

28 October 2022

Retirement Villages Act Review
Consumer Affairs Victoria
GPO Box 123
Melbourne VIC 3001

Dear Review Panel

Review of the Retirement Villages Act 1986

National Seniors Australia welcomes the opportunity to make a submission to the Review of the Retirement Villages Act 1986. As Australia's peak body for older Australians, National Seniors hears regularly from older Australians frustrated at the lack of consumer protections in retirement villages.

National Seniors has shared its views on retirement villages in response to several reviews of retirement villages legislation undertaken across Australia, including:

- [Review of South Australian Retirement Villages Act 2016](#) – South Australia (2021)
- [Review of the Retirement Villages Act 1999](#) – Queensland (2017)
- [Inquiry into the Retirement Housing Sector](#) – Victoria (2016)
- [Review of the Retirement Villages Act 2012](#) – ACT (2015)
- [Review of the Queensland Retirement Villages Act 1999](#) - Queensland (2012)

While retirement village legislation is a state and territory responsibility, there are common issues and complaints across jurisdictions leading to several consistent changes to retirement village laws over time.

National Seniors has long held the view that retirement villages legislation does not adequately protect older Australians. In fact, our increasing view is the existence of retirement villages legislation gives older Australians a false sense of protection.

As a rule, National Seniors has not actively promoted retirement villages as a suitable downsizing option for older Australians, despite the possible benefits of this type of tenure. Retirement villages have the potential to give older Australians a comfortable lifestyle option, which is more suitable as people age, but this promise has been lacking because the legislation has enabled practices that are detrimental to the financial wellbeing of seniors.

It has led National Seniors to consistently promote a strong "buyer beware" approach to any communications we have made regarding retirement villages. This is disappointing given that retirement housing could play a stronger role in addressing some of the factors fuelling the housing crisis.

A large part of our wariness of retirement villages is the lack of transparency regarding contracts, especially with regards to management fees, deferred management fees, entry/exit fees and refurbishment fees.

As a sector that relies on future sales, National Seniors finds it particularly infuriating that most retirement village operators debase the good name of the sector by continuing to sell retirement villages using a model that undervalues entry costs and obscures exit costs as a means of luring in unsuspecting seniors into the retirement village setting. Many are later “hit” with fees and charges - the full cost of which is not easy to understand without costly legal and financial advice.

We are especially disappointed there appears to be a consistent problem with delays in the resale of retirement village properties, resulting in ongoing costs to former residents or residents’ family. This is particularly problematic when a resident is required to enter a residential aged care facility.

Given the current housing crisis, the lack of affordable housing and the lack of suitable housing to downsize into, it appears inexplicable that some retirement villages would struggle to resell village units within a reasonable timeframe. As the 2021 PWC/Property Council Retirement Census found, the average period to sell a unit in a retirement village in Victoria was 7.3 months. In comparison, houses in Melbourne currently sell within 2 months on average.

We suggest this demonstrates a wariness of the retirement village model among older Australians. This could be attributed, in part, to older Australians’ perceptions about the negative financial aspects of buying into a retirement village. We are concerned those who do become residents, may not have fully understood the financial implications of this move.

Many jurisdictions have recently introduced time limits for the resale of retirement village units, which National Seniors strongly supports.

- In Queensland, retirement villages legislation was amended to require the payment of exit entitlements within 18 months (although it has recently been proposed this is reduced to 12 months).
- Retirement villages in New South Wales must provide a former resident with an exit entitlement within 6 months in metropolitan areas; 12 months in other areas from 1 January 2021.
- In Western Australia, changes to retirement villages legislation will occur, requiring exit entitlements be paid within 12 months.

The variance in legislation, affecting all aspects of the retirement village experience, creates unnecessary complexity and inefficiency for both seniors and operators.

While such a move is out of scope of the current review, our firm view is that the Victorian government should negotiate with other state, territory and the federal governments to enact nationally consistent and strengthened retirement village legislation in the near future. We know the retirement village sector itself supports such a move, because it would reduce the costs of compliance and allow operators to more easily deliver projects across state and territory borders.

Regardless, we set out our responses to some of the questions posed within the review of Retirement Villages Amendment Bill (‘the Bill’) for your consideration.

Response to review questions

1. Are the proposed guiding principles clear and easily understood? Are any refinements needed to the proposed principles?

Yes, however these principles deal only with the people after they become a resident. We suggest that an additional principle should be added that addresses specifically the behaviour of village operators when selling or reselling a retirement village unit.

e.g. Village operators should act in a transparent manner and in good faith towards potential residents and existing residents when engaging in the sale and resale of retirement village units.

3. The changes to exit entitlement payments are intended to support residents and their families when finalising their exit from a village by reducing delays and improving certainty.

a. Is the process proposed in the Bill clear and appropriate?

b. Can you foresee any unintended consequences or implementation issues?

National Seniors supports a shorter timeframe than what is proposed. The legislation should be aligned with best practice which is in operation in New South Wales - within 6 months in metropolitan areas; 12 months in other areas.

It is unconscionable an operator would be given 12 months to sell a property in a metropolitan area after the resident gives vacant possession of their unit. 12 months provides no incentive for an operator to act quickly to sell a property.

Furthermore, the requirement to pay an exit entitlement at the earliest of:

- the time determined under the retirement village contract
- the time agreed between the parties
- 12 months after the resident gives vacant possession of their unit,

is flawed.

We do not foresee any situation where an operator would include a shorter period than 12 months in the retirement village contract or would agree to a shorter time period, making reference to the first two points redundant.

We also believe that it is onerous to expect a vacating resident to be required to go to VCAT to get an order for the payment of an exit entitlement by an operator if it has not been paid in the specified period.

It should be mandatory for an operator to pay the exit entitlement on the day after the specified period, with the operator required to apply to Chief Dispute Resolution Officer (CDRO) or VCAT for a variation if there are reasons why they cannot.

We support the obligation that an operator be required to:

- give a vacating resident a statement setting out the amount of their exit entitlement and how it was calculated
- make an aged care payment or alternative accommodation payment within prescribed periods after a resident makes a request.

4. Will the use of standard form contracts assist prospective residents to make more informed choices about retirement living? For example, will the proposed changes help residents to understand their legal obligations and costs?

Yes, there have been moves to standardise form contracts across several jurisdictions to enable informed choice, which is positive and supported.

It is important the calculation of exit entitlements are clearly and simply outlined within contracts so buyers understand the future costs.

However, it will not replace the need for legal and financial advice when deciding whether or not to enter into a contract.

We support the inclusion of penalties for breaching contract requirements, for contracts not being provided in the prescribed form, for failure to provide a copy to a resident and if contracts contain prohibited terms.

5. Are the proposed processes for contract terminations fair and will they make dispute resolution more accessible for residents and their families?

National Seniors is concerned about what would happen to an individual who has their residence contract terminated for health and safety reasons if they were not able to find a suitable alternative (aged care) residence by the date set by the CDRO.

6. Are the changes relating to capital maintenance obligations for operators and residents helpful in clarifying roles and responsibilities in villages? If not, what refinements could be made?

We support moves to require operators to report on compliance with maintenance plans, to distinguish between maintenance works and capital expenditure and to undertake works within a reasonable timeframe. Critically, there must be greater transparency from operators about expenditure on capital maintenance and replacement.

7. Will the proposed reforms to alterations and renovations support residents and operators by making it clear who is responsible for undertaking and for paying for repairs, alterations,

reinstatement and renovations?

Clarifying the circumstances in which a village operator can require a resident to pay for repairs, alterations, reinstatement, and renovations is important as this is a significant point of conflict between residents and operators.

Including a definition of “fair wear and tear” for reasonable use will help to avoid situations where residents have been unfairly charged for remedial works.

13. Are the proposed reforms sufficiently robust to address serious forms of financial harm and misconduct in the retirement village sector?

As noted already, National Seniors believes the proposed laws are deficient in several ways, most notably the requirement to buy back the property within a maximum of 12 months (it should be consistent with best practice in NSW).

Ultimately, the Victorian government should work with other state and territory governments and the federal government to enact nationally consistent and strengthened retirement village laws to the benefit of older Australians.

These laws should combine best practice laws to ensure that people entering retirement villages are protected against unfair and unconscionable contracts with incomprehensible fees and charges. There must be greater transparency between operators and residents so that older Australians can feel confident they are not being taken advantage of.

Ultimately, the retirement village market should be reformed to resemble the residential property market more closely, where owners have greater control over the private areas of their unit, including greater control over the process of reselling.

However, we expect the retirement village sector will not support these moves as it would undermine their lucrative business model.

Yours sincerely



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Chief Advocate