

Office for Ageing Well

Review of the *Retirement Villages Act 2016 (SA)*

Discussion Paper

JANUARY 2021

Government of South Australia

SA Health

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Part 1: Background

Executive Summary

The South Australian *Retirement Villages Act 2016* (the Act) and *Retirement Villages Regulations 2017* (the Regulations) govern retirement villages in South Australia. The Act commenced on 1 January 2018 and replaced the *Retirement Villages Act 1987* (the 1987 Act). The Minister for Health and Wellbeing is responsible for the Act and the Regulations, which are administered by his Department – the Department for Health and Wellbeing – through Office for Ageing Well (OFAW).

Section 68 of the Act requires that the Minister must undertake a review of the Act three years after its commencement. A report on the outcome of the review must be tabled in both Houses of Parliament within 12 sitting days of its completion.

To this end, this Discussion Paper is the next step in reviewing the Act, and the first part of the formal consultation process. The feedback received will inform the report, which in turn will advise whether changes to the Act or Regulations are required.

The Discussion Paper has been developed in two parts – the first providing the background information and legislative framework; the second is a more detailed review of components of the legislation. This second part poses discussion questions on which we seek responses. Not all questions need to be answered – the questions are designed to prompt conversation, not limit feedback.

This section has been developed across the four key components of retirement villages:

- considerations before someone moves into a village
- living in a village
- leaving a village, and
- miscellaneous matters.

As outlined in the Terms of Reference below, the review will also consider the Acts and Regulations in operation in other jurisdictions, to support the development of best practice processes in South Australia. For your reference, Appendix 1 offers information on the legislation in other Australian jurisdictions, as well as New Zealand.

In anticipation of this review, OFAW has undertaken surveys of operators and residents on crucial sections of the legislation. The responses to these surveys have helped to inform the contents of this Discussion Paper. OFAW has also identified issues through complaints or queries raised with OFAW and through ongoing discussions with peak resident and industry bodies. All of this feedback will be considered in the preparation of the Report.

Terms of reference

The Terms of Reference for the Review of the *Retirement Villages Act 2016* are to:

a) Assess the impact of regulatory reforms introduced with the commencement of the Act in 2018.

b) Consider if the Act provides sufficient consumer protections to residents of retirement villages while still maintaining a balance between the rights and responsibilities of residents and operators of retirement villages.

c) Consider if the Act meets its objects of:

   a. encouraging best practice management among operators;

   b. ensuring proper disclosure of information to prospective residents of retirement villages;

   c. effectively regulating the making, content, operation and termination of residence contracts;

   d. ensuring residents are properly consulted about matters affecting their residence in retirement villages;

   e. providing for effective dispute resolution processes.

d) Consider reviews and reforms undertaken in other Australian jurisdictions.

e) Consider the implications of retirement village operators or other organisations providing Commonwealth or privately-funded home care services to residents of retirement villages.

f) Provide a report to the Minister for Health and Wellbeing about the outcomes of the review to enable the Minister to consider the need for legislative changes.

Responding to this discussion paper

Following consolidation and consideration of the feedback, an independent consultant will prepare a report for consideration of the Minister on the issues raised during the feedback process.

Feedback in response to the Discussion Paper will close 26 March 2021.

Questions are in boxes at the end of discussion about each topic.

These questions are a guide only. You do not need to respond to every question.

You can provide a comment which does not relate to a specific question.

If you are responding to a specific question or section, please include the reference to enable easy identification of responses.

Feedback can be provided via email to:
RVActReview@sa.gov.au

via YourSAy:
www.yoursay.sa.gov.au/RV-Act-Review

or by post to:
Att: RV Act Review
PO Box 196
Rundle Mall, Adelaide, 5000

Your submission or its contents may be made publicly available. Submissions may be subject to Freedom of Information and other laws. Office for Ageing Well reserves the right not to publish information that could be seen to be defamatory or discriminatory. If you would like your submission to remain confidential please clearly state this on the submission.

Definitions

Retirement Village

Under section 4 of the Act, *'a retirement village means a complex of residences or a number of separate complexes of residences (including appurtenant land) occupied or intended for occupation under a retirement village scheme'.* It does not include a complex excluded by the Regulations such as residential parks, residential tenancies or aged care accommodation.

Retirement Village Scheme

Section 4 of the Act further defines a Retirement Village Scheme (scheme) as:

'a scheme established for eligible persons and their spouses or domestic partners, or predominantly for eligible persons and their spouses or domestic partners, under which-

(a) residences are occupied pursuant to a lease or licence; or

(b) a right to occupation of residences is conferred by ownership of shares; or

(c) residences are purchased from the operator subject to a right of option of repurchase; or

(d) residences are purchased by prospective residents on conditions restricting their subsequent disposal,

but does not include a scheme under which no resident or prospective resident of a residence pays an ingoing contribution in consideration for, or in contemplation of, admission as a resident under the scheme'.

The most widely used scheme in South Australia is the licence to occupy model under which a resident purchases a lifetime right to occupy a residence. Some villages use contracts based on a lease model, such as 99 year leases. There are also a small number of retirement villages in South Australia that operate under a community title model where the resident is the owner and has the legal title to the residence with restrictions on the subsequent sale.

Eligible Persons

Retirement village schemes are established for eligible persons and their spouses or domestic partners. Section 4 of the Act defines an eligible person as a person who has attained the age of 55 years and retired from full-time employment.

Registrar

The Act requires that there is a Public Service employee who acts as the Registrar.
The Registrar's function is to gather and maintain information about retirement villages and retirement village schemes in South Australia, to advise the Minister on the administration and operation of the Act and to perform any other function assigned to the Registrar under the Act or by the Minister. The Registrar is the Director of OFAW.



Register

The Registrar is required under the Act to maintain a register containing information about each retirement village. A retirement village operator is required to register a retirement village within 28 days of the first resident taking up occupation. An operator must also advise the Registrar of any changes to this information within 28 days of the change taking place. OFAW holds and maintains the Register which contains publicly available information. Penalties can be enforced against operators who fail to register a village or keep information on the Register up to date.

The requirement for registration provides the State Government with information about the makeup of retirement villages in South Australia. The Register provides OFAW with information, including village size, location, expansion and ownership.

OFAW

Office for Ageing Well (OFAW) is a part of the Department for Health and Wellbeing. OFAW was formerly known as Office for the Ageing.

Legislative History

The Minister for Health and Wellbeing is responsible for the Act and Regulations. Office for Ageing Well (OFAW) in the Department for Health and Wellbeing administers the Act and Regulations.

As defined in section 3 of the Act, its objectives are:

- to provide a regulatory framework for the operation of retirement villages in South Australia under which a balance is achieved between the rights and responsibilities of—
  - residents of retirement villages; and
  - operators of retirement villages;
- to encourage best practice management standards among the operators of retirement villages;
- to ensure that there is proper disclosure of information to prospective residents of retirement villages;
- to regulate the making, content, operation and termination of residence contracts;
- to ensure that residents are properly consulted about matters affecting their residence in the retirement village;
- to provide for dispute resolution processes.

The State Government introduced the Act in response to a 2013 Parliamentary Select Committee (the Select Committee) review into the 1987 Act. The Select Committee's Terms of Reference included investigating the rights and obligations of residents and operators of retirement villages, contractual disclosure, financial obligations, compliance and regulation, and dispute resolution under the 1987 Act. The Committee's report and Terms of Reference can be accessed from here: **https://www.parliament.sa.gov.au/Committees/Committees-Detail**.

The Select Committee received more than 90 submissions from organisations, operators, residents' committees, and individuals. It also heard in-person submissions. The Select Committee's tabled report contained 34 recommendations. Its proposals aimed to improve clarity around contractual and some administrative matters in retirement villages while maintaining a balance between the interests of residents and not placing onerous restrictions on operators.

In 2015, the State Government released the Retirement Villages Bill 2015 for public consultation. The public consultation resulted in the *Retirement Villages Act 2016*. The Regulations to support the new Act also underwent public consultation, and the legislation commenced on 1 January 2018.

Significant reforms introduced in the Act included:

- the introduction of a standard disclosure statement to improve transparency and clarity of residence contracts;
- the introduction of the mandatory repayment of an exit entitlement to a resident within 18 months of a resident vacating their residence if not relicensed prior to this time;
- an increase in transparency of village funds, including breaking down of management fees, providing details of expected consultation with residents regarding the village budget and requirements to meet with a residents' committee about finances; and
- an increase to penalty amounts to deter contravention of the Act.

As recommended by the Select Committee, the State Government also introduced an advocacy service for retirement village residents through the Aged Rights Advocacy Service (ARAS) and released Better Practice Guidelines for operators of retirement villages.

Previous consultation

The State Government partnered with the University of Adelaide's Australian Population & Migration Research Centre in 2016 to undertake a state-wide survey of retirement village residents. The purpose of the survey was to gain a better understanding of retirement village residents across South Australia and assist with the creation of policies and future planning around retirement villages. This survey provided a base-line view of retirement villages in South Australia and will enable the State Government to determine through further surveys if legislative changes have improved matters or resolved issues.

There were 2,154 resident responses to the survey, representing 240 retirement villages. The responses were mostly positive about retirement village life, but mentioned issues associated with contractual understanding and transparency with management fees. Residents had also raised many of these issues with the Select Committee. Changes to the legislation aimed to resolve these problems. One of the aims of this Discussion Paper is to determine if the legislative changes that commenced in 2018 have resolved the issues raised through the Select Committee's report, public consultation and the resident survey. This paper includes information about the legislation, any problems which have arisen with specific provisions since their introduction, and questions seeking feedback on particular issues and the possible impact of any changes.

In addition to State legislation, the Australian Consumer Law (ACL) as contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* applies to consumer contracts, including retirement village contracts. The ACL includes protections against unfair contract terms and unconscionable and misleading conduct.

Federal Government reviews of retirement villages

The most recent Federal Government reviews of retirement villages were the Standing Committee on Legal and Constitutional Affairs *Older people and the law* in 2007 and the Federal Productivity Commission *Caring for Older Australians* in 2011. These reviews did not explicitly focus on retirement villages, however, the reports made comments on the industry. The Productivity Commission's report recommended that States and Territories pursue nationally consistent legislation for retirement villages. The Standing Committee also called for an investigation into ways in which greater harmonisation of retirement village legislation could be achieved and for an ACCC review of all aspects of 'exit' and other fees associated with retirement villages.



Current practices in retirement villages

Since the Act commenced, the retirement village industry introduced new tools for operators to self-regulate.

A 2017 media investigation into retirement villages noted the complexity of retirement village contracts, exit and other fees and the time taken to re-license residences. This led to the industry introducing more significant self-regulation measures, including the development of a code of conduct.

The Property Council of Australia (PCA) introduced an eight-point plan to improve standards in the retirement village industry in 2017. As part of the eight-point plan, in December 2018, the PCA and Leading Aged Services Australia (LASA) launched an industry Retirement Living Code of Conduct (RLCC). The code took full effect in January 2020, and retirement village operators can voluntarily subscribe to the code. The code of conduct is available on the PCA's website: **https://cdn2.hubspot.net/hubfs/2095495/_RLC/Retirement%20Living%20Code%20of%20Conduct%20January%202020.pdf**.

The PCA intends for the code to provide a basis for implementing regulation and creating standards in the way that operators will handle various issues in a retirement village setting.

In 2019, the PCA and LASA announced that an Australian Retirement Village Accreditation Scheme (ARVAS) was operational. ARVAS is designed to assess and accredit operators against the Retirement Living Code of Conduct and can be found at **www.arvas.com.au**.

Fast Facts

There are currently 534 registered retirement villages in SA, which, based on estimated rates of single versus couples occupancy, means there are approximately 26,400 people living in retirement villages.

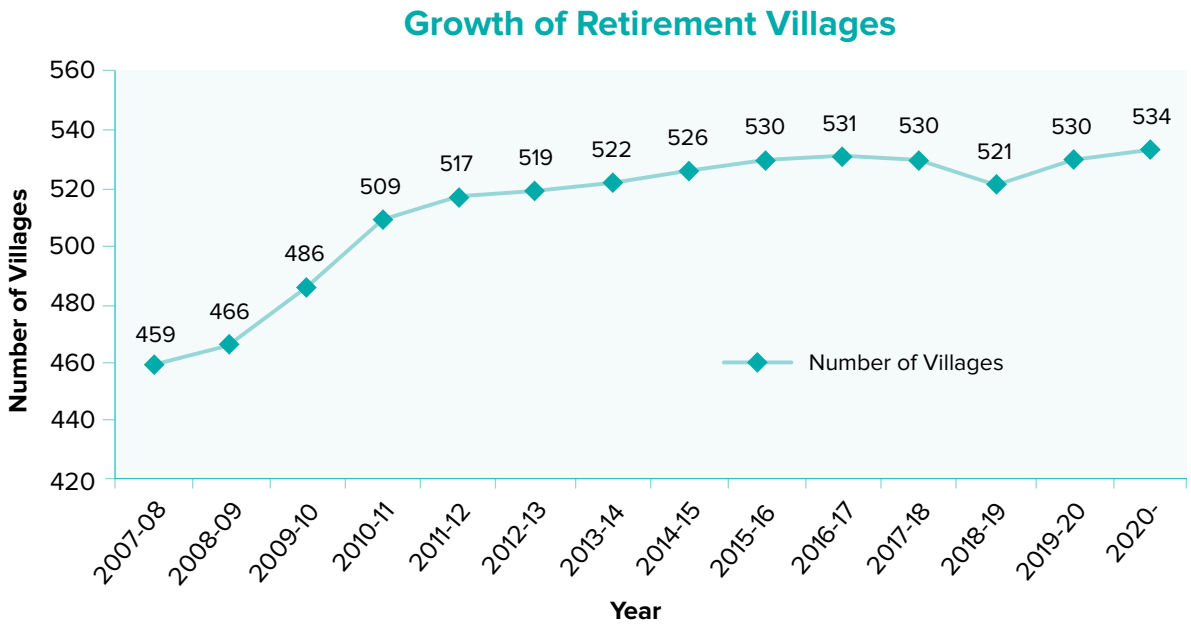
Within Adelaide and Greater Adelaide Local Government Areas there are 445 villages with 16,407 residences.

In Rural and Regional Local Government Areas there are 89 villages and 2,488 residences.

Within these villages there are 17,665 independent living units and 1230 serviced apartments, a total of 18,895 residences.

Commercial operators own 127 villages (10,345 residences) while non-profit organisations (including local government organisations) own 407 villages, which account for 8,550 residences.

Retirement villages can be governed under multiple Acts. There are currently 12 villages in SA that provide serviced apartments and must comply with both the *Retirement Villages Act 2016* and the *Supported Residential Facilities Act 1992*.



Part 2: Review of the Legislation

Before moving into a village

2.1 Deposits

Deposits required by villages are not included in the Act.

Many retirement villages will require a prospective resident to pay a deposit to 'hold' a particular residence before they enter into a residence contract. The Act is silent on the issue of deposits. This means there is no guidance on their purpose, whether or not they are refundable (fully or partially) and any other conditions that may apply to them. The legislation is also silent on whether a deposit is considered part of the ingoing contribution and should be refunded if a resident cools-off. Currently, the process around how the operator will handle deposits is at the discretion of each village.

2.1 Deposits

Should the Act prescribe requirements around deposits and what information an operator has to provide to a prospective resident (e.g. how much the deposit is, what is the purpose of the deposit, is it refundable, how long does it 'hold' a residence for?)

Should the Act put any limitations on deposits?

2.2 Disclosure statement

Disclosure statements are covered in sections 21 and 22 of the Act, and a standard form of disclosure statement is provided in Schedule 2 of the Regulations.

One of the objectives of the Act is to ensure there is proper disclosure of information to prospective residents of a retirement village. The Act introduced a requirement that a disclosure statement be provided to a person at least 10 business days before they enter into a residence contract.

The disclosure statement provides information to a person about any fees and charges they will be responsible for before entering a village, while residing in a village and upon leaving a village.

The Select Committee recommended the introduction of a disclosure statement after submissions to the Select Committee indicated that residents felt there was not enough disclosure before entering a village and that residents did not understand their contract prior to signing. There was also confusion surrounding the method by which the operator provided documentation to residents, including the process and timeframes.

While the disclosure statement is not a substitute for a residence contract, it provides a summary of information to a prospective resident about their financial obligations while living in a village. The purpose of the disclosure statement is to improve transparency and to ensure prospective residents have a thorough understanding of the essential terms that will govern their occupancy in a retirement village.

2.2 Disclosure Statement

Do you believe the disclosure statement is serving its intended purpose?

Are there any improvements that could be made to the disclosure statement?

2.3 Information to be provided before a person can sign a residence contract

Section 22 of the Act outlines the information that must be provided to a person at least 10 business days before a person enters into a residence contract. This information includes:

- the residence contract;
- the disclosure statement;
- if the village is already established, a copy of the financial statements presented at the last annual meeting of residents;
- a copy of the minutes of the last two annual meetings of residents of the village (or of the last meeting if only one has been held);
- the residence rules;
- the remarketing policy; and
- any code of conduct to be observed by the operator or residents.

Section 20 of the Act and Regulation 5 contain requirements around what information an operator is to include in a residence contract.

The amount of information required to be provided to a resident before they sign a residence contract can overwhelm prospective residents and make it difficult for them to compare villages. While the Regulations prescribe the form of the disclosure statement, there is no prescribed form for a residence contract. It would be difficult to prescribe a standard form contract given the wide range of retirement village offerings.

The documents provided to a person before they enter into a contract can comprise a range of information, including village policies and rules. Village policies, such as a dispute resolution policy and remarketing policy, can be subject to change by consultation with residents. In contrast, the terms of the residence contract cannot change without the agreement of all parties to the contract.

2.3 Information to be provided before a contract is signed

Does the information provided before a person signs a residence contract allow a person to make an informed decision?

Can requirements around the information provided to prospective residents, including the residence contract, be improved?

Should the documents provided to the resident make it more apparent which matters relating to their residency in the retirement village might be subject to change, such as village rules and policies?

2.4 Disclosure period before signing a contract

Under the 1987 Act, there was no requirement for a resident to have the residence contract and other information for a certain amount of time prior to signing a contract. A person was able to sign a contract on the same day it was provided.

The Select Committee recommended that a person should be provided with the disclosure statement 15 days prior to signing a residence contract.

Submissions to both the Select Committee and the University of Adelaide Survey raised concerns about residents not receiving contracts until after they had moved into the village. Other concerns were about residents signing the contract and the operator then sending the contract to head office for signing. Both of these scenarios resulted in the person not having a copy of the contract during the cooling-off period to allow them to seek advice.

The aim of the 10 business day period before a person can enter into a contract is to ensure sufficient time for a person to review the contract and understand its terms and conditions. A prospective resident can seek legal and financial advice during this time. If a person understands the contract before signing, it can minimise disputes while the person is living in the village and after they leave.

The disclosure statement must include a statement recommending that the prospective resident seeks legal and financial advice about the contract. Section 5 of the regulations also requires that the residence contract must include a statement in bold, black type that the prospective resident should seek independent advice about the prospective resident's rights and duties under the contract.

It is not mandatory in any Australian state for a person to seek legal advice before signing a retirement village contract. However, it is relatively standard across Australian states for retirement village legislation to prescribe a waiting period between receiving documentation about moving into a village and signing a contract.

Operators have indicated that the disclosure period coupled with a 10 business day cooling-off period means that a resident effectively has a four-week period during which they can withdraw from a contract. While a resident can waive the cooling-off period, they are unable to waive the 10 business day period before signing a contract. An option would be that a person should also be able to waive this period if they wish to move into a village immediately.

2.4 Disclosure periods

Do you believe the disclosure period provides people with sufficient time to seek advice on a residence contract?

Has the introduction of the disclosure period increased the likelihood of a prospective resident seeking legal or financial advice before signing a residence contract?

Should a person be able to waive the requirement to wait 10 business days before signing a residence contract?

What could be the consequences of a person waiving this period?

Should there be conditions on this type of waiver (e.g. a person must seek legal advice)?

2.5 Cooling-off period

Under section 24(3) of the Act, a prospective resident is entitled to rescind the residence contract (cool-off) at any time within 10 business days after the day on which the prospective resident signed the contract. Under the previous Act, the cooling-off period was 15 business days. This period was shortened to 10 business days to acknowledge that the resident now also has a 10 business day disclosure period before signing a contract.

A prospective resident is taken to have waived the cooling-off period if they enter into occupation of their residence before the expiration of the 10 business days. The resident must sign a written waiver acknowledging that the operator has informed them of the entitlement to cool-off and they have chosen to waive that entitlement.

2.5 Cooling off period

Do you have any feedback about the cooling-off period?

Should a person be able to waive both the period before signing the contract as well as the cooling-off period (effectively sign the contract and move into the village on the same day)?

If yes, should there be any conditions around waiving both periods?

2.6 Repayment of an ingoing contribution if a resident cools-off

Under section 26 of the Act, an ingoing contribution must be held in trust until the person by or on whose behalf the ingoing contribution was paid, enters into occupation of the residence. Under the 1987 Act, if a prospective resident cooled-off then the operator was required to refund the ingoing contribution (previously called a premium) within 10 business days of the prospective resident giving written notice of that decision.

The 1987 Act outlined how to deal with any interest or accretions that arose while the premium was held in trust. The current Act does not contain any provisions around when an operator must refund an ingoing contribution after a person provides notice of their intention to cool-off. It also does not outline how any interest or accretions are to be handled, or whether other amounts paid should be refunded (such as a deposit).

2.6 Repayment in cooling off period

Should the Act be amended to clarify when an operator must repay a resident an ingoing contribution (or any other amounts already paid) after the person has provided notice of their decision to cool-off and rescind the contract?

Should the Act be amended to clarify what is to happen to any interest or accretions that arose while the ingoing contribution was held in trust?

2.7 Premises condition report

Under changes introduced in the Act, a premises condition report is required to be completed within 10 business days of a person entering into occupation of a residence. Information about who is responsible for repairing and replacing items in the residence is required to be included in the residence contract. This was previously included in the premises condition report. The report aims to reflect the condition of the fixtures, fittings and furnishings at the time the person moves into the residence. This report aims to minimise disputes about the condition of the premises when a person leaves a residence.

2.7 Premises condition report

Has moving information about responsibility for repair or replacement of fixtures, fittings and furnishings from the premises condition report into the residence contract improved clarity about who is responsible for costs of this work?

Are there any improvements that could be made to the premises condition report?

2.8 Purchasing residences off the plan

The Act is silent on the process to follow where a person enters into a contract for a residence that is not yet constructed (buys off the plan). There has been some confusion about what the process should be in the case of these types of residences. Generally, a deposit is required, with a final settlement when the residence is ready for occupation.

The process of building a residence can be lengthy, and it is currently unclear when specific provisions of the legislation apply.

2.8 Purchasing off the plan

Should the Act be amended to outline what rights a person has if they are purchasing a retirement village residence off the plan?

Should the Act be amended to prescribe what information an operator should include in a contract when a person is purchasing a residence off the plan?

Do you have any other feedback on how the Act could deal with a residence being purchased off the plan?

2.9 Settling-in period

The settling-in period is defined in section 4(2)(b) of the Act. Once a person enters into occupation of a residence, or signs the residence contract (whichever is the later) they have a settling-in period of 90 days.

Section 44 includes requirements about fees charged to a resident who leaves within the settling-in period. The resident is liable to pay fair market rent in respect of their period of occupation, less any amount paid by the resident for services that would otherwise be included in the assessment of fair market rent. The resident is also responsible for any other amounts payable under the residence contract.



No provision in a contract can have the effect of making the resident liable to pay an amount by way of penalty if he or she terminates a right of occupation during his or her settling-in period. A person who leaves a village during a settling-in period will have to wait for a residence to be relicensed, or the statutory payment time of 18 months, before they will receive their exit entitlement (unless the residence contract has a shorter timeframe).

Settling-in provisions remain relatively unchanged from the 1987 Act to the current Act.

OFAW has received several complaints from residents who left a village during the settling-in period and believed their contracts contained excessive fees. Some residents have been charged fair market rent in addition to maintenance fees already paid, six months' of maintenance fees after leaving a village, as well as remarketing and refurbishment costs. These additional fees charged through the contract are effectively negating any benefit the resident might have in leaving a village during the settling-in period. The Act intends for the settling-in period to allow a resident to leave a village without having to pay the full suite of fees that they would have to pay if they left after this time.

Under section 29 of the Act, an operator can deduct up to six months' recurrent charges from a resident's exit entitlement. The Act is unclear whether this deduction can be made from the exit entitlement of a resident who leaves during a settling-in period.

2.9 Settling-in period

Should the Act be amended to limit what an operator can charge a resident when they leave a village during the settling-in period?

Do you have any other feedback about settling-in provisions?

Matters relating to living in a village

2.10 Financial matters

Fees and charges for which a resident is responsible while living in a village

The Act does not dictate the costs a resident is responsible for while living in a village, but the residence contract must include this information. Regulation 5(2)(g) details the financial information that must be included in a residence contract.

The contract must include details about the resident's rights and obligations created by or under the contract, including recurrent charges for which the resident is liable, additional services and facilities available to residents of the village, and the costs of those services and facilities. An operator must also include in a contract detailed information about who will be responsible for repairing or replacing the fixtures, fittings and furnishings provided in the residences, and how the cost of repairing or replacing such fixtures, fittings and furnishings is funded.

The disclosure statement must provide information about the financial arrangements relating to residents of the retirement village, including information about all fees and charges that the prospective resident would be responsible for under the residence contract.

Increases in recurrent charges

One of the main costs for which residents are responsible in a retirement village is the recurrent charge (often referred to as the maintenance fee). Under section 4 of the Act, a recurrent charge means "*a fee, charge or other amount (as specified in the residence contract) payable by a resident to the operator of a retirement village on a recurrent basis*".

This charge can vary across villages but will generally include the cost of day-to-day running of the village such as management fees, general maintenance, and the cost of running any community facilities. In some villages, the recurrent charges will include costs such as water, rates and electricity. In other villages, these will be separate costs charged directly to the resident.

Under section 34(7) of the Act, an operator cannot increase recurrent charges beyond a level shown to be reasonable in view of the accounts from the previous year, and the estimates for the current financial year, as explained at a meeting of residents. An operator must hold this meeting within four months of the end of a village's financial year. In most villages this means an operator must hold an annual meeting by the end of October.

A notice for this meeting must be accompanied by financial information relating to the retirement village, including an audited statement of accounts in respect of the previous financial year showing income from residents and expenditure of that income. The meeting notice must also be accompanied by an estimate of income and expenditure (a budget) for the village for the current financial year.

Resident approval is not required for the financial statements or an increase in recurrent charges. Residents can challenge increases they believe are unreasonable through a village's dispute resolution process and ultimately through the South Australian Civil and Administrative Tribunal (SACAT).

The Act introduced new requirements that aimed to increase the transparency of the financial statements presented to residents and improve consultation with a residents' committee on the preparation of the budget.

Breakdown of expenditure items in a village's budget

The Act introduced a requirement that the items within a village's budget relating to expenditure of recurrent charges should include a description of each general category of item to a reasonable degree of particularity. This requirement to provide a description of expenditure items does not extend to expenditure from other village funds such as a capital fund.

If the budget includes management expenditure, there must be a description of each item to which the management expenditure relates. If the management expenditure is apportioned between more than one village or other business, there must be information about how this apportionment is calculated.

Breakdown of expenditure items in audited statements

The requirement to include a breakdown of expenditure items does not extend to expenditure items included in a village's audited financial statements. While a majority of villages already provide a reasonable level of detail in their audited statements, in some cases, villages have reported all capital expenditure in the audited statements as one lump sum resulting in resident complaints about lack of transparency.

There is also no requirement that a description of the items to which management expenditure relates is included in the audited statements. This is only a requirement for management expenditure included in the budget. This has resulted in continued complaints from residents that the audited financial statements are not descriptive enough concerning expenditure on management fees.

Greater transparency may be provided through requiring consistency in the break-down of expenditure in both the budget and audited statement. Greater transparency would also assist in improving the residents' understanding of the financial statements.

2.10 Financial matters

Should the Act be amended to extend requirements to break down expenditure in the budget to all village funds?

Should the Act be amended to require expenditure items in the audited statements to include a description of each general category of item for all of a village's funds?

Do you have suggestions about how information about management fees in a village's budget can be improved?

Do you have any other feedback about how financial statements can be improved to provide more transparency to residents?

2.11 Process for an increase in recurrent charges

Residents paying increased fees before the annual meeting

An operator is not required to hold an annual meeting until four months after the end of a village's financial year. Many operators increase their fees at the beginning of the financial year. This timeframe means a resident will often be required to start paying any increases in recurrent charges before the operator has held an annual meeting explaining the reason behind these increases.

For example, if a village's financial year usually ends in June, recurrent charges may increase at the start of July, and this is when a resident will be required to pay the increased fee. The annual meeting, which is when many operators explain the increase, does not have to occur until the end of October. This process can create confusion among residents, who might be concerned about paying an increase which has not been explained to them (especially if the increase is significant).

Providing residents with information about any changes to the recurrent charge before the start of the financial year could assist in alleviating this confusion. For example, there could be a 'budget' meeting held before the end of the financial year to explain any change. An operator could then present the audited financial statements at the annual meeting in October. Alternatively, an operator could distribute information about any changes by notice to all residents before the increase occurs. Many villages already hold a 'budget meeting' before the start of a new financial year to provide this information to residents.

2.11 Increasing recurrent charges

Should the Act be amended to require more information to be provided to residents about changes to recurrent charges before they occur?

Do you have any suggestions about how this process could occur?

2.12 Consultation with a residents' committee

Sections 38 and 39 of the Act cover residents' committees, and section 33 covers meetings of residents.

The Act clarified requirements around what consultation an operator must undertake with a residents' committee about a village's annual budget.

If there is a residents' committee in relation to a village, the operator must meet with the residents' committee at least twice before any annual meeting is held. A residents' committee can advise an operator if they do not require one or both of the meetings to be held. The operator is required to provide the committee with a written notice setting out the time and place of the meeting at least 10 business days before the meeting.

The Act requires the operator to meet with the committee to discuss the matters set out in section 33(6)(a), being the financial information to be provided with the notice of the annual meeting of residents, including audited financial statements and a village's budget.

This section has caused some issues around timeframes as an auditor may not have prepared a village's audited statements in time for the operator to call two meetings with a committee to discuss those documents before a village's annual meeting.

2.12 Consultation with a residents' committee

Should the Act be amended to clarify that the meetings held with the residents' committee to discuss the required information does not require the finalised statements?

Do you have any other feedback about consultation between a residents' committee and the operator on the budget?

2.13 Other financial requirements – surplus and deficit policy

The Act introduced a requirement for a village to adopt a surplus and deficit policy in relation to a village's recurrent charges, and prescribed a default policy if a village failed to adopt a policy. This provision aimed to improve clarity around what is to happen in the event of a surplus or deficit in a village's recurrent charges. Before the commencement of the Act, many residence contracts were silent about this issue, and villages did not have a policy in place. Under the transitional provisions in Schedule 2 of the Act (clause 11), an operator was required to hold a meeting of all residents to adopt a policy within six months of the Act commencing.

Both operators and residents have raised questions around the surplus and deficit policy provisions. The default policy states that a surplus or deficit must be 'accounted for' in the financial statements. There has been much debate about what 'accounted for' means. There have been no SACAT determinations to guide interpretation of this phrase.

The only way to change a village's surplus and deficit policy is through a special resolution of residents. In some cases, an operator may propose a change to a village's surplus and deficit policy. The Act does not outline what is to occur if residents vote against changing a policy.

2.13 Surplus and deficit policy

Should the Act be amended to clarify the default surplus and deficit policy?

Should the Act be amended to include processes about what is to happen if residents do not approve a change to the surplus and deficit policy?

Do you have any other feedback about provisions around the surplus and deficit policy?

2.14 Proceedings at meetings of residents

Voting

Section 33 of the Act covers meetings of residents and section 34 outlines proceedings at meetings.

An operator or a residents' committee may convene a meeting of all residents. The meeting is convened by sending a notice to all residents at least 10 business days before the meeting, which outlines the time and place of the meeting and the business to be transacted at the meeting.

Each resident present at a meeting of residents has one vote on any question arising for decision at the meeting. However, if two or more residents are in occupation of the same residence in a retirement village, only one of them may exercise a vote at a meeting of residents. A decision at a meeting is to be determined by a simple majority of the votes cast by the residents. The Act also allows for residents to exercise an absentee vote on questions arising for decision at a meeting.

One vote per residence

The requirement for one vote per residence reflects the fact that only one residence contract (and consequently one recurrent charge) applies to each residence. It aims to prevent residents who live with another person or persons from having an unfair voting advantage over residents who live alone. For instance, the imposition of a special levy would apply per residence, but a residence with multiple occupants is likely to be more able to absorb any additional financial payments than a residence with a sole occupant.

The Act is similar to other legislation which relates to accommodation. The *Strata Titles Act 1988* and the *Community Titles Act 1996* also allow only one vote per residential unit at general meetings. However, this matter can be contentious, with some residents who share a residence with others feeling that they do not have an equal vote.

An option could be that where there are two residents in a residence each has half a vote. This type of voting may be challenging to administer in residences with more than two people. Alternatively, there could be one vote per residence on financial matters and one vote per person for other matters (this is similar to a Select Committee recommendation).

Special resolution

Section 4 of the Act provides the following definition for a special resolution:

special resolution *means a resolution passed at a meeting of residents of a retirement village in the following circumstances:*

(a) at least 15 business days written notice of the meeting, containing a statement of the proposed special resolution, must have been given to all residents;

(b) the resolution must have been passed by a majority of not less than three-quarters of the number of residents who were entitled to vote at the meeting (either in person or by way of an absentee vote exercised in accordance with this Act).

Residents have raised concerns that this definition is unclear. Some residents have argued that the term 'entitled to vote' means all residents (or one vote per residence) and therefore the three-quarters must be calculated on this figure. However, this section intends that the three-quarters requirement is based on the number of people who exercised a vote and were entitled to vote either at a meeting or by absentee vote (only one person per residence is entitled to vote).

A further concern that residents have raised is that there is no requirement for a quorum for voting on a special resolution. As a special resolution vote will generally only apply to financial matters, residents have stated that they believe it is important to have a quorum for this type of vote.

Minutes of meetings

The Act extends requirements around the provision of minutes of meetings. Before the Act commenced, an operator was required to provide the minutes of a village's annual meeting to each residence in a village. Regulation 11(2) requires the minutes to include a copy of written questions submitted before the annual meeting and answers to these questions. It also requires that the minutes contain a record of questions asked at the annual meeting and answers to those questions.

Section 34 of the Act now requires that an operator makes minutes of all meetings of all residents available for residents to inspect.

These provisions aim to ensure that information about what occurred at resident meetings is available to all residents and to provide residents who did not attend the annual meeting with information about all questions and answers at the meeting.

2.14 Proceedings at meetings

Voting
Do you believe the limit of one vote per residence is fair? Do you have any feedback on how voting provisions can be improved?

Special Resolution
Should the definition of special resolution be clarified to make clear that the majority of not less than three-quarters is based on the number of residents who are present at a meeting and entitled to vote or exercising an absentee vote?

Should the requirement for a special resolution require a quorum of residents? If so, what should the quorum be?

Minutes of Meetings
Do you have any feedback about how provisions about minutes of resident meetings can be improved?

Do you have any suggestions about how meetings of residents in general can be improved?

2.15 Consultation with residents

Residents' committees

Under section 38 of the Act, residents of a retirement village can elect a residents' committee. The function of a residents' committee is to consult with the operator of the retirement village, or a representative of the operator, in relation to matters of interest to residents, and to represent the interests of residents.

Schedule 1 of the Regulations outlines the matters on which an operator is required to consult with a residents' committee. This schedule also outlines the matters on which an operator is required to consult with all residents of a retirement village.

A residents' committee plays an essential role in consulting with the operator of a retirement village on matters of interest to residents, and in representing the interests of residents. Changes introduced in 2018 clarified the role and requirements of the residents' committee, including a requirement to hold an annual meeting, provide minutes to residents and prepare a statement of income and expenditure.

With the introduction of the Act, many residents' committees contacted OFAW seeking assistance in amending their committee rules to meet the new requirements. OFAW developed a set of guidelines for residents' committees to provide them with some assistance.

Some committees did not have rules in place to govern their functions, or were confused about what should be included in their rules, which makes resolving any disputes among the committee or between the committee and residents, difficult. It is possible some further amendments to the Act to provide basic guidelines could assist residents in establishing and running a committee.

Consultation with all residents

To create clarity around what constitutes reasonable consultation with residents of a retirement village, the Regulations expanded the requirements for consultation from the previous legislation. Reasonable consultation includes that an operator would have at least:

- notified residents in relation to any matter that could have a significant impact on their financial affairs, the amenity of the retirement village or their way of life; and
- provided residents with an opportunity to respond to such matters within a reasonable time; and
- considered any response provided by residents.

2.15 Consultation with residents

Residents' committees
Should the Act be amended to require residents' committees to establish a set of rules and set out the minimum content of the roles, e.g. the number of members, election processes, frequency of meetings?

Should the Regulations contain a simple default set of rules to apply in the event that a committee does not have rules in place?

Should residents of multiple sites be able to form a representative committee?

Do you have any further feedback on how the provisions around residents' committees can be improved?

Consultation with all residents
Has the clarification of what constitutes reasonable consultation improved consultation in retirement villages?

Do you have any feedback about how consultation requirements could be further improved?

2.16 Disputes

Dispute resolution policy

The previous legislation only required that a village have a dispute resolution policy in place but did not detail what an operator should include in the policy. This vagueness led to some confusion about how a village should handle complaints, as well as inconsistent ways of dealing with disputes. The Select Committee also found that the failure of internal dispute resolution processes to resolve disputes was the primary cause of matters being referred to the Residential Tenancies Tribunal, which was responsible for hearing retirement village disputes at the time of the Select Committee review.

Regulation 18 now details what an operator should include in a village's dispute resolution policy. The legislation requires that a village's dispute policy must include multiple matters including how a resident can make a complaint, timelines around complaints, how an operator will handle a dispute and a requirement that an operator must keep a written record of the complaint.

While there is a requirement that a policy is in place, the Act does not explicitly require that an operator must follow the policy when a resident has a dispute.

Disputes – SACAT process

A party to a dispute between an operator and resident of a retirement village may apply to SACAT for resolution of the matters in dispute. Section 46 of the Act requires that a party should not make an application to SACAT for resolution of a dispute unless the parties have made reasonable attempts to resolve the dispute in accordance with the operator's dispute resolution policy, and such attempts have failed to resolve the dispute.

At the time of the Select Committee's review, the Residential Tenancies Tribunal was responsible for retirement village matters. SACAT commenced in 2015 and took on the work of the Residential Tenancies Tribunal.

Many resident submissions to the Select Committee expressed dissatisfaction with the Residential Tenancies Tribunal as a forum for resolving disputes. Submissions raised issues; including perceived unfairness, with operators often having legal representation when residents did not; lack of clarity about how an order is enforced; and concern that some Tribunal Members did not have an understanding of retirement villages. Some submissions called for an ombudsman or some type of panel to replace the Tribunal in hearing retirement village disputes.

2.16 Disputes

Dispute resolution policy
Should the Act be amended to require an operator to follow a village's dispute resolution policy?

Have the changes to the dispute resolution policy improved handling of retirement village disputes?

Do you have any recommendations about how dispute resolution requirements could be improved?

Disputes – SACAT process
Is SACAT the most appropriate place to hear retirement village disputes?

Do you have any feedback about how the process for escalating a dispute can be improved?

2.17 Lease of land in a retirement village

The Act introduced provisions that aimed to bring more clarity around the lease of land in a retirement village. Section 57 of the Act allows the operator to *'lease, or grant a licence to occupy, land within the village that is not immediately required for the purposes of the scheme to an eligible person'.* An eligible person is defined in section 4 as a person who has attained the age of 55 years and retired from full-time employment. Under section 57, a person to whom a lease or licence is granted does not become a resident of the retirement village, and the term of a lease or licence must not exceed five years. The lease is granted under the *Residential Tenancies Act 1995*.

The provisions around a lease not exceeding five years without Ministerial approval is also problematic. Residential leases are either fixed term, commonly for 12 months, or periodic (ongoing). It is unclear whether periodic leases, or consecutive fixed terms exceeding five years in total, breach this provision.

There has been some confusion around this section, including around what is to happen in the case of commercial leases, and about what is meant by land 'that is not immediately required for the purposes of the scheme'. It is also unclear what the impact of the retirement village endorsement has on using the land for another purpose.

The Act could be amended to include two separate provisions – one relating to renting residences within the village to eligible people. A separate section could deal with leasing land that isn't being used within the village for purposes other than residential tenancies, e.g. café, hairdressing salon.

Many retirement villages also lease out rooms for respite as another source of income. The Act is silent on how this or renting out residences for purposes other than a tenancy can be handled.

Other issues surround how a village is to report income received from any of the above uses of the land.

2.17 Lease of Land

Should the Act be amended to include separate provisions relating to the lease of land within a retirement village for commercial purposes and the lease of residences within the retirement village to rental tenants?

Should there be a limit on the length of residential leases in a retirement village?

Do you have any feedback on how improvements can be made to how the lease of land or residences in a retirement village is handled?

2.18 Rental tenants in retirement villages

Under section 57 of the Act, a person who is a tenant in a retirement village does not become a resident. None of the rights of residents outlined in Part 3 of the Act applies to tenants. These provisions mean rental residents do not have a vote at meetings of residents. Rental residents are also unable to become members of the residents' committee. The reasoning behind this has been that rental tenants may not have the same investment in the village as they may be there for a relatively short period. In contrast, retirement village residents have usually paid a significant amount of money for a lifetime right to live in their residence.

This delineation between who is and who is not a resident under the Act can sometimes create an 'us' and 'them' environment between rental and retirement village residents. Rental residents are part of a village community and are likely to attend village functions and meetings. It could be of benefit to residents and operators in a village to clarify ways in which rental residents can become involved in village life.

For example, some villages struggle to have enough numbers to form a residents' committee if rental residents cannot be members. Many committees will have 'rental representatives' who can attend committee meetings and represent the interests of rental residents. In some villages, residents have voted to allow the committee members to include rental residents in order to have enough people to form a committee.

2.18 Rental tenants

Should the Act be amended to allow rental tenants to have greater participation in village life?

Do you have any suggestions about how this could occur? For example, should rental residents have voting rights on non-finance matters and be able to serve on a residents' committee?

2.19 Health and safety

Code of Conduct

Submissions to the Select Committee raised concerns about bullying and harassment in retirement villages, both from operators and residents. Some residents submitted to the Select Committee that they would not make any complaints in their villages for fear of retaliation.

In response to these submissions, the Select Committee recommended the Code of Conduct be extended to encompass behavioural polices to protect residents and operators from harassment and intimidation and to promote a safe and secure environment.

The Code of Conduct is in Schedule 1 of the Regulations and outlines requirements for the conduct of operators and residents in retirement villages. NSW introduced rules of conduct within their Regulations in an attempt to establish a benchmark for the conduct and behaviour of operators. These rules of conduct prescribe mandatory minimum standards for training and skill development of operators and their staff. Many complaints received by OFAW concern high staff turnover and frustration that staff members appear to lack appropriate 'people skills'.

Under section 63 of the Act, it is a term of a residence contract that the operator and residents will observe any code of conduct. If an operator breaches the Code of Conduct, they are liable to a fine or an expiation fee.

Emergency procedures

The Act does not require a retirement village to have in place any emergency procedures. Some retirement villages may be required to have these in place under other legislation, such as fire safety requirements under the *Supported Residential Facilities Act 1992*.

Given the significant bushfires experienced in recent summers as well as the coronavirus pandemic, residents have raised concerns that there should be a requirement to have emergency plans in place. While many residents live independently, some would require assistance to evacuate a village.

In New South Wales, beginning in January 2020, a retirement village operator must prepare and maintain an emergency plan and also ensure that an evacuation exercise for residents is carried out at least once each year. An operator must also provide all residents with key safety information for their residential premises.

2.19 Health and Safety

Code of Conduct
Should there be a requirement for training of village staff?

Do you have any feedback about the Code of Conduct?

Emergency Procedures
Should the Act be amended to include requirements for villages around emergency/ evacuation plans?

Do you have any other feedback about health and safety requirements in retirement villages?

Leaving a village

2.20 Termination of a resident's right to reside in a retirement village

Section 44 of the Act outlines the circumstances under which a resident's right of occupation in a retirement village can be terminated. These circumstances include a resident terminating their residence contract. In a residence contract, an operator must include information about the right of a resident to terminate their right of occupation and to receive an exit entitlement.

A residence contract should contain provisions about leaving a village. Generally, a residence contract will require that a resident provide notice of their termination in writing and prescribes a period after which a resident must provide vacant possession of their residence.

Section 44 also specifies when an operator can terminate a resident's right of occupation in a retirement village.

If an operator terminates a resident's right of occupation, they must follow a formal process as outlined in the legislation, and apply to SACAT for confirmation of the decision.

Reasons an operator can terminate a resident's right of occupation are:

- if the resident commits a breach of the residence contract or the residence rules;
- if the resident acts in a manner that adversely affects the health and safety of persons working in the retirement village or that seriously disturbs the peace or comfort of other residents of the retirement village;
- the residence becomes an unsuitable place of residence for the resident because of the resident's mental or physical incapacity; and
- circumstances exist that make it no longer appropriate for the resident to continue to reside in the residence.

SACAT may make orders relating to the termination, including fixing a period within which the resident must vacate the residence.

Since commencement of the Act in 2018, the operator has been able to terminate a resident's right of occupation where a resident acts in a manner that adversely affects the health and safety of people working in the village, or seriously disturbs the peace or comfort of other residents. This inclusion aimed to account for a resident who is seriously disruptive but who did not fall into any of the other categories for termination.

2.20 Termination

Do you have any feedback on the provisions surrounding the termination of a resident's right of occupation in a retirement village?

2.21 Notice to vacate but remain in occupation

A residence contract will usually require a resident to provide vacant possession of their residence in accordance with the requirements of the contract. Alternatively, under section 27(3) of the Act, a resident can provide an operator with written notice that they intend to cease to reside in the retirement village but wish to remain in occupation of the residence until the exit entitlement becomes payable. This notice takes effect 10 business days after the resident provides the notice to the operator. A resident can withdraw the notice at any given time with the agreement of the operator. A resident is not able to give an operator notice under this section unless the resident withdrew any previous such notice at least six months before the new notice was given to the operator.

A resident who remains in occupation is taken to have agreed to comply with requirements prescribed in the Regulations for the period they remain in occupation. Regulation 7 prescribes that a resident who has provided such a notice has agreed that if they subsequently withdraw the notice, they must pay all remarketing costs incurred from when they gave the notice until the day on which the notice is withdrawn. An operator may deduct this amount from any exit entitlement to be paid to the resident.

Regulation 17 requires an operator's remarketing policy to include guidelines to be followed by a resident who gives an operator notice under section 27(3) of the Act. This policy must include:

- information about how the operator will manage inspections of the residence by prospective residents, and
- requirements relating to the presentation of the residence for inspection, and
- a date on which the resident is required to provide vacant possession before settlement if a residence is sold or relicensed before the resident's exit entitlement becomes payable 18 months after provision of their notice.

Regulation 7(2) requires a resident to provide vacant possession of a residence three months before the exit entitlement becomes payable (i.e. 15 months after providing notice of their intention to vacate but remain in occupation).

The introduction of this provision aimed to assist residents who wanted to leave a retirement village but did not have access to funds to provide for alternative accommodation while waiting for their residence to re-license. Under the 1987 Act, a resident needed to pay for alternative accommodation until the operator relicensed their residence. Before the introduction of this provision, some residents and operators would negotiate for the resident to remain in occupation while the residence was remarketed, but this was at the operator's discretion.

In the operator survey undertaken in April 2019, 22 operators reported that they had received a total of 47 section 27(3) notices. In the subsequent operator survey in September 2020, sixteen operators advised they had received a section 27(3) notice with an average of one notice for each of these operators. Operators reported that four residents had subsequently withdrawn these notices.

Concerns that operators have raised about this provision relate mainly to difficulties with the refurbishment and remarketing of a residence while a resident is in occupation. Approximately 40 per cent of operators who responded to the OFAW surveys reported that remarketing a residence is more difficult with a resident in occupation.

Many villages will refurbish a residence once the resident has vacated and use the refurbishment as a selling point. A vacant residence also allows the operator to stage it for sale.

2.21 Notice to Vacate

Do you have any feedback about the ability of a resident to remain in occupation while a residence is remarketed?

Are there any changes needed to this provision?

2.22 Remarketing of a residence

Remarketing policy

Section 22 of the Act requires that a copy of the village's remarketing policy be provided with other documents given to a person 10 business days before they enter into a residence contract.

Under Regulation 5, the residence contract must include any fee or charge payable in relation to remarketing, including the manner of calculation of such fees or charges.

Regulation 17 outlines information which an operator's remarketing policy must at least include or address. This includes:

- that the operator of a village will act under the remarketing policy;
- arrangements to meet with the outgoing resident, or their representative, to view the residence and explain and discuss the remarketing process;
- procedures to identify any work that should be undertaken to ensure the residence is in a reasonable condition for remarketing, and to determine when and how any such work will be undertaken, who will be responsible for organising the work and for the cost of the work;
- the fixing of the price at which the residence will initially be remarketed, and when and how changes to that price will be considered and made;
- the type, level and frequency of advertising that will be undertaken in relation to the marketing of the residence;
- who will be responsible for any valuation, advertising and other relevant costs and how these costs are to be calculated or determined;
- what will be required of the outgoing resident in relation to the remarketing of the residence, and the extent to which the resident may or will assume responsibility for any aspect of the remarketing process;
- guidelines to be followed by a resident who has provided a notice to vacate but remain in occupation while the residence is being remarketed;
- requirements that the operator will provide the resident with a monthly remarketing report;
- a requirement that the level of marketing by the operator for the outgoing resident's residence must at least match the level of marketing for new residences in the village; and
- settlement procedures, including fees, charges and costs that will be deducted by the operator at the time of settlement, and the provision to the outgoing resident of a settlement statement.

Under Schedule 1, clause 6 of the regulations, an operator can make changes to its remarketing policy after reasonable consultation with residents of a retirement village.

Resident participation in remarketing

Section 32 of the Act introduced the ability for a resident who is due payment of an exit entitlement to participate in remarketing of the residence if the residence has not been relicensed nine months after the resident ceased to reside in the village (or nine months after providing notice under section 27(3) of the Act that they intend to vacate the village but will remain in occupation while the residence is being remarketed).

If a resident chooses this option, they are required to comply with conditions set out in Regulation 9. These conditions allow the resident to appoint an agent of the resident's choice. However, the resident must provide the operator with information about the name and contact details of the agent, any changes to the appointment of the agent or the agent's contact details. The resident must also advise the operator of any offers to purchase the right of occupation as soon as practicable after an offer is made. The resident is liable to pay the agent's costs and the commission on the sale. The resident must comply with any reasonable request of the operator in relation to the remarketing of the residence undertaken by an agent.

An operator must not interfere with the remarketing of a residence by an agent appointed by a resident. The only exception is if the remarketing would cause the operator to be in breach of the operator's obligations under the Act, or the remarketing would otherwise interfere with the peace or comfort of another resident in a retirement village.

An operator can continue remarketing a residence even when a resident chooses to participate in the remarketing of the residence. The resident remains liable for the costs of remarketing undertaken by the operator as per their residence contract. This cost is in addition to the costs of their own remarketing.

2.22 Remarketing

Remarketing policy
Do you have any feedback on the requirements for a remarketing policy?

Resident participation in remarketing
Do you have any feedback about the ability of a resident to undertake their own remarketing if a residence has not been relicensed after nine months?

How could provisions relating to remarketing of a residence be improved?

2.23 Refurbishment or reinstatement of a residence

Vacated premises report

After a resident has provided vacant possession of a residence in a retirement village, an operator will generally undertake some type of refurbishment work. A residence contract must include detailed information about who will be responsible for repairing or replacing the fixtures, fittings and furnishings provided in a residence and how the cost of repairing or replacing such fixtures, fittings and furnishings is to be funded.

The Regulations require that an operator's remarketing policy contain information about the process of identifying any work that should be undertaken to ensure that the residence is in a reasonable condition for remarketing, determining when and how any such work will be undertaken, deciding who will be responsible for organising the work, and determining who will pay for the work.

An operator must complete a vacated premises report providing detailed information about the condition of the fixtures, fittings and furnishings provided in the residence. This vacated premises report must be completed not more than 10 business days after a person ceases to reside in a residence in a retirement village. The report must be in writing and signed by the operator and the resident, or on behalf of the resident, if it is reasonably practicable to do so in all the circumstances. The report aims to record the condition of the residence at the time a resident provides vacant possession, and to assist in determining what work needs to be undertaken in the residence. The vacated premises report can also be compared to the premises condition report completed at the start of a resident's occupancy in the event of any disputes.

Refurbishment or renovation of a residence

The extent of refurbishment to be undertaken will often depend on how long the resident resided in the village, the condition of the residence and the approach that will most likely achieve re-licensing of the residence while obtaining the best price. Disputes can arise about the level of work to be undertaken on a residence. Another source of dispute can be the assessment of fair wear and tear. There can also be confusion about the difference between refurbishment and renovation. The Act does not contain a definition of refurbishment or renovation, or provide any guidance on these matters. Generally, refurbishment means restoring to original condition not including fair wear and tear, while renovation can be an upgrade beyond original condition.

Usually, any alterations made to a residence will require written permission from the operator, and will become the responsibility of the resident to maintain. The resident may be required to remove the addition and restore the residence to original condition when they leave.

Many residents have argued that an incoming resident should be provided with an option to keep any alteration before it is removed. Disputes may arise at this stage, for example when operators require outgoing residents to remove solar panels from the roof, and repair any damage.

The Act does not contain provisions relating to alterations made to residences and does not require an operator to include information about these issues in residence contracts.

The Act does not contain provisions that outline processes to follow concerning refurbishment or renovation of a residence, or define commonly used terms such as refurbishment, renovation and fair wear and tear.

2.23 Refurbishment or reinstatement of a residence

Vacated premises report
Do you have any feedback about the vacated premises report?

Refurbishment or renovation
Should the Act be amended to include guidance around refurbishment and renovation of a residence, including alterations?

Do you have any feedback relating to the refurbishment of a residence when a resident leaves a retirement village?

2.24 Leaving a retirement village to enter aged care

Under section 30 of the Act, a resident who is leaving a retirement village to enter an aged care facility can apply to have the operator make payments to the aged care facility on their behalf. These payments are deducted from a resident's exit entitlement.

To be eligible for payments, a resident must meet the following criteria:

- be approved under the Aged Care Act 1997 of the Commonwealth to enter into residential care at an aged care facility provided by an approved provider under that Act;
- choose to pay a refundable accommodation deposit (RAD) under that Act;
- not have ready access to funds to make the payment, or the resident's personal finances would be seriously affected by any such payment; and
- will be entitled, on conditions specified in the residence contract being fulfilled or otherwise in accordance with section 27 of the Act, to payment of an exit entitlement.

If a resident meets the above criteria, they must make an application to the operator within 60 days of being approved for entry into the facility or leaving the village (whichever is later). The operator must start paying the daily accommodation payments (DAP) to the facility within 30 days of the application. An operator must continue to make payments until the exit entitlement is paid to the resident or the payments have reached 85% of the operator's reasonable estimate of the exit entitlement.

An operator can request evidence of the resident's income and assets as determined under the *Aged Care Act 1997* (Commonwealth) (This would be the income and assets assessment undertaken by Centrelink).

Under the previous legislation, a resident was able to request early repayment of their premium to pay for a bond in an aged care facility. Changes to the Act aimed to align the legislation with amendments to the *Aged Care Act 1997*, under which the payment of a bond for aged care accommodation was removed and replaced by alternative fee structures. These *Aged Care Act 1997* changes meant that more residents were able to seek a lump sum early repayment from operators, which could lead to financial strain. By changing from a lump sum payment to a DAP requirement, the Act aimed to ease the burden of the early repayment on operators.

In both the 2019 and 2020 OFAW operator surveys, the majority of operators reported that applications for early payments for aged care had remained consistent.

The resident has 60 days to make an application, and subsequently, the operator has 30 days to commence payments. There can therefore be up to 90 days before payments begin. The Act is unclear about who is required to pay the DAP for this period; whether the operator must make back payment or whether the resident is responsible for the fees for these 90 days.

There has been some concern that only residents who elect to pay a RAD can access these early payments. In some situations, a resident may not elect to pay a RAD but still incur DAP fees while in aged care. Arguably, these residents should also have early access to their exit entitlements.

Concerns have also been raised that while a resident who elects to pay a RAD must pay this amount within six months of entering the aged care facility, the resident could be waiting up to 18 months for payment of their exit entitlement from the retirement village.

2.24 Leaving to enter an Aged Care Facility

Should the Act be reviewed to provide further clarity for operators and residents around early access to an exit entitlement when entering an aged care facility?

Do you have any other feedback about provisions relating to a resident's ability to seek early access to an exit entitlement for aged care fees?

2.25 Payment of recurrent charges for six months after vacating a village

Under section 29 of the Act, if a resident ceases to reside in a retirement village, they cease to be liable to pay any amount in respect of any personal service that the retirement village or the operator formerly provided to the resident. In addition to this, an operator must assume responsibility for recurrent charges in respect of the residence formerly occupied by the resident. If a resident is entitled to payment of an exit entitlement, the operator is entitled to recover from the resident payment for six months of recurrent charges as an exit fee.

The Act defines recurrent charge as '*a fee, charge or other amount (as specified in the residence contract) payable by a resident to the operator of a retirement village on a recurrent basis*'.

This provision generally remains unchanged from a similar provision in the 1987 Act.

Disputes have arisen around what charges fall under this provision, and whether a resident can be required to pay other charges until the residence is relicensed.

In some cases, residents have entered into separate agreements that make them directly responsible for costs such as council and water rates. A resident may be required to pay these amounts from vacation until the residence is relicensed. In addition to this, a resident will often be required to leave electricity connected until the next resident takes up occupation, to assist the operator to undertake refurbishment work and show the residence to prospective purchasers. If these fees were part of a recurrent charge, a resident would not be responsible for these costs after six months. Residents have complained that it is unfair they continue to be responsible for costs relating to the residence for up to 18 months when they no longer live in the village.

As these fees are not paid to the operator, it is unclear whether they fall under the definition of recurrent charge and should cease at six months or upon the resident leaving a village.

2.25 Payment of recurrent charges after vacating a village

Should the Act be amended to clarify provisions around what can be charged to a resident after they leave a village?

Do you have any further feedback relating to provisions around a resident's liability to pay up to six months of recurrent charges after leaving a village?

2.26 Payment of exit entitlement

Payment of an exit entitlement after 18 months

Under section 27 of the Act, if a residence has not been relicensed 18 months after a resident has vacated their residence or provided an operator with notice of their intention to vacate but remain living in their residence, they may be eligible to receive payment of their exit entitlement. The different ways in which payment of an exit entitlement may arise are:

- If a resident ceases to reside in a village and the residence is not relicensed after 18 months, then the operator will be required to pay the resident their exit entitlement in accordance with the residence contract;
- If a resident has provided the operator with notice of their intention to vacate but remain living in the residence while it is being remarketed, the resident will be required to provide the operator with vacant possession of the residence 15 months after providing notice, to receive payment of the exit entitlement at 18 months;
- If a residence contract requires payment of an exit entitlement earlier than 18 months, the provisions of the contract will apply;
- If a residence is relicensed earlier than 18 months, then the exit entitlement should be paid to the resident within 10 business days of settlement; and
- A resident may elect not to receive payment of an exit entitlement at 18 months but to wait for the residence to be relicensed. If a resident chooses this option, they are required to notify the operator of this 15 months after vacating the residence or providing the operator with notice of intention to vacate but remain in occupation.

This provision was introduced in response to many complaints from residents about lengthy delays for payment of an exit entitlement once they had left a retirement village. Under the previous legislation, a resident was repaid on the provisions of their residence contract. Many contracts stipulated repayment upon re-licensing of the residence. In most situations, a resident was also required to provide vacant possession of the residence, and the operator was responsible for any remarketing. This process left many residents feeling as if they had no control over the remarketing and with no funds for alternative accommodation. With an uncertain timeframe around when a residence would be relicensed, a resident could also not plan how long they may have to pay for any alternative accommodation. The only recourse a resident had was to pursue a Tribunal action on the basis that the operator was failing to remarket a residence effectively. In some cases, residents (or their representative) reported waiting more than 10 years for repayment of their premium.

The introduction of the 18-month timeframe aimed to provide a reasonable period for an operator to be able to sell a residence if they undertook proper remarketing, while also limiting the amount of time a resident must pay for alternative accommodation.

A transitional provision was introduced along with this section, providing that the 18 months would commence on 1 January 2018, even if a resident had vacated a residence earlier than that date. The first of the 18-month exit entitlement payments fell due on 1 July 2019.

The Act allows an operator to apply to SACAT for an extension of the 18-month timeframe if special circumstances exist. This provision requires that SACAT have regard to the financial hardship likely to be suffered by the operator if the order were not made, and whether the operator has taken reasonable steps to fulfil the conditions specified in the residence contract for the payment of the exit entitlement. Operators report that the requirement to disclose extensive financial information is a hindrance to applying to SACAT.

There has been significant feedback from operators over this provision. A particular difficulty operators have encountered is in obtaining finance to cover the cost of the repayment if a residence has not been relicensed. Operators have reported an unwillingness amongst financial institutions to lend money to retirement villages.

Ways in which operators have advised this provision could be improved are:

- making amendments to the legislation so that it is easier to convert to a community title retirement village to allow the ability to secure a loan over a residence and enable the operator to repay the resident;
- investigating changes that would improve the willingness of financial institutions to loan to retirement villages; and
- allowing an operator to seek an exemption from this section or having modified provisions for different classes of operators, for example defining small operators and providing a modified provision, as these operators are likely to have less financial resources available to be able to pay residents before relicensing a residence.

Information about where an exit entitlement is to be paid

A small number of issues have arisen in the paying of an exit entitlement where a resident or their representative will not provide an operator with details of where to make payment. This situation is rare but has occurred in cases where there is a dispute about the exit entitlement amount. However, under the Act, an operator must make payment of the exit entitlement within 10 business days of it becoming due. If they do not have the information about where to pay, they may still be found in breach of the legislation, particularly if the dispute continues to SACAT.

It is recommended that the Act is amended to require a resident or their representative to provide an operator with current details about where an exit entitlement is to be paid, and to stipulate a timeframe for providing this information. This requirement could also include any proof that needs to be provided (e.g. Grant of Probate). If the resident or their representative fails to provide this information, then the operator should not be subject to a penalty for failing to pay on time.

2.26 Payment of exit entitlement

Do you have any feedback about the requirement for an exit entitlement to be paid 18 months after a resident ceases to reside in a village or provides notice of their intention to vacate but remain in residence while remarketing occurs?

Should the criteria be amended for an operator to apply to SACAT for an extension of the period?

Do you have any feedback about how this provision could be improved?

Information about where an exit entitlement is to be paid

Should the Act be amended to require a resident to provide details about where an operator should pay an exit entitlement?

2.27 Exit fees

The Act defines exit fee as '*the amount of money that is, under a residence contract, payable by a resident of a retirement village on the resident ceasing to reside in the retirement village or on the sale of the resident's right to reside at the retirement village*'.

The Act does not prescribe what fees and charges can be charged to an outgoing resident, but changes to the Act aimed for more transparent disclosure to incoming residents about these fees and charges to minimise disputes when a resident leaves a village.

The disclosure statement must outline all fees and charges a resident is responsible for on vacating a village, including the fees payable if a resident terminates during the settling-in period or after the settling-in period, and specify either the amount of the fee or the manner of calculation of the fee. Information that must be included in the disclosure statement includes whether the fee is based on the ingoing contribution the resident paid or the ingoing contribution of the next resident, and whether the resident will share in any capital gain or loss.

Exit fees most commonly charged to residents include a deferred management fee, a contribution to a capital replacement fund, any outstanding fees for personal services, remarketing fees and sales commission for relicensing of the residence.

A change which residents have repeatedly sought is for the Act to cap exit fees. This push mainly concerns the capping of any capital replacement fund contribution. This contribution is usually calculated based on the outgoing resident's ingoing contribution or the incoming resident's ingoing contribution (and could be capped or uncapped).

This fee is paid into a capital fund which is a contingency, sinking or other reserve fund or account established for the purpose of capital replacement or improvements, long-term maintenance or other similar items in respect of a retirement village.

While all states require disclosure of fees in residence contracts, there are no states that limit or cap fees which an operator can charge outgoing residents.

2.27 Exit fees

Do you have any feedback on the call for exit fees (particularly any capital replacement fund contribution) to be capped?

Do you have any other feedback on provisions relating to exit fees?

Miscellaneous/other issues

2.28 Endorsement of certificates of title

Endorsement of certificates of title are covered in section 56 of the Act.

Where land is to be used as a retirement village, a note of the fact must be endorsed on the relevant certificates of title. The endorsement must occur before a residence contract in respect of the retirement village is entered into.

There have been concerns about what 'relevant' means and what exactly is required to be endorsed. This includes clarifying whether it is just the land used for the residences in the retirement village that requires endorsement, or whether any shared land should also be endorsed. These requirements can become particularly confusing in the case of sites where a retirement village shares land with other facilities, such as aged care.

2.28 Certificates of title

Should the Act be amended to clarify provisions around the endorsement of retirement village land?

Do you have any other feedback on provisions relating to the endorsement of land for use as a retirement village?

2.29 Villages with multiple sites

The Act does not include reference to multi-site villages.

The current definition of retirement village does not reflect the reality that some retirement villages span multiple geographic sites. A village over multiple locations will usually occur where there are small groups of residences that are geographically close to each other and that share communal facilities. These villages are typically managed as if they are one village, will have similar terms and conditions in their residence contracts and joint financial arrangements. However, due to the lack of ability to register a multiple site village, operators may register each site as a separate village. Alternatively, an operator may register only one location for these villages. The Act's silence on this issue can cause confusion about how to register and operate multiple site villages appropriately. It can also lead to the Register not providing an accurate reflection of villages.

In the case where each site is registered separately, the operator needs to treat each village as a separate entity. This could mean having to hold an annual meeting and provide separate financial statements for each village unless the operator has an exemption to consolidate these requirements.

The ability to register a village as being across multiple sites would improve the accuracy of data kept by OFAW and improve consistency across villages.

In cases where a village is currently registered as multiple villages but in practice is operating as a single village with multiple sites, a mechanism to rectify this could be included within the Act. For example, the Minister could be provided with powers to enable the amalgamation on the Register of multiple villages into one village.

2.29 Multiple sites

Should the Act be amended to expressly state that villages can span multiple sites?

Should there be requirements for a village to fit this definition (if any)? For example, terms of residence contracts would be similar, shared facilities and finances shared between all residents.

Should it be up to an operator to determine whether a village will operate across multiple sites?

Should the Minister be provided with powers to enable amalgamation of multiple site retirement villages where each site has been registered as a separate village?

What should be the requirements for the Minister to approve such an amalgamation (if any)?

Are there any other improvements that could be made to the Registration of retirement villages?

2.30 Definitions in the Act

Definitions in the Act are covered in section 4 Interpretation. This Act introduced changes to definitions found within the 1987 Act to improve clarity.

Changes of terms included:

- The definition of administering authority was replaced with separate definitions of operator, senior manager, village manager and village landowner;
- The term 'premium' was replaced with 'ingoing contribution' to reflect a more accurate description of the payment;
- The period of occupation for when a resident resides in a village was defined, including definitions of when a person enters into occupation of a residence and when they will be taken to cease to reside in the residence; and
- Definitions added for exit fee and exit entitlement.

2.30 Definitions

Have the changes to definitions made it easier to understand terms used in the legislation?

Are there any further changes required to definitions under the legislation?

2.31 The requirement for an ingoing contribution

The definitions for the Scheme and ingoing contribution are included under section 4 of the Act. The details of ingoing contributions are covered in section 26 of the Act.

Under the definition of retirement village scheme, a retirement village scheme *'does not include a scheme under which no resident or prospective resident of a residence pays an ingoing contribution in consideration for, or in contemplation of, admission as a resident under the scheme'.*

ingoing contribution *means a payment (however described) made by or on behalf of a person in consideration for, or in contemplation of, the person becoming a resident in a retirement village (but does not include a recurrent charge, an exit fee, a special levy or any other payment excluded by the regulations from the ambit of this definition);*

This definition means that a retirement village can exist where only one resident pays an ingoing contribution. This could make it difficult for an operator to meet the requirements of the Act, such as holding annual meetings, and also be unfair to residents who thought they were buying into a retirement village where other residents would have also paid an ingoing contribution. Under these definitions, there could be one retirement village resident residing in a village where rental tenants occupy all other residences.

2.31 Ingoing Contribution

Should there be a requirement that a certain number or percentage of residences must be occupied by retirement village residents under a retirement village scheme?

Should there be exceptions to this (for example, where an operator is winding-down a retirement village scheme and renting out residences until they can terminate the scheme)?

Do you have any other feedback about provisions relating to payment of ingoing contributions?

2.32 Abandoned goods

The Act does not include provisions around what is to occur with abandoned goods or property that a resident or their representative leaves behind after vacating a residence in a retirement village. Operators have queried with OFAW how they are to deal with this situation. If a person does not remove their property from a residence, it can be difficult for an operator to remarket and refurbish a residence.

In section 4, the Act defines 'cease to reside' as when the person (or someone else on behalf of the person) delivers up vacant possession of the residence to the operator. A person will be taken to have delivered up vacant possession of a residence if the residence is no longer occupied and all personal property has been removed from the residence. A person's period of occupation does not end until the day on which the resident ceases to reside in the residence in the retirement village. These definitions mean that fees will continue to accumulate until vacant possession has been delivered and all items removed.

An operator could apply to SACAT for termination of the residency and seek orders to allow the removal of any abandoned goods. However, this scenario is not considered in the Act.

Division 7 of Part 5 of the *Residential Tenancies Act 1995* (SA) applies to abandoned property that a tenant has left behind on residential premises, and could provide some guidance about possible amendments to the legislation. This Division provides guidance as to how to deal with abandoned property, and allows the parties to make an application to SACAT in regards to abandoned property in the event of a dispute.

Legislation in some other states has similar provisions, requiring an operator to make an application to a tribunal seeking orders in relation to abandoned property.

2.32 Abandoned Goods

Should the Act be amended to include provisions around abandoned property?

Do you have any feedback about how abandoned property could be dealt with in a retirement village?

2.33 Exemptions

Under section 5 of the Act, the Minister may confer exemptions from the whole Act, or from specified provisions of the Act. Other sections of the Act also allow the Minister to grant an exemption from that specific section. For example under section 26, the Minister may grant an exemption from the requirement for an operator to hold an ingoing contribution in trust until a resident enters into occupation of a residence.

Exemptions granted to an operator may apply to all villages owned by that operator. This means that the exemption will apply prospectively to any villages later acquired by the operator. This can result in inappropriate application of exemptions to villages which are later purchased by the operator, and which may be substantially different from the villages they owned at the time of the original application.

Exemptions are also granted with no time limit meaning there is no ability to review whether they remain suitable over time.

Provisions around exemptions could be clarified to include that exemptions can only apply to villages which the operator owns at the time of the exemption. This would mean that exemptions do not automatically apply to new villages, but an operator could apply for the exemptions to be extended when they purchase or build new villages. This would allow the assessment of the suitability of these villages for the exemption.

Exemptions could include a timeframe for review. This review could ensure that the exemptions do not continue to apply if the circumstances that existed at the time they were granted have changed, and the exemption is no longer appropriate.

2.33 Exemptions

Should the Act be amended to clarify the application of exemptions?

Do you have any further feedback about provisions relating to the granting of exemptions?

2.34 Terminating a retirement village scheme

The Act provides two ways in which an operator can terminate a retirement village scheme. These methods are under sections 58 and 59. Section 58 allows an operator to apply to the Supreme Court for approval of the termination of a retirement village scheme while a resident (or residents) remain in occupation of a residence under the scheme. Under this section, the Minister is a party to any proceeding in which the Supreme Court's approval of the termination of a retirement village scheme is sought. In addition to other powers, this section allows the Court to make such orders as it thinks necessary to protect the interests of existing residents.

Section 59 provides the ability for the Minister to terminate a retirement village scheme through a notice in the Gazette. The Minister may not terminate a retirement village scheme unless satisfied that all residents of the retirement village wish to terminate the scheme. The Minister may make such orders as the Minister thinks necessary or appropriate on account of the termination of the retirement village scheme.

In addition to terminations of retirement village schemes where residents are in occupation, an operator may also seek termination where no residents remain in the village and the operator wishes to use the land for other purposes.

A village may be across multiple sites and an operator wants to only terminate one site or there may be a portion of land in a village which an operator wants to remove from the scheme. The Act does not provide clear guidance on how an operator can terminate in these situations, or if termination is required in each of these circumstances.

Given the wide range of circumstances in which an operator may terminate a retirement village scheme, or a portion of a retirement village scheme, the Act could be amended to clarify provisions around terminating a retirement village scheme, including processes and requirements for different circumstances.

2.34 Terminating a retirement village scheme

Should the Act be amended to clarify provisions around terminating retirement village schemes?

Do you have any other feedback relating to provisions around terminating a retirement village scheme?

2.35 Enforcement of legislation

OFAW is responsible for investigation and enforcement of potential breaches of the Act.

The Act introduced a range of new measures in 2018 to increase OFAW's powers to monitor and enforce compliance with the legislation. The Act also increased penalty amounts for breaches of the legislation, and added a range of expiable offences. These measures aimed to deter contravention of the Act.

Division 3 of the Act deals with authorised officers and their powers under the legislation. The Minister may appoint suitable persons to be authorised officers for the purposes of the Act. The Act also outlines what the general powers of authorised officers are and makes it an offence to hinder an authorised officer. The powers of authorised officers were increased from the previous legislation, to ensure that authorised officers can appropriately investigate any potential breach of the legislation.

There have been no penalties issued or prosecutions commenced since the Act commenced in 2018. OFAW has required several operators to enter into undertakings in regards to potential breaches of the legislation.

2.35 Enforcement of legislation

Do you have any feedback about penalties and offences under the legislation?

2.36 Home care services in retirement villages

The Commonwealth Government has an increasing focus on allowing a person to receive care in their own home for as long as possible. Retirement village residents can receive home care services in their retirement village residence. These services may include personal care or help around the home, such as cleaning and cooking.

These home care services could be provided as part of a resident's home care package from the Commonwealth Government after an assessment under the *Aged Care Act 1997.* In this case, the services are regulated by the Commonwealth Government.

Residents may also receive private services to assist them in their home. This may happen if the resident has been assessed as not eligible to receive any Commonwealth Government assistance, or they may be waiting to receive a package from the Commonwealth Government.

Some operators have formed their own separate companies to provide these services to residents. A private company not connected with the operator may also provide these services.

If services are provided privately, they are not regulated by the Commonwealth Government, although services provided by health care practitioners will fall under laws that govern these professionals. Privately provided home care services are not part of a retirement village contract. General consumer law will apply, but residents will have no protection under retirement villages' legislation or the *Supported Residential Facilities Act 1992*.

Retirement villages have often focused on their role of providing independent living to residents. As they start to offer more personal care services, issues arise about what protections are in place for potentially frail and vulnerable residents receiving privately funded care.

There is also uncertainty as to whether a retirement village operator, by providing personal care services, will be required to also register as a Supported Residential Facility and comply with the requirements of the *Supported Residential Facilities Act 1992*.

2.36 Home care services

Do you have any feedback about the provision of private home care services in retirement villages?

How can residents accessing private home care services be protected?

Appendix 1

Legislation in selected jurisdictions

Jurisdiction	Legislation	Review status	Disclosure periods	Voting provisions and Special Resolutions	Refurbishment
NSW	*Retirement Villages Act 1999* *Retirement Villages Regulations 2017*	NSW undertook an inquiry into retirement villages in 2017. First round of amendments passed Parliament in late 2018 with consultation occurring on others during 2020. The *Retirement Villages Amendment Bill 2020* was introduced to Parliament in 2020. The bill passed in late 2020.	An operator must not enter into a village contract earlier than 14 days after the person has been provided with a copy of each village contract they are being asked to sign. An operator is not to restrict the person from seeking independent advice before entering into the contract.	Each resident has one vote. A special resolution must not be considered unless there is a quorum present to consider and vote on the issue. The size of the quorum is either a minimum of 5 qualified voters or 25% of qualified voters (whichever is the greatest). If a village has fewer than 10 occupied residential premises the quorum will be qualified voters from a majority of the occupied residential premises.	A resident who is not a 'registered interest holder' must leave the premises in as nearly as possible the same condition as at the beginning of their occupancy, fair wear and tear excepted. Damage beyond this must be repaired at the expense of the resident. A resident who entered into a contract after 1 July 2000 is not liable to refurbish or pay the cost of refurbishing the premises. If a resident entered into a contract before 1 July 2000, the resident remains liable to cover the cost of refurbishment to the extent outlined in the residence contract. However, there are requirements around this work with an operator required to seek at least three quotes for carrying out the work and negotiate with the resident and attempt to agree as to which quote should be accepted.

Jurisdiction	Legislation	Review status	Disclosure periods	Voting provisions and Special Resolutions	Refurbishment
QLD	*Retirement Villages Act 1999* *Retirement Villages Regulations 2010*	Amendments to the Act passed in 2017 including a mandatory 'buy-back' of a residence 18 months after the termination date. An independent panel reviewed this provision in 2020.	A person must receive a copy of relevant documents including the contract at least 21 days prior to signing the contract. The 21 day period can be waived if the person receives legal advice on the contract.		A resident must leave a residence in the same condition it was in when the resident started occupation. This condition does not include fair wear and tear and any renovations and other changes to the condition of the unit carried out with the agreement of the resident and scheme operator. If a scheme operator proposes to carry out renovation work the operator and resident must agree on a date by which the renovation work is finished. The cost of the work is split in the same proportion as any capital gain on the sale of the residence. If the resident does not share in the capital gain, then the operator must pay for the renovation work.

Jurisdiction	Legislation	Review status	Disclosure periods	Voting provisions and Special Resolutions	Refurbishment
VIC	*Retirement Villages Act 1986* *Retirement Villages (Contractual Arrangements) Regulations 2017* *Retirement Villages (Records and Notices) Regulations 2015* *Estate Agent (Retirement Villages) Regulations 2016*	Community consultation on reforms to the legislation occurred in 2019 with an options paper released in 2020.	A resident cannot sign the contract until 21 days after they have received all documents.	Only one vote per residence at an annual meeting. If the residents disagree about which of them is to exercise the vote, the resident whose name appears first on the residence contract conferring the joint residence right may exercise the right to vote. However, for a special resolution each resident may exercise a vote.	
ACT	*Retirement Villages Act 2012* *Retirement Villages Regulations 2017*	Tabled a review of the legislation in 2016 with two rounds of amendments introduced in 2017 and 2019.		Only one person per residence may vote, however, residents may vote on a special resolution to allow each resident of the village to have one vote. Special resolutions require a quorum similar to the NSW legislation.	

Jurisdiction	Legislation	Review status	Disclosure periods	Voting provisions and Special Resolutions	Refurbishment
WA	*Retirement Villages Act 1992* *Retirement Villages Regulations 1992* *Fair Trading (Retirement Villages Interim Code) Regulations 2020*	Released a report in 2010. Some amendments introduced between 2012 and 2016. Further consultation papers on remaining reforms released across 2019 and 2020 with a final consultation paper due in 2021.	A person is required to receive all documents including the contract at least 10 working days prior to signing the contract.	Where two or more residents occupy the same residence, each resident may have a vote on any matter at a meeting of residents unless otherwise provided in the residence contract. Quorum requirements for a special resolution are covered under the Retirement Village Code.	*Fair Trading (Retirement Villages Interim Code) Regulations (No 2) 2020* define refurbishment work as maintenance, repair, replacement or renovation work. The Code provides steps which an operator must follow if a resident is required to contribute to or pay for the cost of refurbishment work. These steps include providing a written statement that lists each item of work the operator believes is required to be carried out. The Code prevents the operator from accepting or making any demand for payment for the refurbishment work unless the work is complete, the resident has received a fully itemised account for the final cost of the work, and the operator has provided the resident with a reasonable opportunity to enter the residential premises to inspect the refurbishment work.
New Zealand	*Retirement Villages Act 2003*		Residents are required to seek legal advice before signing an occupation right agreement.		

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