



Submission to the Review of the Retirement Villages Act 2012

December 2015

About National Seniors Australia

National Seniors Australia is a not-for-profit organisation that gives voice to issues that affect Australians aged 50 years and over. It is the largest membership organisation of its type in Australia with around 200,000 members and is the fourth largest in the world.

We give our members a voice – we listen and represent our members' views to governments, business and the community on the issues of concern to the over 50s.

We keep our members informed – by providing news and information to our members through our Australia-wide branch network, comprehensive website, forums and meetings, bi-monthly lifestyle magazine and weekly e-newsletter.

We provide a world of opportunity – we offer members the chance to use their expertise, skills and life experience to make a difference by volunteering and making a difference to the lives of others.

We help our members save – we offer member rewards with discounts from thousands of businesses across Australia. We also offer exclusive travel discounts and more tours designed for the over 50s and provide our members with affordable, quality insurance to suit their needs.

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Recommendations

National Seniors Australia recommends:

Issue 1: Rights and responsibilities of residents and village operators

1. National Seniors recommends the introduction of a Commissioner to ensure consistency across the retirement village sector.

Issue 2: Maintenance, Repair and Replacement of Capital Items

2. National Seniors recommends that a plain English list of what is classified as a capital item be provided to residents within the contract.
3. National Seniors recommends that the Act specify what is considered a reasonable amount of time for the resolution of a non-urgent maintenance issue.

Issue 3: Financial

4. The encompassing costs of entering, living in and leaving a retirement village should be reviewed and a full disclosure of payments and fees provided for publication by the retirement village itself or by a Commissioner.
5. A maximum accrual period for departure fees should be specified.

Issue 4: Resident Input

6. The provider of the retirement village must ensure that each resident committee (or singular representative) is aware of the responsibilities required of them.

Issue 5: Other Matters

7. It is recommended that the Act protect the rights of individuals transitioning to higher care and define the obligations of providers in protecting these rights.
8. It is recommended that residents be able to more easily terminate a contract if a resident has to move to residential care. Oversight of any contract termination should be handled by a Commissioner.

Introduction

National Seniors ACT Policy Advisory Group plays a key role in representing the Territory's over-50s age group on important topics and emerging issues. It acts as the conduit between National Seniors members within the Territory, relevant community organisations and the ACT Government.

It is estimated that in 2014 the ACT had 110,536 residents over the age of 50, which accounts for approximately 28 percent of the ACTs population¹.

Given the greater emphasis being placed on the ability to age in place, many older people within the ACT aspire to be able to retire to communities within their area. The desire to retire within a specific region is emphasized by the pre-existing networks these retirees already have in place, such as health care providers, social clubs and transportation links.

National Seniors acknowledges that *Retirement Villages Act 2012* (the *Act*) is a relatively recent legislation enacted to protect consumers and that until recently there was no *Act* in place to regulate the retirement village industry. Whilst the *Retirement Villages Act 2012* is highly commendable, and considered one of the best in the country, National Seniors welcomes the current review.

Several other Australian states are reviewing their retirement industry regulations. National Seniors believes that the ACT will maintain a high standard of regulation if it commits to ongoing consultation with residents and periodic review of the legislation.

This submission draws on information from consultations with National Seniors members from the ACT. The submission sets out a number of key recommendations for consideration, which National Seniors believes will strengthen the current legislation and further protect current and future residents.

¹ The Australian Bureau of Statistics (ABS). 2015. *3101.0 – Australian Demographic Statistics, Jun 2014. Table 58 Estimated Resident Population By Single Year Of Age, Australian Capital Territory*.

Issues and Recommendations

Issue 1: Rights and responsibilities of residents and village operators

1. National Seniors recommends the introduction of a Commissioner to ensure consistency across the retirement village sector.

It is important that those entering into a retirement village contract are aware that their best interests will be protected by a suitable body.

Many current residents feel that there is a need for a Commissioner in order to maintain consistency across the sector. Whilst the *Act* has improved consistency across the industry, a Commissioner would help to ease the concerns of current and prospective residents.

New Zealand's *Retirement Villages Act 2003* includes the appointment of a Retirement Commissioner to monitor the effects of the *Act* and increase education on retirement village issues². The *Act 2003* also provides that the Commissioner selects and maintains a list of persons who are approved for appointment to a disputes panel³.

Western Australia's *Retirement Villages Act 1992*, *Section 7A* specifies the appointment of a Commissioner⁴. *Section 8* of the *Act 1992*, identifies the functions of the Commissioner. This includes investigating matters relating to or affecting retirement villages, disseminating information and publishing reports, and providing advice to consumers on the provisions of the *Act*. It is expected that the Commissioner investigates and attempts to resolve complaints by residents and administering bodies.

Both jurisdictions require the Commissioner to make reports to the respective Minister on matters investigated by the Commissioner.

In the case of the ACT, a Commissioner could be expected to report on issues relating to or affecting retirement villages, investigate and mediate disputes between residents and administrators, and advise consumers about the *Act*. A function of the Commissioner would include annual reporting of retirement village fees, allowing for a price comparison (see Recommendation 4). The Commissioner would also provide oversight for situations where a contract is terminated on medical grounds (see Recommendation 9).

It is believed that if a Commissioner or equivalent were incorporated into the ACT's *Retirement Villages Act 2012*, there would be an increased awareness of rights and responsibilities of residents, greater understanding of contracts and centralised oversight of disputes.

² *Retirement Villages Act 2003*, Part 3: Retirement Commissioner and Statutory Supervisors, s. 36.
<http://www.legislation.govt.nz/act/public/2003/0112/latest/DLM220880.html>

³ *Retirement Villages Act 2003*, Part 4: Dispute resolution, enforcement, and penalties, s. 58.
<http://www.legislation.govt.nz/act/public/2003/0112/latest/whole.html#DLM220913>

⁴ *Retirement Villages Act 1992*, Part 2: Administration, s. 7A.
[http://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:25733P/\\$FILE/Retirement%20Villages%20Act%201992%20-%20\[04-b0-02\].pdf?OpenElement](http://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:25733P/$FILE/Retirement%20Villages%20Act%201992%20-%20[04-b0-02].pdf?OpenElement)

Issue 2: Maintenance, Repair and Replacement of Capital Items

2. **National Seniors recommends that a plain English list of what is classified as a capital item be provided to residents within the contract.**
3. **National Seniors recommends that the Act specify what is considered a reasonable amount of time for the resolution of a non-urgent maintenance issue.**

A recurring theme amongst retirement villages is the issue of what is and what is not, classified as a capital item. It is of a particular concern when the residential building of the retirement village overlaps between the *Retirement Villages Act 2012* and the *Unit Titles (Management) Act 2011*.

It is recommended that a plain English list of what is considered a capital item and, if it applies, a separate list of what is considered a capital item under the *Unit Titles (Management) Act 2011*, be included in contracts. Including a clear list of capital items within the terms of the contract ensures that the resident is aware of what maintenance is their responsibility and what the responsibility of the operator is. This would minimise confusion and enable the resident to act on maintenance issues.

Residents enter into contracts with the operator under the expectation that the fees they are paying will ensure a high standard of maintenance. However, when it is unsure about who is responsible for certain areas of maintenance disputes will often arise.

Whilst the Act provides a very structured overview of what is expected with capital maintenance, there is little clarification of what is a reasonable amount of time for a capital maintenance problem to be fixed. The case study below is indicative of what would be considered capital maintenance issues.

National Seniors believes that the contract should specify the maintenance responsibilities of operators and residents and include an appropriate timeframe for the resolution of non-urgent maintenance issues as this will improve residents quality of living.

Case Study 2.1 - Maintenance Issues

“There is a lack of upkeep of facilities especially as they were too small and expensive in the first place. In some places there has been no heating for 3 years and at others poor heating. There is poor key security, (the) doors and locks often don't work.”

National Seniors Australia Member 2015.

Case Study 2.2 – Maintenance Issues Non-urgent

“The handyman service is only available one day a week, and has a waiting list.”

National Seniors Australia Member 2015.

Issue 3: Financial

- 4. The encompassing costs of entering, living in and leaving a retirement village should be reviewed and a full disclosure of payments and fees provided for publication by the retirement village itself or by a Commissioner.**
- 5. A maximum accrual period for departure fees should be specified.**

The most frequent complaint about retirement villages are the costs, the costs of entry, cost of living within the village and exit fees.

There is no official requirement in the *Act* for the publication retirement village fees. Due to the limited disclosure requirements in the *Act* this makes it difficult for potential residents to compare fees. There have been attempts to publish information about retirement village fees in the ACT⁵, but this publication is difficult to locate, limited in its coverage and is not regularly updated. The information is likely to become out-of-date and therefore misleading.

National Seniors recommends that the *Act* require annual fees be published by a retirement village or provided to a Commissioner who would publish a comparison of fees on a publicly accessible website. This would provide greater clarity to future residents and increase competition.

With regard to departure fees, there is no specification on a maximum accrual period of the interest paid by an outgoing resident.⁶ Under the current legislation, *Division 10.3 s214 (1A)*, a departure fee is

‘an amount payable under a village contract by a former occupant of a retirement village that is calculated in relation to all or part of the period during which the former occupant has or had a residence right in relation to residential premises in the village;’

Given that average life expectancy is increasing,⁷ and so to the average residential term in a retirement village, it is important that the *Act* specify a maximum accrual period.

⁵ Department of Justice and Community Safety and Council of the Ageing (undated) *Retirement Villages in the ACT*

<https://www.accesscanberra.act.gov.au/ci/fattach/get/49007/1437019222/redirect/1/filename/Retirement%20villages%20in%20the%20ACT.pdf>

⁶ McCallugh, R. 2014. Care in Australian Retirement Villages. Retrieved from www.uws.edu.au/__data/assets/pdf_file/0006/733776/McCullagh_04.pdf

⁷ The Australian Bureau of Statistics. 2015. *Life Expectancy and Deaths Hit Historic Highs*. Media Release 12 November 2015. Retrieved from www.abs.gov.au/ausstats/abs@.nsf/latestProducts/3302.0Media%20Release12014

Case Study 3.1 - Costs and Fees

“The entry cost into retirement villages in the ACT is too expensive compared to the costs in other states. Developers indicate that this is due to the much higher costs of land in the ACT.

Most villages charge exorbitant exit fees supposedly because they are for deferred maintenance costs and replacements. However, villages still charge weekly or monthly fees that far outweigh the body corporate fees charged in ordinary units or block of flats.

Because of the high ongoing costs villages feed into dedicated supported accommodation. Many villages do not provide core support and when you are no longer independent you need to move to a totally new village or accommodation”.

National Seniors Australia Member 2015.

Case Study 3.2 - Recurrent Charges and Annual Budgets

“There needs to be greater clarity about what is covered in the Retirement Village budget as opposed to the Body Corporate budget (in Unit Title villages). Again, at my mother’s village, there has been a lot of confusion about what is covered under each budget, with the operator putting their salary costs into the Body Corporate budget. It also needs to be clear that the provisions about how recurrent charges can be increased are for the Retirement Village part of the budget, and the Operator cannot, for example, reduce the ‘sinking fund’ part of the Body Corporate budget to meet the requirements of the Retirement Village Act.”

National Seniors Australia Member 2015.

Issue 4: Resident Input

- 6. The residential provider should ensure that the residential committee or individual representative is aware of the responsibilities they are expected to fulfill.**
- 7. The operator and resident committee should ensure that the whole residential community is aware of the decisions made within committee meetings.**

The *Act* clearly identifies the roles to be fulfilled by the resident committee in relation to the expected interaction between both parties; however there is no requirement for the committee or operator to provide regular information to the whole retirement village community.

This lack of clarity causes confusion amongst the residents as they are unaware of what is occurring within the retirement village. Many residents feel that the role of the committee is social and do not know or understand the role they are meant to fulfill.

To reduce miscommunication between the operator, residents committee and the rest of the retirement village residents, it would be beneficial to provide a fact sheet informing the residents committee of their obligations.

The *Act* could specify that minutes of meetings are taken for each meeting of the residents committee and that the minutes be made available to all residents in the village. *Section 129A* of Queensland's *Retirement Villages Act 1999* specifies a similar provision⁸.

Case Study 4.1 – Resident Input

“The Resident Committee is a requirement of the Act. It is in effect a ‘Toothless Tiger’. Suggestions, such as much needed additional outside drying lines, are met with excuses. Requests for such things as additional rubbish hopper collections are fobbed off by management saying the budget cannot be extended for this item until the next financial year”.

National Seniors Australia Member, 2015.

Issue 5: Other Matters

- 8. It is recommended that the *Act* protect the rights of individuals transitioning to higher care and define the obligations of providers in protecting these rights.**
- 9. It is recommended that residents be able to more easily terminate a contract if a resident has to move to residential care. Oversight of any contract termination should be handled by a Commissioner.**

There is little to no transition between varying stages of accommodation, self-contained to hostels and nursing homes. While aged care is covered by the *Commonwealth Aged Care Act 1997*, there is little within the *Aged Care Act* that helps facilitate the movement of residents from retirement villages to residential care. Given that the relocation of an individual can cause an undue amount of stress and exacerbate a person's health issues it is particularly important that there is a smooth transition between different forms of accommodation to minimise disruptions.

Division 9.2, Section 187 of the *Retirement Villages Act* specifies the provisions for the ending of a residence contract on medical grounds. A contract cannot be ended on medical grounds unless the resident or operator applies for an order from the ACT Civil and Administrative Tribunal to end the contract. If such an order is awarded under this section of the Act, the ACT Civil and Administrative Tribunal must state in the order a day by which the resident must vacate the premises.

Under Queensland's *Retirement Villages Act 1999, Division 4, Section 53, (3)C* specifies that a contract can be terminated with two months notice, if

⁸ *Retirement Villages Act 1999*, Part 7: Residents participation, s. 129A.
<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/R/RetireVillagA99.pdf>

‘the scheme operator and a person who has assessed the resident’s care needs under the *Aged Care Act 1997* (Cwlth), section 22.4 reasonably believe the resident’s type of accommodation is now unsuitable for the resident.’⁹

It is also provided within the Queensland’s *Retirement Villages Act* that notice must state the grounds on which the resident contract is being terminated and a date by which the resident must vacate the village.

National Seniors believes that if the accommodation is found to be unfit for the resident because of an Aged Care Assessment Team assessment,¹⁰ that the resident or operator should not have to apply to ACT Civil and Administrative Tribunal to receive an order to end the contract. It would be more appropriate if the *Act* specified that a residents contract contain a clause specifying contract cancellation on medical grounds. Oversight of this form of contract termination could be handled by a Commissioner.

Conclusion

National Seniors welcomes the opportunity to contribute to the review of the ACT *Retirement Villages Act 2012*. National Seniors calls on the ACT Government to commit to reviewing the *Act* in the future to ensure that it provides adequate protections for residents. Representatives from the National Seniors ACT Policy Advisory Group will be available to discuss the recommendations in this submission should this be required.

⁹ *Retirement Villages Act 1999*, Part 3: Residence contracts, s. 53.

<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/R/RetireVillagA99.pdf>

¹⁰ My Aged Care, <http://www.myagedcare.gov.au/eligibility-and-assessment/acat-assessments>