

SUBMISSION TO THE

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

Prepared and authorised by:

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Who is COTA SA?

COTA SA is an older people's movement run by, for and with older people. We represent the aspirations, interests and rights of more than 630,000 older South Australians. COTA SA reflects the diversity of modern ageing in terms of living arrangements, relationships, income, health, ambitions and aspirations. COTA SA connects with thousands of older people each year throughout SA. Our policy and advocacy are guided by the COTA SA Policy Council made up of older South Australians from a diverse range of backgrounds, along with a number of advisory groups. COTA SA's social enterprise, The Plug-in undertakes regular surveys with older South Australians in addition to its work facilitating access to older people for organisations, researchers and service providers. COTA SA is part of the COTA Federation with independent COTAs in each state and territory along with COTA Australia.

BACKGROUND

This submission is based on ongoing inquiries and feedback to COTA SA, input provided in response to a call out about the review and advice from three key COTA SA advisory groups –

- Goolwa Victor Harbor Advisory Group
- Rainbow Hub Advisory Group
- Policy Council

COTA SA enjoys a close and longstanding relationship with the SA Retirement Villages Residents' Association (SARVRA).

We have had the opportunity to view the SARVRA submission which provides detailed, thoughtful proposals based on the lived experience of almost 9000 members, about 34% of retirement village residents in SA. We commend it as a thorough outline of the issues that need to be addressed and options to address them.

INTRODUCTION

The review of the Retirement Villages Act (2016) is being undertaken against a backdrop of a strong housing market which favours those selling. It is a very difficult time for people on low and fixed incomes to secure housing whether bought or rented. Demand for retirement village accommodation seems to have rebounded following COVID and is very strong. According to industry sources, demand for retirement villages exceeds supply, underlined by the fact that in March 2021, 17,348 people nationally sought information about retirement village and land lease homes against supply of 2,753.¹

Retirement village accommodation offers an important housing option for older South Australians, serving about 5% of people aged over 55 at any time. The legislation that regulates the industry must strike the right balance between the rights of residents and the viability of the diverse range of private, local government and not for profit providers. Indeed, regulation serves to support consumer confidence in retirement village living as an option and mitigates against the potential for damage that poor conduct does to the reputation of retirement villages.

There is no doubt that the current *Retirement Villages Act (2016) SA* achieved a much-improved range of consumer protections. Notwithstanding this, there continue to be significant issues that require attention and the potential for improvements including those outlined in this submission.

¹ [Retirement village new enquiry breaks villages.com.au record at 123,000 in March - The Weekly SOURCE](#)

PRINCIPLES

Five central principles have been reflected in the feedback to us -

1. Transparency and Disclosure

While the current Act greatly improved transparency and disclosure from the previous Act, we think continuing reform in this area should be a major theme in this review. Retirement village contracts are among the most significant contracts entered in a lifetime, involving very big decisions which often follow or anticipate significant and stressful life events. The impact of that decision will last for years. Similarly, the ongoing capacity for older people to engage in, be consulted about and be part of decisions about expenditure, policies, rules and changes in relation to their home is fundamental to enjoyment.

2. Useability and simplicity

We receive significant feedback that there is an ongoing need to improve the simplicity and useability of the Act and Regulations and of the subsequent agreements between residents and providers. All should be as simple, useable and easy to understand and interpret as possible. We support innovations that deliver standardised formats and templates allowing easy comparison of terms, and a plain English outline of rights and responsibilities.

3. Consumer protection and support

Again we think that this is an area that the review should focus on. We note that the Code of Conduct is rarely used and that, despite the fact that penalties and consequences were increased as part of this Act, no prosecutions have taken place. We receive very positive feedback about the critical support available to prospective and actual residents through organisations such as the Office for Ageing Well, SARVRA, ARAS and the Catalyst Foundation.

4. Village Relationships

Many older people report enjoying long and happy lives in retirement villages. The key to this in most instances is a harmonious relationship between provider and resident and between residents. This is highly valued, even above amenity and service, by the people who have talked to us.

5. Innovation to meet future trends and needs

Patterns of occupation, along with the needs and aspirations of residents, have changed considerably since the retirement village model was first conceived. We commend the provision for this review and urge that there are opportunities for continuous review and innovation in an option that is an important part of the housing landscape for 26,440 older South Australians.

BEFORE MOVING INTO A VILLAGE

The feedback to us has been that more clarity is required in relation to deposits and particularly in relation to what is refundable.

In general terms we believe that the disclosure statements have served an important purpose in improving the information available to a prospective resident about the essential terms of

their prospective occupancy. It is also important that the disclosure statement is very clear about any matters that may be subject to change (such as village rules and policies) during occupancy.

Residents continue to tell us that they have not understood their agreements and that they did not get legal advice and/or financial advice before signing their contract. Many too have apparently not engaged with a key family or network member who is later called upon as a substitute decision-maker on exit. While we would not support such advice or consultation being mandated, we would like to see encouragement and more information for people about how to access advice that is independent and expert.

From time to time, and in other jurisdictions, there is a view that it should be possible for a person to agree to waive rights – to cooling off or to statutory buy back provisions for example. This is not an approach we support. It is COTA SA's view that legislated protections should be inviolable thereby countering the risks associated with rushed decision-making including in what is often a high-pressure sales environment. We do not support introducing an option to waive the requirement to wait 10 business days before signing a resident contract. This is especially important where the option to "cool off" may also be waived.

COTA SA urges that, in line with other repayment requirements, repayment of the ingoing contribution be required within 10 business days of cooling off.

LIVING IN A VILLAGE

Village Relationships

COTA SA commends industry initiatives such as the voluntary industry code of conduct and the increasing take up of better practice and leadership training for village managers.

We remain concerned that there continue to be instances of poor management, dysfunctional relationships with residents and, we understand, bullying and harassment experienced by residents from time to time.

Despite the inclusion of a code of conduct in the Regulations made pursuant to the current Act, we do not believe they have become an active tool in supporting positive relationships between providers and residents and between residents.

Given the very strong feedback to us that the relationship between residents and operators is so critical to successful retirement village living, we propose that there is disclosure to prospective residents where there are ongoing or serial issues between residents and operators. This would both assist a prospective resident in assessing the suitability of a village for them and create an imperative for operators to invest in village management, consultation and dispute resolution.

Financial matters

Rather than give detailed commentary in relation to financial matters, COTA SA urges improvements in the disclosure and transparency related to expenditure and charges levied on residents. From the feedback to COTA SA, this continues to be the source of major dissatisfaction between residents and operators. There are particular grievances relating to

increases or changes in charges and we believe there is often a lack of sympathy for the low and fixed incomes, and resulting tight and careful budgets, of many residents.

We would encourage the overhaul of requirements to improve transparency and the adoption of the better practice which has been introduced in some villages as part of regular reporting and accountability to residents.

Transitions to new management or operators

It is inevitable that retirement villages will be bought and sold. The feedback to us is that some of these ownership changes go very well and offer improved relationships and services to residents.

However, we also get feedback that some changes have been unsettling and fraught. This typically occurs where existing culture or routines are not respected or when residents are not engaged in changes.

We have also had feedback, including through the Rainbow Hub, that there is a level of nervousness for LGBTI elders that their rights and “enjoyable occupation” may not be respected by incoming managers. There is some concern that the *Equal Opportunity Act* may offer religious exemptions for new operators that may diminish freedoms and protections previously enjoyed.

LEAVING A VILLAGE

COTA SA continues to hear that the process and fees relating to the exit of a resident from a retirement village are often the source of conflict and dispute.

As part of a general requirement for the Act to improve transparency, COTA SA believes that all expenses payable on exit need clarification. This includes any expense that can be charged when a person leaves during the settling in period. Residents tell us of the need for exit fees to be both more transparent and, in the case of capital replacement fund contribution, capped.

We would also advocate that the charges that are payable by the resident after they leave a village be clarified. Concepts like “fair wear and tear” need to be defined and more guidance is needed in relation to what is refurbishment and what is renovation.

We increasingly hear of issues relating to whether solar panels, installed at the cost of an outgoing resident, should be removed, on sold to an incoming resident or at least left in place.

COTA SA believes that the mandated buy back period of 18 months prescribed in the current act is too long. We advocated for this to be 6 months in our representations in 2016. Many operators already offer shorter pay back periods. Provision already exists for operators to apply for an extension in some circumstances. It is reasonable that there is pressure on an operator to re-market and re-lease a retirement unit in a timely fashion and it is not reasonable that delays in this are borne by the resident. COTA SA again urges that the period be reduced to a maximum of 6 months with operators able to reduce it further.

COTA SA would also support a reduction to 3 months in the length of time rates can be charged to an outgoing resident, again with a view to ensuring that there is urgency for the operator to prepare and sell the unit.

It is a feature of modern longer lives that many of us spend longer periods in so-called retirement. It is impossible to predict the course of events over the two or three decades after retirement and life circumstances will change in the two or three decades after retirement. Some have raised with us whether deferred management fees (DMF), payable on exit to offset the upfront cost of moving into a village, locks a person into a village and prevents them moving to a new house if circumstances change. An awareness of this risk, in the context of a long life ahead, is important to evaluating entry options.

COTA SA believes that *the Act* should do a better job of recognising the rights in the event that a resident re-partners. Often the “new” partner will have lived in the village for some time. Currently they face a raft of complexities and unreasonable costs to continue to occupy their home in the village.

FUTURE TRENDS AND ISSUES

Embedded Networks

COTA SA is increasingly aware of issues related to the use of embedded suppliers of electricity. Residents are often unaware that such arrangements are in place and that they do not have the flexibility to choose a provider.

We note that there are broader calls for improved protections for consumers in relation to embedded networks. The Australian Energy Market Commission (AEMC) published a report in June 2019² proposing a package of law and rule changes to update the regulatory frameworks for embedded networks to improve protections for consumers and enable access to more competitive offers for consumers who are part of embedded networks.

We note too that the Economic and Finance Committee of the Parliament of SA has announced an inquiry into embedded networks with submissions due on 7 May 2021.

At a minimum, residents are entitled to know of the existence and implications of embedded networks prior to signing a contract and should be updated about any changes in charges or supply on a regular basis.

Rental Options

Given the increasing number of older people – and women especially – who are in housing stress and for whom home ownership is not an option as they age, COTA SA is encouraged by the increasing involvement of some retirement village operators in offering rental options. We have had positive feedback about the value and success of rental options for older people who do not have the capacity to buy a licence.

Given the increasing likelihood of rental options, we support the need to clarify the rights of residents who rent to be part of consultation and decision-making (including as part of resident committees) in the village they occupy.

² <https://www.aemc.gov.au/sites/default/files/2019-06/Updating%20the%20regulatory%20frameworks%20for%20embedded%20networks%20-%20FINAL%20REPORT.PDF>

Frailty, continued occupation and access to aged care

Older people are – and will increasingly – access aged care while a resident of a retirement village.

We received feedback about the importance of ageing in place, where a resident must have some certainty about continued tenancy even as frailty, cognitive decline or other health events necessitate the need for care. For many people this is the attraction of a retirement village, with options for aged care support being available in a retirement village unit in the same way it would be as a homeowner.

Currently there is provision in *the Act* for an operator to terminate a resident's right of occupation if the residence becomes an unsuitable place because of the resident's mental or physical incapacity or if circumstances exist that make it no longer appropriate for the resident to continue to reside there.

While it is acknowledged that this may require some negotiation, it is increasingly likely that people will seek to remain in a retirement village throughout their lives, receiving care, including to high levels, at home. For many providers this is part of the value proposition for residents, and they offer or facilitate services, whether government subsidised or private, as agreed. However, some residents and families also report pressure to move to aged care long before they choose.

We are aware of differing opinions about whether home care services and housing should be available from the same provider. Generally COTA SA believes this is a matter of choice for residents. Some will enjoy the convenience of their housing and aged care services being offered by one provider while others will elect, perhaps as a matter of privacy or because another home care service is better, to use a provider who is not the village operator. This right to choose is fundamental and must be protected and supported.