Residential Services (Accreditation) Bill 2002 (Qld): Standards and Accreditation

The Residential Services (Accreditation) Bill 2002 (Qld), introduced into the Queensland Parliament on 6 March 2002, is part of a twin legislative package that will regulate the residential services industry. The other part of the package is the Residential Services (Accommodation) Bill 2002 (Qld) which will establish residency rights and responsibilities for residents and service providers.

The new legislation will cover boarding houses (offering accommodation only), hostels, supported accommodation (with additional services such as meals and personal care), and aged care accommodation units (with a range of extra services and meals provided). It will therefore apply to traditional boarding house style premises providing ‘rooms only’, and also to those facilities providing meals and/or personal care services. The South Australian Supported Residential Facilities Act 1992, which has some similar features to the new Queensland legislation, requires only those facilities providing personal care services to be licensed.

Many residents in residential services facilities are disadvantaged by physical or mental disabilities, age and infirmity, and/or low incomes and are vulnerable to exploitation and abuse by unscrupulous service providers.

The main objectives of the Accreditation Bill are to protect the health, safety and basic freedoms of residents and to encourage service providers to continually improve the way they conduct residential services. Minimum standards and living conditions for residents will be established. A residential service provider will not be allowed to conduct a residential service without being registered and accredited to the requisite level.

To achieve its aims, the Accreditation Bill will:

- establish a registration system where a residential service can be registered only if the service provider and associates are suitable persons and the premises in which the service is conducted are safe and suitable;
- establish a three-level accreditation system under which a residential service provider must provide a service in a way that meets the minimum standards of the level of accreditation sought and continues to improve; and
- include compliance and enforcement measures and review and appeal processes.

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1 INTRODUCTION

The Residential Services (Accreditation) Bill 2002 (Qld) (the Accreditation Bill), introduced into the Queensland Parliament on 6 March 2002, is part of a twin legislative package that will regulate the residential services industry. The other part of the package is the Residential Services (Accommodation) Bill 2002 (Qld) (the Accommodation Bill) which will establish residency rights and responsibilities for residents and service providers and is dealt with in the Research Brief Residential Services (Accommodation) Bill 2002 (Qld): Rights and Responsibilities No 10/02.

The new legislation will cover boarding houses (premises which usually offer accommodation only), hostels, supported accommodation (with additional services such as meals and personal care to assist disabled persons), and aged care accommodation units (with a range of extra services and meals provided). It will therefore apply to traditional boarding house style premises providing ‘rooms only’, and also to those facilities providing meals and/or personal care services. The South Australian Supported Residential Facilities Act 1992, which has some similar features to the new Queensland legislation, requires only those facilities providing personal care services to be licensed. This Brief will refer to the whole range of the aforementioned facilities as ‘residential services’.

Many residents in residential services facilities are disadvantaged by physical or mental disabilities, age and infirmity, and/or low incomes and are vulnerable to exploitation and abuse by unscrupulous service providers.

The main objectives of the Accreditation Bill are to protect the health, safety and basic freedoms of residents and to encourage service providers to continually improve the way they conduct residential services. Minimum standards and living conditions for residents will be established. A residential service provider will not be allowed to conduct a residential service without being registered and accredited to the requisite level.

To achieve its aims, the Accreditation Bill will –

- establish a registration system where a residential service can be registered only if the service provider and associates are suitable persons and the premises in which the service is conducted are safe and suitable;
- establish a three-level accreditation system under which a residential service provider must provide a service in a way that meets the minimum standards of the level of accreditation sought and continues to improve; and
- include compliance and enforcement measures and review and appeal processes.
2 BACKGROUND

Boarders and hostel residents in privately run accommodation tend to be the most disadvantaged persons in society. Many have physical or mental disabilities, are elderly, have limited incomes (often government benefits), and have poor standards of education. Some have been disenfranchised from family and isolated from friends through drug and alcohol abuse. A recent Department of Housing study found that 84% of residents in boarding houses and supported accommodation had disabilities, 66% of whom had mental disabilities. Some are only just one step from homelessness.

Thus, residents in this situation are highly vulnerable to exploitation by unscrupulous service providers and have limited means by which to seek recourse when subject to neglect, abuse, poor conditions, or inadequate services. Older persons are more inclined to want security of tenure and appropriate standards of care, yet tend to be reluctant to complain when things go wrong or are not up to standard, or fear reprisal if they do so.

2.1 LACK OF LEGISLATIVE PROTECTION

The difficulties for residents in residential services are exacerbated by the fact that the law classifies them as licensees rather than tenants which means that they are not protected by the Residential Tenancies Act 1994 (Qld), except in relation to bond money. Any rights they have are those limited rights provided under the common law. The Accommodation Bill will fill the gap in relation to tenancy type rights and obligations, such as rental payments, entry to residents’ rooms, and termination of residency agreements.

Residential services accommodation is not covered by industry standards or legislation that apply in other residency situations (such as the Retirement Villages Act 1999 (Qld), the Aged Care Act 1997 (Cth)) and it is not embraced by the Supported Accommodation Assistance Program. Thus, no legislation directly regulates the standard of residential services premises, the quality of services provided, or the suitability of persons who conduct the services. Again, the common law provides very few rights. Some local government health and safety

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2 The SAAP is a program administered by states and territories with financial assistance from the Commonwealth under intergovernmental agreements made in accordance with the Supported Accommodation Assistance Act 1994 (Cth) aimed at providing transitional supported accommodation and services to the homeless.
laws apply to boarding houses and hostels. However, those will not usually encompass important matters such as design features that are relevant to the needs of older persons (eg emergency call buttons, grab rails) who are rapidly taking up these cheaper forms of accommodation.

The concerns are highlighted by an increasing number of private aged accommodation rental complexes aimed at the elderly. These complexes are a type of boarding house premises marketed as an affordable housing alternative to a retirement village or to difficult to get public housing for older persons wishing to maintain a level of independence, have more social contact, and better access to services. Residents normally pay around 80% of their pension and other allowances in rent but usually do not pay bonds and other similar charges. Services provided may include three meals a day served in the dining area, a weekly linen service, access to emergency nursing care, and other personal services.

These complexes tend to operate outside the type of residential aged care services accredited and regulated by the Commonwealth Aged Care Act 1997. As state government funding is not provided, there are no similar government regulations or industry standards of the kind that apply to retirement villages (eg the Queensland Retirement Villages Act 1999).

2.2 SOME CONCERNS

It is understood that a common issue concerning residents is the quality of the meals provided, particularly the nutritional content, when residents have limited funds to meet outstanding dietary needs. It is not unknown for service providers to cut costs by serving lower quality food.

While many operators in the residential services sector are caring and ensure their residents’ well being, there are others that do not. In June 2001, the Courier-Mail reported that it had visited ‘several squalid boarding houses in Brisbane’. Many good service providers have expressed a desire that standards be improved to improve the image of the industry.

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4 Cynthia Tupico, p 23.

5 Margaret Wenham, ‘Cheap Digs “a disaster”’, Courier-Mail, 23 June 2001, p 1.

During 2000, Mr Michael Kaiser MP, the former Labor Member for Woodridge, informed the Queensland Parliament, on at least two occasions, of his concerns about aged care accommodation complexes, calling for regulation of the industry.\(^7\)

The reforms incorporated in the Accreditation Bill respond to findings that many people with disabilities have been living in squalor in residential services premises although they pay a large amount of their income to the service provider.\(^8\)

### 3 MOVEMENTS TOWARDS REFORM

In 1998, in response to lobbying from a number of groups pressing for more protection of boarders and lodgers, the Queensland Government established a hostel industry development unit (HIDU) within the Office of Fair Trading. The HIDU worked with private boarding house operators to improve standards of the boarding facilities and support services to residents.\(^9\) Among its achievements was the development and evaluation of an agreed set of industry standards.

In 2000, a Hostel Industry Taskforce was formed to carry on the work of the HIDU. In mid 2001, a Residential Services Strategy Implementation Unit (RSSIU) was established within the Department of Tourism, Racing and Fair Trading to progress the reform work that had been initiated.

As a result of Taskforce recommendations, the Government commenced legislative reform of the private accommodation sector, including aged rental accommodation. As noted above, the Accreditation Bill is one part of the twin legislative package under which all service providers will have to comply with registration and accreditation requirements and have their operations subject to external monitoring. The Accommodation Bill is the other component.

During the development of the Accreditation Bill, the RSSIU consulted members of a joint advisory committee, comprising representatives from residential services

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\(^9\) Cynthia Tupico, p 23.
industry bodies, community groups, government, and resident advocacy associations.\textsuperscript{10}

It is believed that the package will cover around 10,000 residents living in more than 500 residential services accommodation premises across the state. That can be roughly broken down as follows –

- 134 supported accommodation, housing 2,500 persons (with approximately 4-130 residents per premises);
- 368 boarding houses, containing 5,500 residents (4-100 per premises);
- 32 aged care rental accommodation, housing 1,000 residents.\textsuperscript{11}

4 RESIDENTIAL SERVICES (ACCREDITATION) BILL 2002

The Minister for Tourism, Racing and Fair Trading, the Hon Merri Rose MP, has commented that Queensland will be the first state to require mandatory accreditation of residential services service providers and minimum standards for the industry.\textsuperscript{12} It is expected that the Accreditation Bill will commence on 1 July 2002 and will be administered by the Department of Tourism, Racing and Fair Trading.

The Minister stated that the initial focus will be on assisting service providers to meet standards, such as building standards and fire safety standards. Later, the emphasis will turn to compliance and enforcement with sanctions that will include loss of accreditation and possible closure of the premises if the service provider ignores the requirements to meet relevant standards.\textsuperscript{13}

When introducing the Accreditation Bill into the Parliament, the Minister noted that the scheme implemented by the Bill was not intended to duplicate or replace existing regulatory regimes, but to complement them. It will recognise the role and

\textsuperscript{10} Queensland Government, Department of Tourism, Racing and Fair Trading, Residential Services Strategy Implementation Unit, ‘Registration and Accreditation’, \emph{Residential Services Update}, Issue 1, December 2001, p 1.

\textsuperscript{11} Hon Merri Rose MP, ‘Accreditation, Minimum Standards for Hostels, Boarding Houses.’

\textsuperscript{12} Hon Merri Rose MP, ‘Accreditation, Minimum Standards for Hostels, Boarding Houses.’

\textsuperscript{13} Hon Merri Rose MP, ‘Accreditation, Minimum Standards for Hostels, Boarding Houses.’
expertise of local government concerning compliance with building and fire safety standards.14

Under the new laws, it will be unlawful for a person to operate a residential service without being registered and accredited to the appropriate level. Under the proposed scheme, registration will be the first step, following which the service provider must apply for accreditation at the relevant level for the service he or she wishes to provide.

4.1 SOME DEFINITIONS

Both the Accreditation Bill and the Accommodation Bill regulate ‘residential services’ which is defined for the purposes of both pieces of legislation in the Accreditation Bill.

Clause 4 states that a service is a residential service if its main purpose is to provide accommodation for at least four residents, in return for rental payments, with each resident having a right to occupy one or more rooms but no right to occupy the whole of the premises.

If the above criteria are satisfied, a service is still a ‘residential service’ in the following situations –

- where the resident does not occupy a self-contained unit, and shares other rooms or facilities in the premises (eg bathroom, kitchen, dining room) with other residents; or
- where the resident does occupy a self-contained unit but is provided with a food service or personal care service; or
- where the service is prescribed under a regulation to be a residential service.

A number of types of accommodation services are excluded from the Bill. Clause 4(5) should be consulted for the full range of excluded residential services. Many are those which are already covered by other legislation (eg an aged care service conducted according to the Commonwealth Aged Care Act 1997) or under accreditation schemes.

Some exemptions appear similar to, or reflect to some extent, those recommended in the Rules for Renting in Queensland Report which is an evaluation of the first year of the operation of the Residential Tenancies Act undertaken by the Board of Directors of the Residential Tenancies Authority (the Rules for Renting Report).

The types of facilities the Report considered should be excluded from residential services legislation include –

- private non-commercial boarding arrangements (e.g. renting out rooms to a student) or where rooms are occupied by a family member because they would be difficult to regulate or warrant regulation unless there were a number of potential tenants (the issue about family members is reflected in the definition of ‘resident’, as described below);

- a service which provides holiday accommodation (e.g. backpacker hostels, motels) which are aimed at holiday makers requiring very short stays (e.g. overnight) rather than a longer term residency (see cl 4(5)(g) of the Bill);

- nursing homes or hostels defined and regulated under the Health Act 1937 and hospitals defined and regulated under the Private Health Facilities Act 1999 and mental health services covered by the Mental Health Act 2000, because the primary reason for providing the accommodation is the person’s need for health and ancillary services (see cl 4(5)(b), (c) and (d)). It was also recommended in the Report that prisons and other premises under the Corrective Services Act 1989 be excluded as it would be undesirable for them to be included in residential tenancies type legislation;

- temporary refuge accommodation providing overnight crisis care to battered women or homeless young persons and accommodation supplied under the Supported Accommodation Assistance Program for the first 13 weeks of occupation because of its extremely temporary nature (cl 4(5)(i) deals with this to some extent).

The Rules for Renting Report also considered that primary and secondary educational institutions be excluded and noted that further consideration was needed to determine whether student accommodation with formal links to tertiary institutions should be covered. Clause 4(5)(e) of the Accreditation Bill exempts services conducted as part of, or under an agreement with, a school or other educational institution mainly to provide accommodation to students or employees.

The Tenants’ Union of Queensland (QTU) has commented that the Bill should include accommodation such as Aboriginal Hostels, and even be extended to cover all residents not covered by the Residential Tenancies Act. It was considered that protection should be based on the type of tenure of the resident rather than how the premises are described.\(^\text{15}\)

Clause 5 defines a ‘resident’ as a person who occupies one or more rooms as their only or main residence. It does not include the service provider or their relatives.

(note that the *Rules for Renting Report* recommended that rooms used by the service provider’s immediate family be excluded) or employees. A ‘service provider’ is either the person registered as such under the Accreditation Bill, or, if not so registered, the person conducting the relevant service: cl 6.

### 4.2 REGISTRATION

The proposed registration requirements are set out in **Part 2** of the Accreditation Bill (cls 9-33).

It is an offence (maximum penalty being $15,000) for a person to conduct a residential service in premises unless the service, the premises, and the person are registered under the legislation.

However, residential services operating prior to the commencement of the legislation will have two years to apply for registration unless it also provides a personal care service (such as a supported accommodation facility). In that case it has just one year to seek registration. A ‘personal care service’ is defined as a service regularly providing residents with help in things such as attending to personal hygiene (eg going to the toilet or bathing); dressing; eating; managing medication; helping with movement; and providing financial assistance.

The application for registration must be accompanied by –

- a building compliance notice for the premises that is less than 12 months old; and
- a prescribed fire safety document;
- signed consents by the applicant and their associates to a criminal history check; and
- the requisite fee.

The chief executive (CE) of the Department of Tourism, Racing and Fair Trading must register the service and issue a registration certificate if satisfied about the building compliance notice and the prescribed fire safety document and that the applicant and each associate are suitable persons.

Note that registration can be cancelled at any time where the CE is satisfied that the service provider is no longer suitable; the premises do not meet building or fire safety requirements; or the service is no longer being conducted.\(^{16}\)

\(^{16}\) Note that ‘show cause’ and review procedures apply to afford procedural fairness to the service provider.
4.2.1 Suitability of Premises (Part 2, Divisions 5-6)

To satisfy the CE about the suitability of the premises, the application must be accompanied by a building compliance notice and a prescribed fire safety document for the premises.

A building compliance notice is a notice issued by the relevant local government stating that the premises comply with prescribed building requirements. Note that a Regulation may prescribe building requirements for the premises for the purposes of ensuring that they are safe and suitable for use in providing accommodation in the course of the residential service. Such a Regulation may be necessary because general legislative building requirements may not be sufficiently stringent to safeguard smaller premises. The Bill sets out a process for obtaining a building compliance notice and for seeking review of an adverse decision. Local governments will be permitted to charge a reasonable fee for providing this service.

In relation to existing residential services, the transitional provisions state that the application for registration does not have to be accompanied by a building compliance notice. Instead, it must be accompanied by a notice from the local government, issued within the previous 12 months, stating the extent to which the premises do comply with prescribed building requirements. The caveat is that the CE cannot register the service unless satisfied that the premises are safe and substantially comply with those building requirements. If there is substantial, but not full, compliance, the service can be registered subject to conditions about improving the premises to achieve full compliance within a certain time. The intention of the foregoing provisions is to alleviate the burden on existing residential services in meeting the full building compliance measures almost immediately when many, while basically safe and physically sound, may need costly improvements to ensure full compliance with prescribed building requirements.

The application must also be accompanied by a prescribed fire safety document for the premises (whether the premises are new or existing).

For a budget accommodation building –

- if a development application has been made to undertake building work requiring development approval under the Integrated Planning Act 1997 (Qld) and that development application included a fire safety management plan, the prescribed fire safety document will be a copy of the decision notice approving the development application, provided it was issued within the previous 12 months;

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17 Residential Services (Accreditation) Bill 2002 (Qld), Explanatory Notes, p 13.

18 Residential Services (Accreditation) Bill 2002 (Qld), cls 189-190.
• otherwise, the prescribed fire safety document will be a fire safety management plan in accordance with the amendments proposed for the Fire and Rescue Service Act 1990 (Qld).

For other premises, the prescribed fire safety document will be a fire safety management plan complying with any regulatory requirements.

The above measures attempt to avoid duplication of requirements contained in other legislation and to ensure that operators of budget accommodation do not have to meet more than one fire safety standard.

4.2.2 Suitability of Applicant and Associates (Part 2, Division 4)

The applicant and any associates must be suitable persons. An associate is a person who takes part in the management of a residential service (eg a person employed to make agreements with residents) but not a person who is a mere caretaker or just collects rents.

The Bill sets out the bases for deciding suitability. As well as needing prescribed qualifications in the field and financial viability, the CE may also have regard to the criminal history of the service provider and associates to ensure that there is no history of offences involving serious fraud or dishonesty or acts injurious to the public etc. Of particular interest is whether there has been a conviction under residential services legislation (eg the Accommodation Bill) or similar legislation of another jurisdiction. The CE has a residual discretion to decide that the person is nevertheless suitable, despite the criminal history, if there are exceptional circumstances.

To assist in determining such matters, the CE may obtain a criminal history report, provided the person being checked has provided the requisite consent. If the person does not consent, the CE must decide that the person is not suitable. The Bill sets out a procedure governing the use of the information in order to safeguard the rights of the person about whom the history is obtained (eg destruction after use). In addition, the person concerned must be given a reasonable opportunity to make representations about the information before it is used in the decision making process.

The Explanatory Notes state that the criminal history provisions seek to protect persons who are vulnerable and that the public interest in that objective outweighs any perceived infringement of the rights and liberties of the individual. It goes on to note the relevant checks and safeguards that control the use of the information.19

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4.3 ACCREDITATION

Applying for accreditation of the service will be the next step the service provider must take following registration – generally six months after the service is registered (the ‘due date’ unless extended). Accreditation will be governed by Part 3 (cls 34-60) of the Bill. There are three levels of accreditation and the level of accreditation necessary depends on the type of services provided. The process aims to ensure that services comply with agreed industry standards while encouraging continuous quality improvement. Those industry standards will be set out in a Regulation and will be a blueprint for good practice.20

All residential services must be accredited to at least level 1. If level 1 accreditation is not obtained by the due date, registration is automatically cancelled. If the service provider provides food services, it must also be accredited at level 2. If it provides a personal care service, it must also be accredited at level 3. Thus, it might be necessary for a service provider to be accredited at more than one level (eg level 1 and level 3). It will be an offence to provide a service that has not received accreditation (maximum penalty being $1,500). Accreditation generally remains in force for up to three years. Transitional arrangements for existing residential services are mentioned below.

4.3.1 Level 1 Accreditation – Accommodation Service

Level 1 accreditation will be compulsory for all residential services, even those offering just accommodation. Level 1 accreditation criteria will cover –

- the extent which the service provider recognises and observes residents’ rights (eg right to privacy, right to make a complaint);
- the standard of registered premises and facilities – linked to registration requirements and will encompass the provision and condition of things such as laundry facilities, the state of the bathroom and bedrooms etc;
- the way the service is managed and conducted, including applying current business practices, staff training, human resource management etc; and
- any other relevant matters prescribed under Regulation.

However, an existing residential service that provides accommodation only will not have to seek level 1 accreditation until four years after the legislation commences (ie until July 2006).

20 Hon Merri Rose MP, Second Reading Speech, p 370.
4.3.2 Level 2 Accreditation – Food Service

Residential services providers who wish to provide a food service (ie regular provision of meals to residents) must also meet the level 2 criteria for accreditation which require a consideration of –

- the quantity, quality, variety and the nutritional value of the food provided;
- the preparation, delivery, service and storage of the food; and
- any other relevant matter prescribed under Regulation.

An existing residential services of this type will not have to seek accreditation until three years after the legislation commences (ie until July 2005).

4.3.3 Level 3 Accreditation – Personal Care Service

Residential services providers who wish to provide personal care services must have accreditation at all three levels.

The standards for level 3 accreditation cover –

- the extent to which the service provider provides the service in a way that meets the residents’ individual needs, protects their interests, and maintains and enhances their quality of life;
- the suitability of the staff who will provide the relevant service; and
- any other relevant matter prescribed under Regulation.

An existing residential services of this type will be the first of the existing services to have to apply for accreditation and that will be two years after the legislation commences (ie by July 2004). This is also the case if both a food service and personal care service are already being provided.

4.3.4 Accreditation Process (Part 3, Division 4)

The approach to accreditation is one which the Minister for Fair Trading hailed as recognising the unusual intersection of private sector business interests with the delivery of human services. The Minister noted that the accreditation scheme will attempt to meet the needs of a ‘for profit’ industry that the Government cannot afford to lose, as well as community expectations about the care of aged and disabled persons.21 The process is set out in the Appendices to this Brief.

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21 Hon Merri Rose MP, Second Reading Speech, p 370.
It may be that benefits will accrue to accredited services such as improved competitiveness against similar but non-accredited services and being able to attract investment.

**Step One – Self Assessment**

The first thing a service provider has to do before applying for accreditation is to obtain the self-assessment material relevant to that level. The service provider should then start providing the accommodation or the food service or personal care service relevant to the accreditation level sought and use the self-assessment material to gauge whether the service is being provided in a way that meets the criteria (see above) for that level. This self-assessment may involve completing a workbook, obtaining residents’ and their families’ feedback, auditing of files etc.22

At this point, the service provider might consider developing a draft quality improvement plan setting out the steps to be taken over a specified period to improve the service so that they will be able to meet the criteria upon which the accreditation will be based once the time for external assessment arrives.

**Step Two – External Assessment**

Once the self-assessment process has ended (and by the ‘due day’), the service provider applies to the CE for a decision about accreditation to the relevant level. The time in which an accreditation application must be made can also be extended. It might be appropriate for the self-assessment material to be submitted with the application to assist the CE and the accreditation unit in making the decision.

Note that Part 7 of the Bill enables the CE to appoint persons who have the requisite experience or expertise or have undergone the relevant training as associated accreditation officers to assist the CE to make accreditation decisions. In practice, those officers may form the accreditation unit within the Office of Fair Trading (OFT) who will carry out the external assessment.

At an operational level it would appear that a departmental assessor, a peer assessor and a community assessor will undertake an evaluation of the residential services and inspection of the premises (eg, watching meals being served where level 2 accreditation is sought). Other assessment may involve interviewing staff, residents, family members etc, and looking at records, policies and procedures of

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the service provider.\textsuperscript{23} Those officers would formulate a recommendation to the CE to assist the decision making process.

Accreditation can be granted on \textbf{conditions}. Those might include a requirement that the service provider develop a quality improvement plan dealing with stated aspects of the service and steps to be taken for improvement. Another condition might be for the service provider and/or associates to undergo training.

If the service is accredited, an \textbf{accreditation certificate} is issued.

If the accreditation application is \textbf{refused}, the provision of the relevant service must stop.

The CE has the power to \textbf{amend} the service provider’s accreditation at a particular level in certain specified circumstances (eg breach of an undertaking given under the Accreditation Bill). Accreditation may also be \textbf{cancelled} in similar but more serious circumstances, or if the service provider stops providing the relevant service for at least one month. In both situations, the service provider has the opportunity to show cause.

The Accreditation Bill makes provision for changes such as a person wanting to be registered as a service provider for a registered service; ceasing to be a service provider or to conduct the service; seeking to provide a service from another premises etc (see \textbf{Division \textit{5}}).

Accreditation has effect for a maximum of three years and must then be \textbf{renewed}.

All accreditation decisions can be reviewed by the Queensland Building Tribunal after an internal review process.

\section*{4.4 APPOINTMENT OF ADMINISTRATOR}

\textbf{Part 6} of the Bill allows the Queensland Building Tribunal (on application by the CE) to appoint an administrator to a registered service. It is understood that this would only occur in quite exceptional circumstances where it is necessary to ensure the health and safety of residents, an example being where the service provider is a sole operator and leaves the premises and there are no alternative options.\textsuperscript{24} Depending on the nature of the services usually provided and the needs of the particular residents concerned, there might be a real need for a person to be appointed urgently to continue to provide those services.

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\textsuperscript{23} See RSSIU, 'Registration and Accreditation', \textit{Residential Services Update}, p 3.

\textsuperscript{24} Hon Merri Rose MP, Second Reading Speech, p 371.
The *Explanatory Notes* state that the procedure is appropriately limited and controlled, including restrictions placed on the Tribunal’s discretion to appoint.25

Before applying to the Tribunal for an order that a particular person be appointed as an administrator, the CE must have considered other alternatives and may consult with the service provider, residents, the disability services department or another entity.

The Tribunal must conduct a hearing before making a decision and must be satisfied of two things before making the order of appointment –

- that the appointment is **reasonably necessary to protect the health or safety of the residents** concerned, taking into account a number of matters including the services usually provided; the likely consequences for residents if the service is no longer provided or provided properly, having regard to the capacity of the residents to look after their own interests; and

- that the proposed administrator is **suitable and eligible** for appointment after considering matters such as the services that will need to be provided; the person’s criminal history, expertise and experience etc. Some persons (eg corporations) are ineligible for appointment.

The limits on the appointment are set out in the Bill. The appointment cannot exceed three months, unless extended. The function of the administrator is to provide the services that the service provider has agreed to provide and they must be delivered in accordance with the terms of the appointment. The administrator is at all times subject to the direction of the CE and must report and produce records as required.

Powers the administrator will have include being able to go anywhere and use any facilities on the registered premises, other than in a resident’s room. However, the administrator will be able to enter a resident’s room in the same way that a service provider is able to under the Accommodation Bill which sets out the limited circumstances in which entry may take place (such as to provide an agreed service to a resident) and the procedure that must be followed in doing so.

It will be an offence for a person, without reasonable excuse, to obstruct an administrator in exercising his or her powers.

In addition, the administrator may give written notices to residents requesting payment of rent (to the extent reasonably required to carry out the administrator’s functions) to the administrator rather than to the service provider and the accommodation agreement is taken to be amended accordingly. Note that the amounts received may be applied only in carrying out the administrator’s functions

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and any excess must be paid to the service provider. If the resident fails to pay rent, the administrator can take the same action as the service provider can under the Accommodation Bill to require remedy of the breach and to issue a notice to leave if the breach is not remedied.

The administration costs are to be met by the service provider. A further safeguard for service providers may be the provision for seeking compensation from the CE for any loss or damage incurred because of an exercise of the administration powers. This would occur via court proceedings.

4.5 Monitoring, Enforcement and Compliance

Part 8 will provide for monitoring and enforcing compliance with the legislation by allowing for the appointment of authorised officers and conferring upon them relevant powers necessary for carrying out those functions.

Part 9 sets out the compliance process that will apply in the case of a contravention or possible contravention of the legislation. It will include provision for the CE to seek an undertaking from the service provider not to continue or repeat the contravening act or omission. If the situation is more serious in that it appears that the contravention will be likely to be repeated, the service provider can be given a compliance notice seeking rectification. If that notice is not obeyed and no reasonable excuse is given, an offence is committed.

The sanctions that may follow include amendment or cancellation of accreditation or registration. Closure of the premises would occur, however, only in rare circumstances where there is a serious risk to the health and safety of residents and all other avenues have been pursued. The main focus, particularly initially, will be to assist service providers to comply with the relevant standards.

4.6 Reviews and Appeals

A number of registration and accreditation decisions will be reviewable decisions. The process for obtaining reasons, seeking internal review and, if not satisfied, appealing to the Queensland Building Tribunal, are set out in Part 10.

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26 Hon Merri Rose MP, Second Reading Speech, p 370.
4.7 REPRISALS

Under **Part 12** of the Bill, protection will be given against reprisal to people who make a complaint to the CE about the conduct of a residential service, or who provide information about a possible offence to an appropriate person. Any person who takes reprisal action will commit an offence and also be liable in damages to any person who suffers consequent detriment. These provisions seek to address the concern that residents have about being evicted or otherwise adversely affected because they have made a complaint about a service or facility.

5 SOUTH AUSTRALIAN LEGISLATIVE FRAMEWORK

South Australia is possibly the only jurisdiction to have comparable legislation. The *Supported Residential Facilities Act 1992* (the *SRF Act*) establishes standards for the provision of personal care services in supported residential facilities in that state. It requires only those facilities that provide personal care services in addition to accommodation to have a licence. There are no accreditation requirements.

Supported residential facilities are premises where, for monetary or other consideration, residential accommodation is provided together with personal care services. They do not receive government funding and are aimed at older persons and those with disabilities. ‘Personal care services’ have a similar meaning to those services provided under the Queensland Accreditation Bill (eg nursing care; help with bathing, dressing, eating etc; management of medication; management of personal finances). The *SRF Act’s* application to boarding house type facilities that offer just accommodation is peripheral only, as its emphasis is on facilities that provide personal care services in addition to accommodation. The Accreditation Bill, however, applies to all residential services facilities, even where only accommodation is offered.

The *SRF Act* aims to recognise and protect the rights of residents; ensure that residents and prospective residents have access to necessary information about the facility; to regulate the responsibilities of service providers; and to ensure accountability (s 6).

Any disputes (eg about the services, the contract, or the legislation) between the proprietor of the facility and the resident is taken first to the licensing authority (usually the local council) which has power to attempt to conciliate the matter, make recommendations, or failing that, to make relevant orders. Decisions or orders of the licensing authority may then be appealed to the District Court.

The *SRF Act* provides for investigation and prosecution of relevant offences and for the issuing of default notices to the proprietor to require that action be taken to fix identified problems within a particular timeframe.
5.1 **PRINCIPLES**

The *SRF Act* sets out a list of principles to be observed in the management and administration of facilities (s 7). Those include residents’ entitlement to high quality care, choice of doctor or other health service provider, and to an informed choice in the provision of appropriate care; that services should provided in a safe physical environment; and residents’ entitlement to independence and freedom of choice, freedom from exploitation and freedom of comment.

5.2 **LICENSING SCHEME**

A licensing scheme is established by Part 4 of the *SRF Act*. Premises must be licensed to provide supported residential services or an offence is committed. Premises used as boarding houses or lodging houses (ie to provide accommodation only) are not required to be licensed. The licence operates for up to two years and must then be renewed.

The licensing authority (the relevant local council) must consider the suitability of the applicant to hold a licence which requires regard to whether the applicant is a fit and proper person; the applicant’s proposals about the management and staffing of the facility; the ability of the applicant to fulfil their legislative obligations; and any other relevant matters.

The suitability of the premises must also be considered, having regard to the physical standards of the building, furnishings, fittings and equipment; the design, layout and repair of the premises and routine maintenance arrangements. The authority must look at the extent to which the premises accord with Building Code of Australia standards.

The licensing authority must also consider the quality and scope of personal care intended to be given; the qualifications of the operators, managers and staff.

Note also that if it appears to the licensing authority that the applicant would not administer the facility in accordance with the Principles mentioned above, the licence must not be granted. Licences can be subject to conditions imposed by the licensing authority or by regulations.

The licensing authority can cancel a licence on similar grounds to those on which registration can be cancelled under the Queensland Accreditation Bill such as the licensee no longer being a fit and proper person, or the state of the premises renders it unsuitable as a supported residential facility.

Cancellation may occur also if the facility is not administered in accordance with the abovementioned Principles; for serious irregularities in management or provision of care; for failure to provide services; or for negligent or improper
conduct having an adverse affect on a resident. Pending cancellation, the licensing authority may impose conditions to protect the residents’ interests.

Note that the decisions made by the licensing authority can be taken on appeal to the District Court.

5.2.1 Administrator

The licensing authority may appoint an administrator of the facility after the cancellation of the licence, or before it takes effect if the licensing authority believes that imposing conditions on the licence holder would not adequately protect the interests of the residents. In contrast to the requirements in the Queensland Accreditation Bill, it appears that the licensing authority has the discretion to appoint an administrator without applying to a tribunal and that there are no criteria set down for determining whether the appointment is necessary to protect the health or safety of residents, or whether a person is suitable and eligible for appointment.

Once appointed, the administrator has full and exclusive power to manage the facility and care for residents. As under the Queensland Accreditation Bill, expenses are to be met by the proprietor of the facility. There appear to be no real confines upon the administrator’s powers that appear to found in the Accreditation Bill. The safeguards on the appointment under the SRF Act are that the administrator has to regularly report to the licensing authority and the appointment will last, at the most, for six months from the date on which the licence was cancelled, at which time the administrator has to fully account to the licensing authority and the proprietor for his or her management of the facility. If there is a dispute about the administrator’s actions, application can be made to the District Court for resolution.

5.2.2 Rights of Residents

Insofar as the SRF Act sets out rights and obligations of residents in relation to contracts relating to accommodation in the facility, these are dealt with in the accompanying Research Brief Residential Services (Accommodation) Bill 2002 (Qld): Rights and Obligations No 10/02.

The SRF Act makes provision for ensuring that persons in charge of the facility make reasonable attempts to obtain any additional services that a resident may need, including residents of a facility where only accommodation is provided (i.e. not one licensed under the SRF Act).
5.2.3 Facilities and Safety

The Supported Residential Facilities Regulations 1994 (SA) establish requirements for the facilities and safety of the premises. They deal with matters such as bedrooms, the state of bathrooms (eg need for grab rails, hot water etc), proper access and egress including handrails and ramps etc, storage, cleanliness and maintenance, food hygiene, laundry and fire safety.

5.2.4 Standards of Care

The SRF Act establishes standards of care that a proprietor must ensure are observed in relation to –

- privacy, dignity and respect regarding residents’ personal property and carrying out personal functions;
- maintenance by residents of personal hygiene;
- managing of medication;
- nutrition and variety of food and drink, taking into account the residents’ dietary needs;
- assistance to facilitate mobility of residents;
- residents’ participation in activities;
- notification to a medical practitioner and the resident’s representative about deterioration or other events that impact adversely upon the resident and other matters;
- encouraging or assisting residents to manage personal finances;
- keeping records.

5.2.5 Management and Staffing

The abovementioned Regulations also set out the responsibilities of managers of the facility and staffing levels for particular types of facilities such as nursing homes.

6 RESPONSES TO THE QUEENSLAND ACCREDITATION BILL

Industry has raised concerns that the measures that will be required to improve standards for accreditation will be costly and may force closures, thus undermining the very purpose the Bill wishes to achieve – protection of vulnerable residents who have few, if any, accommodation alternatives. In response, the Queensland Government has approved development of a loan product by the Department of
Housing that will be available to those seeking to undertake capital repairs and improvements to premises to meet registration and accreditation standards. The *State Housing Act 1945* will have to be amended before this can happen.\(^{27}\) In addition, the implementation of the legislation will be staged over a four-year period with residential services providing personal care services being the first to have to seek registration and accreditation.

In recognition of the challenges that many service providers will face, the Government has organised a number of practical measures to assist such as subsidised training courses for employees, managers and accommodation owners and workshops for industry to provide more detailed information about the standards and accreditation framework.\(^{28}\)

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APPENDIX A – MINISTERIAL MEDIA STATEMENT

Hon Merri Rose MP, Minister for Tourism, Racing & Fair Trading

6 March 2002

Accreditation, Minimum Standards for Hostels, Boarding Houses

Queensland’s Office of Fair Trading will have the power to close hostels, boarding houses and aged rental facilities which fail to meet strict safety and resident care standards under legislation introduced to Parliament today.

Fair Trading Minister Merri Rose said Queensland would be the first state in Australia to require mandatory accreditation of residential services accommodation providers and minimum standards for the industry.

Ms Rose said legislation to boost industry standards consisted of two Bills the Residential Services (Accreditation) Bill, to be administered by the Department of Tourism, Racing and Fair Trading and Residential Services (Accommodation) Bill, administered by the Residential Tenancies Authority.

“The new laws will protect about 10,000 vulnerable people living in more than 500 supported accommodation, boarding houses and aged rental complexes across the state,” she said.

“The legislation will provide minimum standards for living conditions, provide residents with rights, protection from arbitrary eviction and a dispute resolution process and has been welcomed by industry and community groups.”

The new laws will cover:

- 134 supported accommodation housing 2500 people (ranging from 4-130 residents per premises). 93 per cent in SEQ (35 per cent Brisbane, 25 per cent Ipswich/Brisbane Valley; 24 per cent Toowoomba);

- 368 boarding houses – 5500 people (housing 4-100 plus). 87 per cent SEQ (Brisbane 81 per cent); and

- 32 aged rental – 1000 people (2500 more beds being developed in the next 12 months).

Ms Rose said the crackdown started with supported accommodation providers, who would be required to meet registration requirements by the end of year one and accreditation standards within two years.

“To be registered, operators will have to comply with minimum fire and physical building standards, certified by local government,” she said.
“Following registration, they will seek accreditation from a special unit to be established within the Office of Fair Trading. Accreditation will be granted for a maximum three years.

“Initially, the focus will be on helping operators meet standards. Later it will be on compliance enforcement. Sanctions will include loss of accreditation and possible closure of premises if operators ignore their requirements.”

“The Government has been working since 1998 to improve the standards and care in the sector, and the quality of life of residents,” Ms Rose said.

"Many of the people running these residential services are kind and caring, but we need to regulate to ensure all services meet standards we would expect of services providing shelter to vulnerable people.

“Recent research underlines the importance of regulating the industry to protect some of our most vulnerable Queenslanders.”

Ms Rose said the Department of Housing found 84 per cent of residents in boarding houses and supported accommodation had disabilities.

"Of these, 66 per cent have a psychological, psychiatric or intellectual disability,” she said.

"This reinforces the importance of our moves to protect residents.

"For many residents, supported accommodation is the last resort before homelessness.”

Inquiries: David Smith 3225 1005 / 0409 496 534 or Harold Thornton 3225 1212
APPENDIX B – THE ACCREDITATION PROCESS

- Operator identifies services provided and level of accreditation required
- Operator conducts a self-assessment comprising:
  - completion of self-assessment workbook with participation by staff
  - obtaining feedback from residents, families and others
  - audit of files and collation of documents
  - self-assessment is submitted with application for accreditation

- Develop Quality Improvement Plans to meet accreditation standards (identified through self-assessment)
- Undertake improvements identified in the Quality Improvement Plan
- Accreditation body may provide information regarding the development of improvement plans

- Evaluation by a team of 3 comprising departmental assessor, peer assessor and community assessor
- Desk audit involving a review of workbook, files and documents including records, policies and procedures
- Site inspection of premises
- Interviews with staff, residents and family, and other stakeholders
- Assessment team assesses compliance eg. met, partially met, not met etc for each standard

- Assessment team makes recommendation to Chief Executive
- Accreditation may be granted for up to 3 years depending upon the level of compliance with standards
- Decision on timing and format of reporting during the agreed accreditation period relayed to the operator
- Development of Quality Improvement Plan to address issues raised in accreditation report
- Accreditation and registration decisions can be appealed
- Monitoring of progress against Quality Improvement Plan
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