In June 2006, there were 20 dual licensed facilities and 37 ‘pension-only’ SRFs.⁷ There are around 1067 beds in the pension only facilities, which include 56 Government owned beds.⁸

In addition, there are currently 32 organisations exempt under the SRF Act. These exemptions were granted as the organisations were able to demonstrate alternative proper standards of care and resident security of tenure.

Boarding houses are also an important source of low cost accommodation, however it is often of poor quality and many of the residents are some of the most marginal and disadvantaged members of our community. They may have physical, intellectual, social and psychological difficulties, combined with substance abuse, which affects their every day functioning to varying degrees.

Boarding houses are not licensed under the SRF Act and do not provide personal care services to residents. In 2006 actual details regarding boarding house numbers and locations are not available, however DFC has been advised that the number of facilities has decreased considerably because of increased property values.

3.2 The Current Legislation

The SRF Act was enacted December 1994 along with the Supported Residential Regulations 205 of 1994. At the time of its introduction, the SRF Act was considered innovative legislation, as it recognised the rights of the residents in this particular form of accommodation. There was no such legislation in South Australian prior to its introduction.

Local government has acknowledged that the SRF Act is difficult to administer. The work associated with this legislation has costs for councils, particularly the resources required for monitoring, granting and cancellation of license’s.

Recent studies into Supported Residential Facilities have shown that many of the privately operated facilities are unable to meet the requirements of the legislation or meet disability standards including resident privacy, choice and decision making, participation in the life of the community, personal independence, rehabilitation, skills development, housing quality and health care. They also show that there are different standards, practices and quality of facilities.⁹

A similar study into boarding houses in 2003 showed that the situation is no better in these facilities.¹⁰ The important issues to emerge from this research indicated that:

⁶ Department of Health WA

⁷ The DFC is currently reviewing the *Retirement Villages Act* see

<http://www.familiesandcommunities.sa.gov.au/ofta>

⁸ SA Department for Families and Communities

⁹ Somewhere to Call Home

¹⁰ Its No Palace

- Many boarding houses are clustered in central Adelaide
- Have poor standards
- Have poor compliance with the Residential Tenancies legislation
- Inconsistent and complex regulatory regime spread across a number of Acts, namely:
 - *The Residential Tenancies Act 1995*
 - *The Local Government Act (1934)*
 - *The Public and Environment Health Act 1989*
 - *The Development Act 1993*
- There is a decline in the number of providers
- This kind of accommodation is unable to satisfactorily meet the needs of vulnerable residents and for many it is not appropriate

This study prompted the establishment of the Boarding House Taskforce which recommended that new umbrella legislation be developed to include boarding houses and related forms of accommodation where levels of assistance and care are required by residents/tenants. The Supported Residential Facilities Advisory Committee, a requirement of the SRF Act, recommended that the current SRF legislation be reviewed and new legislation developed.

3.3 Government SRF Program

As a result of the findings in these reports, increasing concern for vulnerable residents and the increasing numbers of closures of SRFs, the government has put together a package of support and assistance for residents under the SRF Program.

The package includes:

- A resident board and care subsidy paid to proprietors on behalf of residents whose only form of income or asset is a government pension plus rent assistance, and who are considered tertiary homeless
- A sustainment support program to provide additional support and services to 25% of these people assessed as having high and complex unmet
- The 'Sprinkler Subsidy Scheme' for SRFs whose residents are in receipt of the SRF resident board and care subsidy payment. The subsidy payment is a one-off reimbursement of 75% up to \$80,000 towards the total costs of installing a certified residential sprinkler system.

4. The proposed new legislation

4.1 The intent of the new legislation

4.1.1 What will be included.

The purpose of new 'supported accommodation legislation' is to provide a protective regulatory framework for vulnerable people living in SRFs, boarding houses and similar forms of congregate care. This will be done by:

- Improving the physical standards of accommodation
- Development of an integrated (joined-up) resident service support system
- Making sure residents are protected from exploitation or harm
- Making sure that the number of SRFs is not reduced as a result
- Providing management standards and support

Because new legislation and/or regulations will cover a broader accommodation sector than the current SRF legislation, it is suggested that there are three criteria for inclusion:

- The type of accommodation
- The resident population and profile
- The level of resident support needed

Because the level of support and services will range from low to higher levels, depending on the needs of residents, different levels of licensing is also suggested. Any new legislation

(including regulations), should apply to all State, non-government and private for-profit owners who operate SRFs, boarding houses and other like forms of congregate care.

4.1.2 *The main cornerstones proposed for the new legislation*

The four cornerstones of any new accommodation legislation should be:

- I. Principles and values
- II. Licensing Provisions
- III. Integrated Service provision
- IV. Operational requirements

4.2 **Definition of target population**

4.2.1 *Who lives in Supported Residential Facilities?*

Research in South Australia in 2003 showed that residents of SRFs:

- Have a range of disabilities, with psychiatric disability being the most common
- Are people on low incomes, usually government benefits
- Often have complex health care needs, functional impairments and unmet social and health needs
- Include a proportion of aged people, including frail aged
- Have minimal community participation and little access to rehabilitation, skill building or capacity development
- Are likely to have a compromised quality of life ¹¹

More recent research by the DFC SRF Assessment Team (who have conducted over 1000 assessments of residents) shows the following additional vulnerability criteria ¹²:

- A dual or multiple disability
- Are under 25 years of age or
- Are over 80 years of age
- Are at risk of losing their accommodation.

Of the residents assessed, 68% were male and 32% female of which:

- 52 % have a psychiatric disability,
- 18% have an intellectual disability
- 1% have a neurological disability
- 1% have Korsakoff's syndrome ¹³

4.2.2 *Who lives in Boarding Houses?*

The population of boarding houses and other forms of congregate care options that may be covered by this new legislation is harder to describe. For example, the DFC advises that boarding house residents are usually on low incomes, a male aged between 25 – 55 years. More than 80% are unemployed and they are receiving either a Centrelink allowance or disability pension.

Residents of boarding house may be living there because there is no other accommodation and there has been a personal crisis such as a relationship breakdown, circumstances which means moving from one-location to another, having no friends or family to stay with and lack of a good income to find better accommodation.

Many can remain residents for long periods of time, either at one address or moving from boarding house to boarding house. The 2003 report showed that about 66% of residents were in this situation. ¹⁴ Information from the DFC is that a minority of boarding house residents

¹¹ Somewhere to Call Home

¹² SRF Assessment Team is based in Disability Services SA

¹³ A brain disorder often caused by heavy drinking for a long time and causing short term memory loss.

¹⁴ Its No Palace

needed some support. For these residents who are particularly vulnerable, because they are frail aged or have a disability, boarding houses are not suitable because they don't provide this support.

4.2.3 *Other forms of Congregate Care*

There is increasing anecdotal evidence of vulnerable people also living in local hotels, caravan parks or aged care accommodation not covered by current legislation who may also not be receiving the support they need. Because of their circumstances and lifestyles, it is difficult to get accurate data about the people living in these kinds of accommodation options. Any new accommodation legislation needs to consider their inclusion.

4.3 Definition of facilities

4.3.1 *Personal Care*

The DHS reports into Supported Residential Facilities and Boarding Houses have shown that many residents are vulnerable people with complex needs. Residents of SRFs may receive various kinds of regular personal care and support defined in the current SRF Act.¹⁵ It can include:

- nursing care
- assistance in bathing and personal hygiene, toileting, dressing, eating
- mobility assistance
- management of medication
- developmental and rehabilitation assistance
- management of personal finances

It is proposed that similar definitions be included in any new legislation.

4.3.2 *Current definition of an SRF facility in the SRF Act is:*

"Means premises at which, for monetary or other consideration (but whether or not for profit), residential accommodation is provided or offered together with personal care services to more than 2 people (other than members of the immediate family of the proprietor of the facility)."

It is proposed that this definition remain.

4.3.3 *Proposed definition of Boarding House*

At present there is no agreed definition of what constitutes a boarding house in South Australia. Each piece of legislation and Local Government By-Law defines them differently. For example, the definition under the Residential Tenancies legislation differs from that in the Building Code of Australia.

The following definition is proposed

"Means premises where rent is collected for the use of a single room, where other facilities such as kitchen, toilet and living areas may be shared. The single room may be provided on a single or a shared basis. Meals and other services such as laundry may or may not be included."

4.3.4 *Definition of Congregate Care*

Proposed definition of other forms of congregate housing options, not covered by other pieces of legislation is:

¹⁵ SRF Act

“Congregate housing options are for vulnerable people who require some personal care services in the following life domain areas: personal care, mobility, community living, public transport skills, community safety and social skills

Examples of congregate care include independent living units for residents that are leased or owned and serviced by SRF proprietors, boarding houses, some caravan parks and mobile home parks which are increasingly becoming accommodation options for groups of vulnerable people. Welfare housing agencies are also reporting that people are also being accommodated in hotels because boarding house and SRFs are not available

4.3.5 What kinds of congregate care will not be included in the new legislation?

The purpose of the new legislation is to provide a regulatory framework for vulnerable people living in SRFs, boarding houses and other similar forms of congregate care. There are a range of other congregate care facilities that have a different purpose with a different population profile. They are therefore not appropriately covered under the proposed accommodation legislation.

These include:

- Any premises that form part of an educational institution or college; or
- Any premises that form part of-
 - A recognised hospital with the meaning of the *South Australian Health Commission Act 1976*; or
 - A private hospital licensed under the *South Australian Health Commission Act 1976*; or
- Any premises that form part of-
 - A home used for the provision of foster care by a foster parent approved under the *Community Welfare Act 1972*; or
 - A facility established or licensed under the *Community Welfare Act 1972* to the extent that personal care services are provided to children under that Act; or
- Any premises where less than two people are provided with personal care services.

4.4 General Objects

The Objects of legislation are the goals to be reached and which it is believed can be reached.

The objects of the proposed new accommodation legislation should be:

- To establish standards for providing personal care services in SRFs, boarding houses and other like forms of congregate care (not covered by other legislation in South Australia)
- To recognise and protect the rights of people who live in supported residential facilities, boarding houses and other forms of congregate care options
- To make sure that a resident or someone who wants to be a resident of a supported residential facility, boarding house or other form of congregate care, has ready access to information about the scope, quality and cost of care within the facility, and their tenancy rights and responsibilities; and
- To regulate the responsibilities of service providers in supported residential facilities, boarding houses and other forms of congregate care options; and
- To ensure accountability in relation to supported residential facilities, boarding houses and other forms of congregate care.

5. The Principles.....Cornerstone 1

It is proposed that the new accommodation legislation be based on four cornerstones.

The first of these are the key principles which will protect and enhance the lives of the vulnerable and marginalised people who live in supported residential facilities, boarding houses and other congregate housing.

The following principles are suggested:

- Residents have the same citizenship value as other members of the community
- Residents have the natural right to respect for their human worth and dignity
- Residents have a right to protection from neglect, abuse, intimidation and exploitation.
- Residents are entitled to high quality care, to their choice of medical practitioner or other providers of health services, and to an informed choice in the provision of appropriate care
- Residents are entitled to receive reasonable levels of nutrition, comfort and shelter in a home like environment
- Services should be provided in a safe physical environment
- Residents have reasonable privacy
- Residents are entitled to independence and freedom of choice (so long as they do not unreasonably infringe upon the rights of others), including-
 - the right to choose and pursue friendships with members of either sex
 - the right to practice religious and cultural customs; and
 - the right to participate in activities of their choosing
- Residents are entitled to manage their own affairs (wherever possible) and must not be subjected to exploitation of their financial or other assets
- Residents are entitled to freedom to comment (either publicly or confidentially) to a person they choose about the accommodation and personal care services
- Residents have the right to pursue any grievance in relation to those services without fear of the service stopping or of recrimination or retribution from service providers.

6. Licensing Provisions and Service Standards.....Cornerstone 2

6.1 Licensing

The second cornerstone of the new accommodation legislation should be the licensing of the accommodation options. The purpose of the licensing process would be to improve standards through a quality improvement process. This means that to gain a certain level of licensing, a service provider must show that it meets a set of minimum standards for each proposed level.

It is proposed that there are 3 levels of licensing. A residential facility/accommodation option could be licensed at more than one level depending on what they provide, but each level of license must also include the lower levels.

6.1.1 Levels

The following criteria could be used to decide if a service meets the requirements for licensing. These are described in detail in the Appendix.

Level 1 All residential services and accommodation options are required to be licensed at this level.

It is proposed that the minimum standard be that:

- the service provider recognises and observes the rights of each resident
- the physical standard of the licensed premises and facility meet community standards
- the way in which the accommodation is managed

Level 2 A residential services and accommodation options is required to be licensed at this level as well as level 1 if it includes the provision of a food service.

It is proposed that the standards at this level relate to:

- The quantity, quality, variety and nutritional value of the food provided
- The preparation, delivery, service and storage of the food¹⁶

¹⁶ *The Food Act 2001*

Level 3

A residential service is required to be licensed at this level, as well as levels 1 and level 2, if it includes the provision of personal care services

- The extent to which a service provider provides the personal care service in a way that meets the individual needs, protects their interests and maintains and enhances their quality of life
- The competencies of staff members providing the personal care services

6.1.2 General Licensing Provisions

The new legislation needs to include the following:

- How to apply for and renew a licence
- What the Licensing Authority needs to know to grant and renew a license
- Eligibility criteria to be licensed
- How long the licence should be for
- Licence conditions
- Transfer and giving-up a licence (including who looks after residents if a license is abandoned, but not the facility itself)
- Cancelling a licence
- Licensing appeals process

6.2 Standards and Quality

A complete table of proposed Standards is attached in Appendix 2

6.2.1 Standards

It is proposed that licensing under new legislation includes standards of care and amenity with the following principles:

- The accommodation provider responds to residents, their rights and personal care needs
- Organisational improvement is driven by the accommodation management
- Attention is given to procedures and systems and how they can improve outcomes for the residents
- Appropriate data and information is collected and analysed to measure the quality of the service
- Staff are involved and trained to contribute to better outcomes for residents
- Quality improvement is a part of service culture and vision.

Minimum standards for Level 1

Licensing relates to a resident's entitlement to security of tenure, privacy, independence, individual resident contracts, good record keeping, protection from abuse and neglect, grievance mechanisms, adequate goods and equipment, access to external providers of professional health and other services, building cleanliness, provision of linen and its laundering and building and garden maintenance.

Standards would also apply to security and emergency procedures, business practices, staff health and safety management, human resource management including staff training and the management of residents with challenging behaviour.

Minimum standards for Level 2 licensing (Food Services)

Means that meals are nutritious stored safely and prepared and served in a safe and hygienic way. Kitchens and dining facilities must also meet minimum requirements as described under *The Food Act*¹⁷.

¹⁷ *The Food Act 2001*

Minimum standards for Level 3 licensing (Personal Care Services)

Residents have access to internal and external support services, accountable financial assistance, medication management, primary health care, (including access to a GP) assistance with clothing and hygiene management, the living environment, the right to pursue leisure interests, the preservation of social networks and participation in decision-making.

6.2.2 *Licensing periods and conditions*

Each accommodation licensing option under the new legislation would be assessed according to the proposed criteria and standards by the licensing authority and may include information from other sources eg Local Government for compliance with the Food Act, and Building Fire Safety Committees for fire safety.

6.3 *Authorised Licensing Officer Role*

Under the SRF Act, the responsibility for granting and monitoring licenses is done by Local Councils through Authorised Licensing Officers, while the State Government has a responsibility for broader policy around resident referrals and services.

South Australia is the only State where the State Government is not responsible for licensing, monitoring and the review functions of SRFs. Local Government acknowledge that for a number of reasons, it has been difficult to monitor these facilities as required, including adequate resourcing to carry out the monitoring functions.

This is complicated by the fact that there are a number of other related pieces of legislation that overlap Council's work in issuing licenses. These include *Local Government Act 1999*, *The Development Act 1993* the *Food Act 2001*, *Public Environment Health Act 1988*, *The Retail and Commercial Leases Act 1995* and the *Housing Improvement Act 1940*.

It is proposed that responsibility for licensing such accommodation should move to the State Government under any new legislation. This would not preclude a necessary partnership arrangement, where Local Government Authorised Officers become part of an integral licensing and accreditation team together with State Government.

6.3.1 *Powers of Authorised Officers*

The role and powers of Authorised Officers for the SRF legislation has been clearly described in the existing SRF legislation. Whichever government department is given responsibility for the licensing functions under new legislation for these kinds of facilities and accommodation, resources will be required to enforce any standards required under legislation . It is suggested that the Authorised Officer role should continue to have similar legal rights and functions, as required under the current SRF Act irrespective of where it is carried out.

7. Integrated Service Provision.....Cornerstone 3

The third cornerstone of the proposed new legislation should be joined up/linked services for residents in the licensed accommodation options which could be described in the Regulations of any new Act.

As described, residents in Supported Residential Facilities, boarding houses and similar forms of congregate housing who will be covered in the proposed new legislation, are often extremely vulnerable because of low income, disability, ill-health, substance abuse or a combination of these. As a result they may require additional support.

Some of the key elements of this integrated service provision could be:

- A flexible service plan designed to meet individual housing, independent living support and clinical service needs. This integrated plan should involve all service providers (where possible) to make sure the resident get the best possible result
- Holistic services
- Based on effective partnerships
- Promote resident independence and respond to changing needs

- Resident-centred and include all aspects of life
- A standardised service system so that residents, regardless of location, experience the same process. This is particularly important for residents with intellectual disability and/or mental illness who have a particular need for consistency.

7.1 Referral and the admission process

A standard referral process currently does not exist. The issue of inappropriate referral and the lack of documentation accompanying residents arriving has been raised as an issue of concern by a range of concerned parties, including proprietors, service providers and Licensed Authorised Officers.¹⁸ It is proposed that a standard referral system be included within the new legislation as the first step in an integrated model.

As well as the residents themselves, depending on their needs, assessments and service plans could involve:

- Disability support providers
- Health Providers (including mental health services, GPs and community health)
- Specialist agencies (Housing SA, Disability SA)
- Accommodation managers/proprietors
- Family carers¹⁹

7.2 Assessment of Residents needs

In the proposed integrated service model, the second step would be a detailed assessment of what personal support each resident needs.

The assessment should include:

- ✍ General resident Information
- ✍ Financial and legal Information
- ✍ Agency contacts
- ✍ Diagnostic information
- ✍ Physical health conditions and medical concerns
- ✍ Medications and substance use
- ✍ Accommodation requirements
- ✍ Quality of life issues
- ✍ General health assessment
- ✍ Emotional well-being
- ✍ Functional assessment
- ✍ Change in functional skills over past 6 months
- ✍ Previous and current interests
- ✍ Current supports and services received
- ✍ Vocational history
- ✍ Assessment of resident's ability to participate in activities
- ✍ Current behavioural and medical concerns and management
- ✍ High and unmet needs assessment summary
- ✍ Recommendations and review date set

7.3 Service Plan, Implementation and Review

The Service Plan for each resident should clearly specify the following information about the resident

- ✍ Contact details for family and family carers
- ✍ Contact details for medical services such as doctor, dentist, allied health, legal representative etc.
- ✍ languages spoken

¹⁸ SRF Act

¹⁹ Carers Recognition Act 2005

- ✍ Medication
- ✍ Goals, actions, timeframes and responsibilities based on assessment
- ✍ Review date

As well as information about the services

:

- ✍ exact details of the personal care services to be provided to the resident (including the nature, extent and frequency)
- ✍ instructions to staff relating to the provision of those services
- ✍ current assessment details
- ✍ A service plan must be kept in a confidential place at the facility and the proprietor must ensure that it is made available, on request, to the resident or his or her representative, or to a medical practitioner or other health service provider, at any reasonable time.
- ✍ A service plan must be reviewed and, if necessary, revised if the resident experiences or suffers a significant occurrence or deterioration that adversely affects the resident's health or well-being, and in any event must be reviewed at least once in every 12 months.
- ✍ A review of the service plan must be done with the resident (or their representative)

8. Operational Requirements.....Cornerstone 4

The fourth cornerstone of the proposed accommodation legislation should be the operational requirements to effectively fulfil the Objects

The following key operational areas should be considered:

- The role of an Advisory Committee
- Facilities and safety
- Dispute settlement
- Documentation required
- Staffing arrangement and qualifications

8.1 Advisory Committee

The current SRF Act requires a Supported Residential Facilities Advisory Committee. It is proposed that a similar mechanism be considered in any new legislation. Its role could be to advise the Minister and others on:

- Administration of the new legislation
- Policies that should govern the administration of the legislation and regulations
- Matters pertaining to SRFs, boarding houses and other forms of congregate care
- General advice to other authorities about licenses
- Report to the Minister when requested or on its own initiative.
- Keep any new Legislation under review and recommend any changes
- Inform the public of the work and policies of the Advisory Committee
- Perform other functions assigned by the Minister.

8.2 Standards

A set of standards will form the basis of the licensing model being proposed in this paper.

The standards provide benchmarks and an assessment framework that will make sure residents of SRFs, boarding houses and other like forms of congregate care, live in safe and well-maintained facilities where their rights and dignity is respected. An accommodation option will require the minimum level of standards to be licensed. To provide food services, Level 1 and Level 2 would be required. To provide personal care services, Levels 1, 2 and 3 would be required.

8.2.1 Proposed Standards framework

Standard	Which level Service	Scope
1A	L1, L2, L3	Recognizing resident's rights
1B	L1, L2, L3	Buildings and amenities
1C	L1, L2, L3	Management and Staffing
2	L2 & L3	Food Services
3	L3	Personal Care Services

These standards detail the minimum requirements that services need to comply with to be licensed in South Australia. Should such a system be required, manuals would need to be developed to assist accommodation managers and proprietors with detailed information on how to comply with the standards, including the types of documentation required to verify compliance.

Appendix 1 contains the full list of proposed Standards and their Descriptors.

8.3 Dispute Settlement

There are often disputes (arguments) and complaints when people live in congregate care. It is important that these are dealt with immediately, properly, sensitively and whenever possible, solved to the satisfaction of all parties. The current SRF Act says that facilities must establish adequate procedures to deal with complaints and disputes. It is proposed that these be maintained and extended in new legislation. The disputes fall into the following categories:

8.3.1 Kinds of disputes

- Minor Complaints and Disputes which may be dealt initially at the facility/accommodation option.
- Complaints and Disputes requiring formal procedures. This category may require an independent person to act as a resident advocate.
- Disputes and complaints requiring referral to external agencies. Complaints and disputes that can't be resolved within the facility/accommodation option and are more serious should be referred to the licensing authority or other relevant agency.
- Assault on or abuse of residents. This category deals with resident assault or abuse of another resident or staff member abuse or assault of a resident. These matters should be reported to the police immediately and the licensing authority. The police may conduct the primary investigation into the alleged incident. Matters of an urgent nature need to be dealt with within a 24 hours period, and be clearly documented.
- Child Abuse. Under child protection legislation in South Australia, a child is defined as a person under the age of 18 years.²⁰

8.3.2 Complaints

Residents are able to make complaints to the following agencies if necessary:

- The South Australian Health and Community Services Complaints Commissioner was appointed under the *Health and Community Services Complaints Act 2004*. A person in receipt of a community service can make a complaint with the Commissioner. Community services include the 'provision of accommodation or support to the socially disadvantaged', including supported residential facilities, boarding houses and other like forms of accommodation²¹
- Department for Families and Communities, which is the government department that has the lead for new legislation and manages the SRF program.

²⁰ *Children's Protection Act 1993*

²¹ <http://www.hcsc.sa.gov.au>

- Office of the Public Advocate –was established under the *Guardianship and Administration Act 1993* to promote and protect the rights and interests of people with reduced mental capacity (from conditions such as intellectual disability, dementia, severe mental illness, stroke and acquired brain injury due to an accident) and where appropriate their family Carers^{22, 23},

Other Australian States also have Official Visitors Schemes where volunteers are trained to visit residential facilities for people who may have a disability including mental illness. These visitors are able to take the concerns of residents to the appropriate body and assist in providing residents with protection from harm and exploitation.

8.3.3 Staffing Issues

The managers and/or proprietors of SRFs, Boarding Houses and like forms of congregate care currently must:

- Take responsibility for the day to day management of the facility and accommodation
- Make sure there is proper management and care of the residents
- Make sure the facilities are in good physical condition
- Maintain records
- Make sure there is enough staff at all times so residents are properly cared for and safe
- Make sure the facility is under the proper supervision of a competent and skilled person when the manager is not there
- Maintain a register of staff that includes full name, contact details and qualifications
Maintain a staff roster

Any new legislation should continue to have similar staffing requirements.

9. Summary

This background paper has provided a brief summary of the requirements of any proposed new accommodation legislation. To better meet the needs of vulnerable South Australians living in Supported Residential Facilities, boarding houses and other forms congregate care the new legislation should:

- Be expanded to include a wider range of accommodation options currently not covered under legislation
- Include three levels of licensing depending on what is being provided with detailed standards for each level
- Allow for the provision of improved services for residents
- Transfer licensing responsibilities to the State Government

Interested people are encouraged to present their views on the proposed new legislation through the consultation process detailed in section 1 at the beginning of this paper.

²² *Guardianship and Administration Act 1993*

²³ <http://www.opa.sa.gov.au>

10. Appendices

Appendix 1 : Proposed Standards

LEVEL		DESCRIPTION OF STANDARD
Level 1A: Residents Rights(8)		
1.A.1	Recognizing and Observing Resident's Rights	<ul style="list-style-type: none"> The service provider or an associate of the service providers acts to uphold the legal and human rights of residents Each resident's right to privacy, dignity and confidentiality in all aspects of the resident's life is recognised and respected by the service provider, each associate of the service provider and all staff of the residential service
1.A.2	Agreement for Residency	<ul style="list-style-type: none"> The service provider gives information to residents, prospective residents, or representatives of residents or prospective residents, about the type of accommodation and services available. Each Service must develop a Prospectus, which is given to each prospective resident or resident's advocate The service provider uses an individual resident agreement for each resident. Which also clearly details the process for termination of a resident's contract
1.A.3	Keeping of Records about residents	<ul style="list-style-type: none"> The service provider ensures that a register of residents is maintained containing, for each resident, relevant information reflecting the type of residential service and the residents needs
1.A.4	Prevention of Abuse and Neglect	<ul style="list-style-type: none"> The service provider recognises and implements policies and procedures on the rights of residents to live in an environment free of verbal, emotional, sexual or physical abuse or neglect.
1.A.5	Grievance mechanism	<ul style="list-style-type: none"> Residents and representatives of residents, including advocates, are free to raise and have resolved with the service provider, an associate of the service provider or an external agency, any complaint or dispute they may have about the residential service without fear of retaliation.
1.A.6	Management of Complex or difficult behaviours	<ul style="list-style-type: none"> Residents with complex or difficult behaviour are provided with services that are respectful of their dignity and are the least restrictive alternative.
1.A.7	Access to External Providers of Professional Services	<ul style="list-style-type: none"> Residents have full access to professional case workers or other providers of services from health, disability or welfare agency or other relevant professional service. Residents who have asked for help from an advocate have full access to the advocate by way of visits to or from the advocate
1.A.8	Entitlement to Independence and freedom of choice	<ul style="list-style-type: none"> Each resident's right of independence and freedom of choice is recognised and respected, if the right does not unreasonably infringe on the rights of other residents.

LEVEL	DESCRIPTION OF STANDARD	
Level 1B	Building and Amenities (10)	
1.B.1	Kitchens	<ul style="list-style-type: none"> • Kitchen facilities, including food storage, preparation and cleaning up facilities, are clean and in good repair.
1.B.2	Laundries	<ul style="list-style-type: none"> • Laundries are kept clean and in good repair.
1.B.3	Common Rooms	<ul style="list-style-type: none"> • Common Rooms (dining and living areas, gardens, bathrooms etc) are kept clean and in good repair
1.B.4	Bedrooms	<ul style="list-style-type: none"> • Bedrooms are clean and comfortable, providing privacy and personal space for each resident.
1.B.5	bathrooms and toilets	<ul style="list-style-type: none"> • Bathroom and toilet facilities provide privacy and are kept clean and hand rails, tiling, bathmats, disability support equipment etc are kept in good repair,
1.B.6	Passages and stairways	<ul style="list-style-type: none"> • Passages and stairways are kept free of objects to allow safe and unimpeded movement through them at all times.
1.B.7	Rubbish Removal	<ul style="list-style-type: none"> • All rubbish is removed regularly and in a way that does not impact on the health and wellbeing of residents and staff of the residential service
1.B.8	Cleanliness and good repair	<ul style="list-style-type: none"> • Internal and external features of the premises are kept clean and in good repair.
1.B.9	Inventory and Equipment	<ul style="list-style-type: none"> • Adequate stocks of goods and equipment necessary for the enjoyment of the residents and the smooth operation of the resident service are available
1.B.10	Security and other emergencies	<ul style="list-style-type: none"> • Policies and procedures are in place to ensure the safety of residents.
Level 1C.	Management and Staffing (4)	
1.C.1	Business Practice	<ul style="list-style-type: none"> • Current business principles are applied to the management and operation of the residential service.
1.C.2	Workplace Health and Safety	<ul style="list-style-type: none"> • Obligations to staff under workplace health and safety legislation are met.
1.C.3	Human Resource Management	<ul style="list-style-type: none"> • Fair and consistent strategies for the recruitment, selection and development of staff of the residential service are used where applicable • There enough staff on duty to provide agreed services and support to residents.
1.C.4.	Staff Training	<ul style="list-style-type: none"> • Staff are adequately trained to carry out their assigned duties under appropriate occupational health and safety conditions and management.

LEVEL		DESCRIPTION OF STANDARD
Level 2:	Food Services (6)	
2.1	Food and Nutrition	<ul style="list-style-type: none"> Residents are provided with food that is adequate in quality, quantity, variety and nutritional value to meet each person's daily food requirements
2.2	Food delivery and storage	<ul style="list-style-type: none"> Procedures are in place to ensure the safe delivery and storage of food
2.3	Food Preparation	<ul style="list-style-type: none"> People preparing food observe adequate hygiene standards and ensure food does not spoil before or during preparation
2.4	Food Serving	<ul style="list-style-type: none"> People serving food to residents observe adequate hygiene standards and take all steps to prevent contamination of food and the spread of disease.
2.5	Kitchens	<ul style="list-style-type: none"> The kitchen facilities comply with other relevant legislation eg Food Act
2.6	Dining Rooms	Dining room facilities are clean and comfortable, close to kitchen facilities and separate from lounge room facilities.

LEVEL		DESCRIPTION OF STANDARD
Level 3	Personal Care Services (10)	
3.1	Access to externally provided support services	<ul style="list-style-type: none"> Personal care services for residents are delivered, where possible, through entities external to the residential services
3.2	Financial and Clerical Support	<ul style="list-style-type: none"> Residents have management of their own financial affairs as much as possible or have entities external to the residential service to help with financial decisions
3.2	Medication Management	<ul style="list-style-type: none"> If residents ask for support to manage their medication, help is given in accordance with medical directions
3.4	Health Care	<ul style="list-style-type: none"> Residents have a choice of health care provider. Residents are encouraged and helped to maintain their physical, dental and mental health
3.5	Clothing	<ul style="list-style-type: none"> Residents are supported to ensure they have access to and wear clothing appropriate to the situation and climate
3.6	Hygiene Management	<ul style="list-style-type: none"> The personal hygiene needs of residents are met in a way consistent with individual needs and respect for dignity and privacy
3.7	Living Environment	<ul style="list-style-type: none"> A safe, comfortable and homelike environment is provided for residents
3.8	Leisure Interests	<ul style="list-style-type: none"> The rights of residents to independence and freedom of choice in pursuing activities of interest to them is recognised and encouraged
3.9	Preservation of social networks	<ul style="list-style-type: none"> The importance of preserving family relationships and informal social networks is recognised and supported
3.10	Choice and decision making	<ul style="list-style-type: none"> Residents participate in decisions about the services they receive. Residents are able to exercise choice and control over their lifestyle if this does not unreasonably infringe on the rights of other residents

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www.parliament.sa.gov.au Provides a link to all the pieces of South Australian Legislation referred to in this paper