

Operator Frequently Asked Questions

AMENDMENT BILL

The *Retirement Villages (Miscellaneous) Amendment Bill 2023* (the Bill) has been released for a period of public consultation. The Bill proposes to amend the Retirement Villages Act 2016 (the Act).

Why is the Retirement Villages Act being amended?

When the Act commenced in 2018, it included a provision for its operation to be reviewed after three years. An independent review of the Act (the Review) was conducted by PEG Consulting and tabled in Parliament in November 2021.

Many of the recommendations made by the Review require reforms to strengthen the operation of the Act. Amendments are proposed to the Act to respond to these recommendations.

The proposed amendments have a strong focus on improving consumer protections and clarifying the rights and responsibilities of residents, prospective residents and operators under the Act.

What are the main changes which will affect operators of a retirement village?

The Bill will amend the Act to give effect to the recommendations of the Review and to strengthen consumer protections. The proposed amendments seek to achieve a balance between enhancing the rights of residents and prospective residents while minimising any unnecessary impacts on retirement village operators.

Residence contract

The Bill proposes to update the provisions of the Act relating to the residence contract to require a broader range of information to be provided to a prospective resident, including:

- > whether a resident may make alterations to the residence, including any approval process and obligations when the residence is vacated
- > a clear statement at the front of the contract about the type of occupancy being entered into. Where a person is entering into a licence, lease, or share to live in a residence, the statement must make clear that the person is not purchasing the residence
- > all fees and charges payable under the contract, and how exit fees, remarketing fees and charges are calculated
- > a completed premises condition report (PCR) at the time a resident executes the contract. This provides that the PCR is always provided to the incoming resident at an early stage whilst ensuring there is only one cooling off period applicable.

Disclosure statement

The Bill proposes to update the provisions of the Act relating to the disclosure statement to require a broader range of information be provided to a prospective resident to aid in decision-making.

This includes information to make clear whether the prospective resident is purchasing a lease/licence/share to live in the property (and that the property remains owned by the operator) or purchasing a residence, embedded networks (if any) and the composition of occupation types within the village. It also includes a requirement for worked calculations on exiting a village at two, five and 10 years to provide prospective residents with a clear understanding of the fees and charges for which they will be liable.

Deposits

The Bill proposes to introduce a clear and transparent framework for residence contract deposits. It makes clear that any deposit paid by a prospective resident will 'hold' a residence for a specified time during which the operator is prohibited from entering a contract with another person. It also clarifies that a deposit must be treated as part of the ingoing contribution and must be repaid by the operator within 10 business days if a person does not proceed with the contract.

Emergency plans

The Bill proposes amendments to require that operators prepare, maintain and implement emergency plans and make them available to residents. Operators must also undertake a safety inspection annually of communal areas (if any), make a report available to residents and ensure that prescribed safety information is clearly displayed in communal areas.

Recurrent charges

The Bill provides for the responsible management of residents' funds by clarifying and strengthening auditing requirements and limiting fee increases. The proposed amendments will significantly increase the transparency of village funds by requiring audit statements to be easily compared with financial reports and budgets. The Bill also limits any recurrent charge increase to a maximum of CPI unless otherwise provided for in the residence contract, agreed to at a meeting of residents or ordered by the South Australian Civil and Administrative Tribunal (the Tribunal).

The Bill also proposes to limit the obligation of residents to pay recurrent and 'recurrent-like' charges to a maximum of six months after exiting the village (for example, council and water rates).

It makes clear that non finalised accounts may be used for the mandatory meetings to discuss proposed increases with a residents' committee at the budget meetings.

Capital fund contributions deducted from exit entitlement

The Bill proposes that if any amounts are deducted from an exit entitlement as contributions to a capital fund, they must not exceed the lesser of the following:

- > one per cent (1%) of the current market value of the residence, multiplied by the number of years of occupation, or
- > an amount that is 12.5 per cent (12.5%) of the current market value of the residence.

If the residence contract provides for a lesser amount as the deduction, then the contract provision will apply.

Management of retirement villages

The proposed amendments strengthen the professional standards required of operators, senior managers and village managers through:

- > expanding the types of offences that will disqualify a person from being involved in the administration of a retirement village
- > requiring operators and staff to undertake approved training on the Code of Conduct contained within Schedule 1 of the Retirement Villages Regulations upon employment and then every three years
- > requiring operators to ensure that retirement village staff receive training on the village's operational policies and procedures as relevant to their role.

A 12-month transitional period will be provided for existing retirement village operators and staff to complete Code of Conduct training requirements.

An update to the Code of Conduct in Schedule 1 of the Retirement Villages Regulations is planned and there will be further consultation and feedback opportunities for stakeholders to inform this also.

How will the changes affect current contracts?

In most cases, current residents will remain bound by the terms of their existing contract.

A small number of changes will impact requirements relating to the residency of both current and prospective residents. This includes the proposed changes relating to emergency plans, recurrent charges, exit entitlements and capital fund contributions deducted from exit entitlements.

What changes are being proposed to the mandatory repayment of an exit entitlement?

In 2018 the Act introduced a requirement for operators to pay an exit entitlement after 18 months if it had not already been paid under the terms of the contract.

Three possible options for the mandatory repayment of an exit entitlement are being canvassed. These are:

- > **Option 1** is modelled on the scheme in New South Wales. It allows an eligible resident to apply to the Tribunal for an order for the payment of the exit entitlement when certain conditions are met. These conditions are:
 - > that a period of six months plus 20 business days for refurbishment (for metropolitan Adelaide) or 12 months plus 20 business days for refurbishment (in all other cases) has passed since delivery of vacant possession and
 - > the residence contract provides for the resident to share in at least 50 per cent (50%) of the capital gain applying to the residence and
 - > a sale price has been agreed between the resident and operator, or an independent valuation has been obtained within 30 days prior to the Tribunal application.

Note: Under this model the resident must apply to the Tribunal and the Tribunal is only empowered to make an order where the applicant meets all of the eligibility criteria and the Tribunal is satisfied that the Operator has unreasonably delayed the remarketing process.

The ability of a resident to continue living in a residence after giving notice of intention to vacate is removed. The existing 18-month repayment provisions and ability to remain in-situ will continue to apply to residents who are not eligible to apply to the Tribunal for an order. Ineligible residents include those where the operator is making payments to an aged care facility on their behalf and deceased estates.

- > **Option 2** reflects the recommendation made by the final report of the independent review of timeframes for exit payments in Queensland retirement villages. It reduces the timeframe in which the Operator is obligated to pay an exit entitlement after a resident has delivered vacant possession from 18 months to 12 months. A 20-business-days refurbishment period applies before the 12 month timeframe commences. The ability of a resident to continue living in a residence after giving notice of intention to vacate is removed. Repayment of the exit entitlement is automatic after 12 months unless relicensed sooner.

Note: Under this model the operator must pay after the specified time. There is no eligibility criteria.

- > **Option 3** – maintains the status quo (no change). Statutory repayment of the exit entitlement will remain at 18 months after a resident provides a notice of termination. If a resident continues living in a residence after giving notice of intention to vacate, vacant possession must be provided to the operator at least three months before repayment falls due.

Note: Under this model the operator must pay after the specified time. There is no eligibility criteria.

A separate information sheet provides greater information on the exit entitlement options.

What other changes does the Bill propose?

Dispute resolution

The Bill includes additional provisions to improve dispute resolution at the local level and when heard by the Tribunal. These include:

- > requiring operators to follow their dispute resolution policy unless an alternative dispute resolution process is agreed to by each party to the dispute, and
- > empowering the Tribunal to hear a wider range of disputes, including those relating to village rules. The Tribunal will also be empowered to make orders they consider to be just to resolve the matter, including an order to restrain a person from engaging in particular conduct.

Compliance and enforcement

The proposed amendments strengthen the powers of the Regulator to monitor and enforce the Act. This includes introducing enforceable voluntary undertakings and additional penalty provisions, as well as giving the Registrar the discretion to publish enforcement information where in the public interest and as a deterrent to non-compliance.

Commercial and residential rental leases

The proposed amendments separate the provisions relating to commercial and residential leases.

Provisions relating to residential rental leases for eligible persons are strengthened to remove the maximum five-year lease period and to increase the participation and inclusion of rental tenants in village affairs. This includes the participation of rental tenants on residents' committee.

Commercial leases will retain a maximum five-year lease period unless otherwise approved by the Minister for Health and Wellbeing.

Termination and modification of a retirement village scheme

The proposed amendments will require that operators who are considering the termination of an occupied village to notify:

- > the Registrar in writing of their proposal to terminate before commencing discussions with residents, and
- > each resident in writing of the proposed application and grounds for termination, along with a recommendation and reasonable time frame within which to seek legal advice.

The Registrar may, depending on the termination proposal, require the operator to reimburse the reasonable legal costs of residents seeking advice and notify residents of their entitlement.

The proposed amendments clarify that the Minister for Health and Wellbeing can make a determination to terminate a whole or part of a retirement village scheme, even when there are no residents living in the village.

Insurance

The Bill proposes to amend the Act to require the operator to maintain adequate insurance for the village that covers damage, reinstatement or replacement of buildings and public liability. Information about the insurance cover held must be made available to residents on request.

Register

The Bill proposes to update the information included on the Register and provides for the Register to be published online and to be publicly searchable.

The information that may be included on the Register will include compliance and enforcement action. However, the inclusion of this information will be at the Registrar's discretion.

To minimise the impact on operators, this requirement will be supported by the introduction of a secure online platform where operators can update their village information.

Information gathering

The Bill proposes to amend the Act to allow the Registrar to gather information about retirement villages relevant to the performance of the Registrar's functions under the Act. This includes information relating to entry and exit payments, average turnover times, formal enforcement action, Tribunal proceedings and prosecutions of offences under the Act.

Not all information gathered by the Registrar will be included on the publicly available Register.

When will the changes come into operation?

It is likely that the Bill will be introduced to Parliament this year. Once the Bill is passed, further consultation will also occur on supporting regulations prior to the new laws taking effect.

An awareness-raising campaign will also be conducted prior to the commencement of the new laws to ensure all stakeholders are aware of the changes and when they will come into force.

How can I provide feedback on the *Retirement Villages (Miscellaneous) Bill 2023*?

There are a number of ways to learn more about the Bill and provide feedback. For more information about the changes, planned public information sessions and to access the reference documents, please visit:

www.sahealth.sa.gov.au/reviewsandconsultation

or

via YourSAY at: <https://yoursay.sa.gov.au/RVActAmendmentBill>

All submissions must be in writing; a feedback form has been developed and can be submitted in the following ways:

- > Online Survey: provide your formal feedback by completing the online survey – <https://www.surveymonkey.com/r/RVActAmendmentBill>
- > Email: provide your formal feedback via email - RVActReview@sa.gov.au
- > Post: Retirement Villages Review, Office for Ageing Well, PO Box 196 Rundle Mall, Adelaide SA 5000

Feedback closes on **Friday 19 May at 5.00pm** and late submissions will not be considered.

If you have any questions or require support to participate in the feedback process, please contact Office for Ageing Well by phoning 08 8204 2420.

For more information

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