

Fact Sheet

Retirement Villages Act 2016

The Retirement Villages Bill 2016 completed its passage through the Parliamentary process in November, and is now the *Retirement Villages Act 2016* (un-commenced). This legislation is the result of over three year's significant consultation, and successfully balances increased consumer protection with the interests of operators across the diversity of retirement village operations.

When will the changes come into operation?

There are still some steps to be undertaken prior to the enactment of the new legislation.

Regulations will need to be drafted to support the new legislation prior to it coming into force.

It is the Minister's intention for the new legislation to commence on 1 January 2018.

An education process will also be undertaken to ensure operators and residents are aware of the changes being implemented and when they will come into force.

The Act is available to view at www.legislation.sa.gov.au.

How will the Act affect prospective residents?

Disclosure statement

One of the most significant provisions of the Act which will affect prospective residents is the introduction of a standard disclosure statement to improve transparency and clarity of residence contracts.

The standard disclosure statement will provide prospective residents with a summary of fees and charges within the contract and allow residents to make an informed decision when entering into a residence contract.

The disclosure statement aims to ensure that potential residents better understand their contracts and minimise disputes. The disclosure statement will be provided to prospective residents at the same time as the residence contract.

The disclosure statement includes the following:

- > All fees and charges that residents will be responsible for
 - o prior to entering a village
 - o while residing in a village
 - o upon leaving a village.
- > Definitions of fees, charges and funds
- > Any interest an administering authority has in services used within the village e.g. electricity or internet services
- > The clear disclosure of any financial or contractual relationships between an operators' villages
- > The clear disclosure of the option for repayment of an exit entitlement when entering aged care.

The disclosure statement will be provided with the residence contract to a prospective resident at least 10 business days prior to signing the contract.



After signing the contract the resident will be provided with a 10 business day cooling off period.

If a resident chooses, they will be able to waive the cooling off period and move into the residence before the 10 business days have expired.

Premises Condition Report

The Premises Condition Report will simply be a record of the condition of fixtures, fittings and furnishings in the residence at the time of occupation and at termination.

Residence contracts

The residence contract must continue to provide information about the residents' rights and obligations under the contract. It will also be required to include detailed information about who will be responsible for repairing or replacing the fixtures, fittings and furnishings and who is responsible for payment of these to provide further transparency and understanding.

In addition a prospective resident must be provided with a copy of the minutes of the last 2 annual meetings of residents which may provide additional insight into the operations or issues within the village. Regulations will be drafted to support these sections.

How will the Act affect current residents?

Current residents will still be bound by their current residence contract. However there are a range of changes that will impact on current residents' rights and responsibilities:

- > Providing improved transparency of village funds – the Act includes changes which will significantly increase transparency of village funds including breaking down management fees, providing details of expected consultation with residents regarding the village budget and requirements to meet with residents' committees about finances.
- > Clarifying current legislative provisions - a number of current provisions will be clarified for residents and operators including specifying who is responsible for the payment of recurrent charges for newly built homes and further defining the role of the residents' committee within the village.
- > Increasing powers of investigation and compliance - the introduction of expiable amounts will help to reinforce operators' obligations under the Act and serve as a deterrent to non-compliance.
- > Improving protections for residents and operators including improved mechanisms for the protection of resident funds and providing operators with the option of removing disruptive and difficult residents through a tribunal process.

Residents' fees

The Act provides for responsible management of residents' funds by strengthening auditing requirements and improving transparency of financial reporting. The Act also introduces provisions relating to what is to occur when a surplus or deficit occurs in a village's recurrent fees and requires villages to adopt a surplus or deficit policy.

Meetings and voting

The Act requires that the convenor of a meeting must ensure that accurate minutes of that meeting are kept and made available within 10 business days of the meeting. Residents will be able to cast an absentee vote if they are unable to attend a meeting of residents.

How will the Act affect residents when they leave a village?

Statutory repayment

The Act introduces the mandatory repayment of an exit entitlement to a resident. An exit entitlement must be repaid within 18 months of a resident vacating their residence if it is not relicensed prior to this time and includes additional provisions as outlined below:

- > If a resident ceases to reside in the village and the residence is not relicensed after 18 months, the operator will be required to repay the resident their exit entitlement in accordance with the residence agreement, or
- > A resident may elect not to receive payment at 18 months and await the actual relicensing of the unit, or
- > A resident may choose to provide written notice that they intend to leave the village and would like the operator to remarket their residence while the resident remains in occupation. The resident must provide vacant possession after 15 months with repayment due at 18 months. The operator must remarket the residence and must repay the exit entitlement to the resident in accordance with the provisions of the residence contract.

If a resident chooses to remain in occupation while a residence is relicensed, the resident will be required to comply with conditions including maintaining the home to a reasonable level of cleanliness and ensuring the residence is available for property viewings. The resident is also required to comply with any reasonable request of the operator to achieve the relicensing of the residence. Penalties for non-compliance will apply and all fees and charges will accrue during occupation.

Operators will be able to apply to the South Australian Civil and Administrative Tribunal (SACAT) for an extension of time to repay the exit entitlement should special circumstances exist. SACAT will consider both the likelihood of financial hardship on the operator and whether reasonable steps have been taken by the operator to achieve the conditions of the contract in deciding whether to grant an extension of time. Regulations will be drafted to support this section.

Moving to an aged care facility

The provisions in the Act regarding the early repayment of an exit entitlement for a resident wanting to enter residential aged care have been modified to better align with aged care reforms which came into operation on 1 July 2014.

Residents who demonstrate need will continue to be able to apply to the operator for early access to their exit entitlement to meet the daily payments for a residential aged care facility until the resident's exit entitlement is due. The operator will be able to deduct these daily payments from the resident's exit entitlement.

The Act also clarifies that a resident may be requested to provide evidence of their financial status when making a request to the operator under this provision. This may include a copy of an asset assessment undertaken as part of the resident's entry into the aged care facility. Regulations will be drafted to support this section.

What other changes are included in the Act?

Rights in relation to remarketing

Where the repayment of an exit entitlement is based on the relicensing of the unit, a resident is entitled to participate in the remarketing of the premises if the unit has not been relicensed after 9 months. Regulations will be drafted to support this section.

Leasing of premises

The Act clarifies that an operator cannot lease out a unit where the exiting resident has not been paid their exit entitlement, unless the exiting resident agrees.

Removal of disruptive residents

The Act introduces a new provision allowing operators to apply to the Tribunal for the removal of disruptive residents if warnings and dispute resolution processes are not successful. This provision fills gaps in the current legislation where behaviour may be serious enough to warrant termination but does not fall within the provisions of the current Act.

Increased offences and penalties

Penalty amounts under the current legislation have remained relatively unchanged for nearly 20 years, whilst the retirement village industry has evolved significantly.

The application of offences and penalties are used as a last resort, however it is important that penalty amounts should be significant enough to deter contravention of the Act. Penalty amounts now range from \$750 to \$35,000 for offences relating to the provision of residence contracts.

Review

A review must be undertaken three years after the commencement of this Act. There have been some significant changes introduced and a review will give the opportunity to raise and address any issues.

For more information

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