



Submission in Response to the Discussion Paper
Queensland Retirement Villages

October 2011

About National Seniors Australia (NSA)

With a quarter of a million members Australia-wide, National Seniors is the consumer lobby for the over-50s. It is the fourth largest organisation of its type in the world.

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

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

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

We support those in need – as a not-for-profit organisation, we raise funds and redirect monies received to older Australians who are most in need.

We help our members save – we offer member rewards with discounts from over 7,000 business across Australia, we offer discount travel and tours designed for the over 50s, and we provide older Australians with affordable, quality insurance to suit their needs.

Contact:

NSA National Policy Office, 23 Torrens Street, Braddon, ACT 2612

P: (02) 6230 4588 F: (02) 6230 4277

E: npo@nationalseniors.com.au

W: www.nationalseniors.com.au

Contents

Introduction	1
Our Position.....	1
Issue 1: Closing a retirement village	1
Issue 2: Timeframes for closing a retirement village	3
Issue 3: Financial considerations.....	4
Issue 4: Entering a village and closure – implications for residents.....	10
Other Considerations.....	10

Introduction

National Seniors Australia appreciates the opportunity to provide feedback on options for amending the *Retirement Villages Act 1999* (Qld) to address issues which arise when a retirement village closes.

Retirement Village living is a popular option for senior citizens wanting to down-size their homes and to live in a friendly, safe environment. People enter villages expecting that they will be able to continue to reside there until they are no longer able to live independently. They enter into contractual arrangements with the village operators to permit them to achieve this aim and village operators should meet their contractual obligations and do everything in their power to maintain the village in good order and to continue operating.

National Seniors recognises that village operators and village residents may have competing interests. Villages must remain commercially viable or the operators may wish to use their assets in a more profitable way by redevelopment. However, from the residents' perspective, there is the need to ensure continuation of the village and to preserve the rights of residents, so that those who may be frail are not burdened with unnecessary stress or concerns.

We believe that every effort should be made to ensure that retirement villages continue to operate and that closure should be the last resort. Closure has the potential to cause enormous detriment to residents who may be unable to relocate to similar facilities in a suitable location, due to both the costs involved and availability. At the same time, closure may suit the village operators who may be able to realise significant gains through redevelopment. Consequently, deregistration may not necessarily have the same adverse impact on the village owner as it does for residents.

Our Position

Our comments in relation to the issues raised in the Discussion Paper are set out below.

Issue 1: Closing a retirement village

Issue 1.1 – Triggering deregistration of a scheme.

The issue is: who should be able to trigger deregistration of a retirement village scheme, and thereby close the village?

Option 1: maintain status quo

Option 2: residents to be able to approach the chief executive to request a deregistration investigation

Option 3: require a court or the Queensland Civil and Administrative Tribunal (QCAT) to approve deregistration

Questions:

1. Who do you consider should be able to initiate the closure of a retirement village scheme?
2. What failures by the operator would you consider to be serious enough for the operator to “show cause” as to why the chief executive should not initiate the process of deregistration in the interests of the residents?
3. Do you think that complaints by residents can be sufficiently serious to be able to endanger a business and hence take away someone’s livelihood?

The Discussion Paper presents three options for consideration. Option 1 provides for maintenance of the status quo, allowing either the chief executive of the agency administering the Retirement Villages Act 1999 or the village operator to trigger closure of a retirement village. National Seniors considers that this appears to remain the best option, but with the added requirement that residents be consulted before any final deregistration decision is made. If necessary, such consultation should first be brought to a residents meeting and decisions should be facilitated through a secret ballot of residents.

In our view, deregistration should be used only as the last resort. The operator should be required to undertake remedial action to correct any deficiencies in the village and to engage in mediation to resolve any areas of conflict with the residents. If residents are dissatisfied with the decision of the chief executive, access to the Queensland Civil and Administrative Tribunal (QCAT) should be available.

To instigate a “show cause” action, a minimum set of standards should be introduced so that both village owners and residents are aware of their rights and obligations in this regard. The village operator should maintain a safe environment with roads, lighting and pathways suitable and in good repair for elderly people. Trees and shrubs should be regularly pruned so as not to cause any hazards in the case of fire or storm. All electrical work in the village should be regularly checked for safe operation. Any concerns about plumbing or drainage which may impact on the health of residents should be attended to expeditiously, eg. water pooling or effluent and waste discharge. Any motor vehicles used by workers and residents should be regularly serviced and any faults repaired. All recreation facilities should also be maintained in a safe condition so as not to cause injuries to residents. Essentially, the village should be maintained in the same condition with the same facilities when residents commenced occupancy.

If a safe environment is not maintained and there are possible serious health concerns arising, then a complaint could be considered sufficiently serious for the chief executive to consider deregistration. However, in the first instance, remediation works should be undertaken to correct any problems before deregistration becomes an option.

Option 2 allows residents to approach the chief executive to request a deregistration investigation, which may not be in the best interests of all residents and may not necessarily lead to the best outcome. Residents may make complaints but there may be a range of actions available apart from deregistration, which has potentially serious ramifications for residents leaving them without suitable housing. We consider that it would be better to allow the chief executive to determine whether deregistration would be the best course of action.

Option 3, which would require a court or tribunal to approve deregistration, is not a suitable alternative because of the legal costs and stress involved for residents.

Issue 1.2 – Grounds upon which the chief executive may deregister a scheme

The issue is: on what grounds should the chief executive be able to deregister a retirement village scheme, and thereby close a village?

Option 1: maintain status quo

Option 2: status quo and further ground

Questions:

1. If feedback supports the chief executive being able to initiate deregistration of a retirement village scheme, do you consider the grounds for deregistration should remain as they presently exist?

2. If 'no' to question 1, do you consider the grounds for deregistration should be expanded as suggested in the above options?
3. Do you consider there are other grounds for deregistration, not discussed in the above options, which should be introduced?

National Seniors favours Option 2, which provides for maintaining the status quo, allowing the chief executive to deregister a scheme reasonably believed to not be operating but expanding the grounds for deregistration to include where the scheme operator has committed acts with the intention of closing down the scheme, has not lodged an application to close down the scheme, or where deregistration would be in the best interests of the residents.

Residents need protection where an operator attempts to force residents to leave the village by running down facilities or making it undesirable for residents to remain there. Where a village operator downgrades facilities progressively to force residents to leave over time to reduce exit entitlements, residents should be able to make a complaint to the chief executive. If the complaint is substantiated, then the chief executive should take any appropriate action, including deregistration if warranted.

Issue 2: Timeframes for closing a retirement village

Issue 2.1 – Winding-down period after deregistration

The issue is: for deregistration of a retirement village scheme by the chief executive, how long should the winding-down period be? It should be noted that residents would be required to permanently vacate their accommodation unit on or before the last day of the winding-down period.

Option 1: maintain status quo

Option 2: sixty day winding-down period

Option 3: a longer winding-down period

Questions:

1. When a retirement village scheme is deregistered, how long do you consider the winding-down period should be?
2. What factors have you considered to arrive at the suggested period in Question 1 above?
3. If an extension of time to the winding down period were necessary, should the decision about the additional length of time lie with the chief executive, QCAT or another entity?

National Seniors considers that the present 30 day winding-down period, presented as Option 1, is totally inadequate and does not give residents sufficient time to locate and purchase a new residence. Alternative accommodation could be affected by market conditions at the time and availability of suitable stock, thereby placing additional strain on an elderly resident to meet such a deadline. While settlement dates for the purchase of alternative accommodation may be 28 days, this is not always the case. The 30 day period would mean that a contract would have to be entered into immediately which would be virtually impossible even if an alternative was available. Following the Global Financial

Crisis, financial institutions were often taking much longer to approve finance, if indeed they will consider approving finance without assets, thus causing delays in the settlement of contracts.

A sixty day winding-down period is likely to have similar drawbacks to Option 1.

Option 3 suggests a deregistration winding-down period of between three and twelve months. We consider that the deregistration period should be a minimum of four months, with the possibility of an additional length of time to be available by application to the chief executive. We recognise that while too short a winding down period would affect residents' ability to secure appropriate new accommodation, too long a winding down period would prolong the distress and uncertainty for residents, in an environment in which the village amenity is likely to be continuously declining.

As an additional protection, if residents are not satisfied with the chief executive's decision, they should be able to apply to QCAT for a review.

Issue 2.2 – Winding-down period after cancellation of registration

The issue is: for cancellation of registration of a retirement village scheme by the operator, how long should the winding-down period be?

Option 1: status quo

Option 2: 30 day winding-down period

Option 3: a longer winding-down period

Questions:

1. When a retirement village scheme is cancelled, how long do you consider the winding-down period should be?
2. If an extension of time to the winding-down period were necessary, should the decision about the additional length of time lie with the chief executive, QCAT or another entity?

In our view, the present 60 day winding-down period is inadequate and does not give residents who may not have been aware of the proposed cancellation sufficient time to locate and purchase a new residence. Moving home can be very stressful, particularly for older people, and alternative accommodation may not be immediately available. A minimum of four months should be available with the possibility of an extension of time by application to the chief executive. If residents are not satisfied with the chief executive's decision, they should be able to apply to QCAT for a review.

Issue 3: Financial considerations

Issue 3.1 - Dealing with the maintenance reserve fund

The issue is: how should the balance of the MRF be distributed upon closure of a village?

Option 1: distribute evenly between remaining residents

Option 2: distribute between residents from the past 12 months

Question:

1. How do you consider the surplus maintenance reserve funds should be dealt with?

National Seniors favours Option 1. We note that residents who have left the village under ordinary circumstances would not be entitled to a refund and it would therefore seem unnecessary to make a refund to those who have left during the 12 months prior to closure.

It may be, however, that some who left in the 12 months prior to village closure did so because of the clear likelihood of village closure and the desire to secure alternative, appropriate accommodation, in which case they may have a case for a partial refund. If these people were to be catered for under the Act, it should be by application to the village operator. If the applicant was not satisfied with the outcome, an appeal could be made to the chief executive or QCAT. To pay a refund under any other circumstances would retrospectively alter entitlements and would not be fair.

Issue 3.2 - Dealing with the general services charges

The issue is: who should receive the balance of surplus general services charges?

Option 1: residents to receive the balance

Option 2: operator to retain the balance

Questions:

1. How do you consider the surplus general services charges should be dealt with?
2. If the surplus is to be shared between residents and the scheme operator, on what basis, and how should this be calculated?

As the general services charges have been paid by the residents to provide for the ongoing running costs of the village, they should be entitled to receive a refund calculated at the date of closure. Any expenses involved with the closure should be borne by the village operator and do not relate to the ongoing running costs of providing services to residents. Residents who have left due to imminent closure may be entitled to some payment and should be dealt with as in Issue 3.1.

Issue 3.3 - Whether general services charges should continue to be payable

The issue is: should a resident be liable to continue paying general services charges for the remainder of the winding-down period if the resident moves out of the accommodation unit during the winding-down period?

Option 1: resident to continue paying general services charges

Option 2: operator to pay general services charges

Questions:

1. If a village is closing, should a vacated resident continue to pay general services charges (as they would under the present legislation)?
2. What other method would present a solution to the charging of general services charges where a village will cease to operate?

3. If residents continue to reside in a village which is in the process of winding down, should their general services charges be reduced if facilities in the village are also being wound down?

Residents contract with the village operator to be able to continue to reside in the village. Where the village owner decides to close the village and terminates that contract, the obligation of the resident to pay general service charges should end on the date the resident leaves the village. Similarly, the village operator is contracted to provide certain facilities included in that fee and if these facilities are reduced, general service charges should be reduced accordingly.

Issue 3.4 – Reinstatement costs

The issue is: should a resident be required to pay any reinstatement costs following termination and vacation of their unit?

Option 1: public information document and residence contract to provide for this circumstance

Option 2: the Act should not permit reinstatement costs to be payable under this circumstance

Questions:

1. Should the public information document (PID) and the residence contract indicate the requirements around paying reinstatement costs specifically in the circumstances where the village for which those documents have been prepared were to close?
2. If a village is closing, what conditions should apply to paying reinstatement costs, as originally required under the residence contract?

Ordinarily, residents would be required to pay reinstatement costs when they leave the village for any reason. Where the village owner decides to end the contract arrangements through closure of the village, National Seniors considers that residents should not be required to pay any reinstatement costs. If the village is closing, it is likely that action other than reinstatement will occur, obviating the need for any expenditure on reinstatement. Charging residents for reinstatement costs in these circumstances would not only be unfair but would reduce the residents' financial capacity to relocate. Accordingly, the PID should clearly state that residents would not be liable to pay reinstatement costs if the village closes.

The PID and residence contract do not indicate the requirements around paying costs in the case of village closure. Residents should not be charged for something they have no control over.

Issue 3.5 – Valuation of the right to reside in a retirement village unit

The issue is: how should the valuation of a resident's unit be calculated when a retirement village is being wound down or ceasing to operate?

Option 1: unit valued in its current condition

Option 2: unit valued as if it had been reinstated

Questions:

1. What considerations should be applied to valuing a unit in a village that is winding down?
2. How should a unit be valued when a village is to close?

Residents forced to leave their homes due to village closures will need sufficient funds to purchase entry into new accommodation that provides them with a comparable standard of living. Residents stand to be seriously disadvantaged due to a forced change of residence. Therefore, units should be valued as if normal reinstatement had occurred and as if the village were continuing to operate as a going concern. The valuation should be measured against comparable units in comparable villages. If no similar villages exist, then the valuation should be in accordance with the housing market in the area. In instances where village closure is motivated by the owners' desire to redevelop the property, it would be unreasonable to expect residents to pay reinstatement costs, which would only add to village owners' profits.

Issue 3.6 – Timing of payment of exit entitlement

The issue is: when should exit entitlements be paid to residents who have vacated their units?

Option 1: the Act should establish a time by which the exit entitlement should be paid

Option 2: the Act is adequate already

Questions:

1. Do you consider section 63 of the Act adequate for when a village closes?
2. Should a limitation be placed on the settlement period allowable for sales due to village closure?

National Seniors considers that the exit entitlement should be paid as soon as possible to assist residents to purchase new accommodation. The current provisions may be adequate, except that the term "settlement day" needs to be revised to include situations where winding down of a village is occurring.

Issue 3.7 – Compensation for residents

The issue is: should operators pay compensation to residents affected by village closure?

Option 1: the Act should require operators to ensure residents are no worse off should their village close

Option 2: the Act should not require operators to ensure residents are no worse off

Questions:

1. Do you consider a retirement village resident should be entitled to receive compensation (in addition to their exit entitlement) when the retirement village closes?

2. If 'yes' to question 1, do you consider compensation should be payable regardless of the reason why the village is closing (e.g. the village may be closing because the operator wants to redevelop the land, or because the operator is losing too much money running the village)?
3. If 'yes' to question 1, do you consider the compensation should be paid by the retirement village operator?
4. Is there another way to ensure residents affected by closure are no worse off should their village close?
5. How would you propose the compensation be calculated that is equitable for both the resident and the scheme operator?

National Seniors notes that a village owner may be in breach of contract by terminating the tenure offered to the residents, having marketed the village as offering secure tenure. This brings with it a responsibility for the village owner to continue operations. When a village closes, therefore, residents should be entitled to receive compensation from the village owners in addition to their exit entitlement. Such compensation would assist residents who may otherwise be financially disadvantaged by the closure.

Compensation should be payable regardless of the reason for closure. Village operators choosing redevelopment have the opportunity to profit from the change at the expense of elderly people who may have sold their family homes to enter the village. Village operators closing for financial reasons will still be left with a valuable asset. Residents affected by the closure are likely to suffer a financial penalty and should therefore be entitled to compensation.

As an alternative to compensation, we suggest that the village operator could assist residents to relocate to similar accommodation without any financial detriment. If a village has sufficient staff, this could be achieved by establishing a group employed by the village to work with residents to ascertain their needs and source appropriate accommodation for them. Another option would be for the village operator to pay the packing and removal expenses of the resident.

Where a village owner is in financial difficulties, National Seniors considers that, as an alternative to closure, it would be preferable to sell the retirement village to another operator who is able to operate the village as a going concern.

If the village operator is required to pay compensation in the event of closure, it may encourage continuation of the business.

Issue 3.8 – Exit fees

The issue is: should residents be required to pay their contracted exit fee if their village closes?

Option 1: the Act should not require residents to pay their contracted exit fees if their village closes

Option 2: the Act should require residents to pay their contracted exit fees if their village closes

Questions:

1. Do you consider a retirement village resident should be required to pay an exit fee if the village closes?

2. If no exit fees were payable, how else could the detriment to the operator be minimised?
3. Would your answers to Questions 1 and 2 differ if the village closed because it was no longer financially viable for the operator, compared to the scenario where the operator wants to redevelop the land for another purpose?
4. Should the scheme operator receive the exit fee regardless of their reason for closing the village?

How to appropriately balance the competing interests of residents and village operators at a time of village closure is a very vexed issue.

The question arises as to whether residents were advised, before entering into an agreement, of the possibility that the retirement village could close. If they were not advised of this, the residents could reasonably believe that the village operators had engaged in misleading and deceptive conduct, by inducing them to expend what could amount to their lifesavings to enter the village and whose closure is against their wishes and interests. The closure could result in serious financial implications for residents, who may need maximum reimbursement in order to fund access to alternative accommodation.

Having regard to the known requirements to pay an exit fee, it could be expected that such a requirement would still apply even though the closure would occur through no fault of the residents. However, under the circumstances, village operators would be in breach of their agreement with residents. While operators may have a legal entitlement to the exit fee, whether they should have a full or partial entitlement should be considered. The exit fee is paid out of the capital proceeds when a resident vacates the accommodation unit and the right to reside is sold. As no sale occurs in the event of a village closure, can any exit fee actually be justified?

We recognise that exit fees form an important part of the financial management of the village and removal of the right to exit fees may be detrimental to the operator generally, as this often represents the profit component of the owner's investment in the retirement village. The operator could argue that residents have had access to facilities and services until this point and they therefore should be entitled to some payment.

In balancing the interests of village operators and residents, it should be noted that the operators have the potential to use their asset to obtain greater financial rewards through redevelopment, or to preserve capital/minimise losses if the closure results from financial viability issues. However, depending on the nature of exit fees set out in the contract and their length of stay, residents could incur substantial financial losses, leaving them with insufficient capital to purchase entry into alternate accommodation of a similar standard in a similar location.

We suggest that each closure situation should therefore be subject to independent review by the chief executive, to determine the extent to which any contracted exit fees should be enforced.

Issue 4: Entering a village and closure – implications for residents

Questions:

1. How useful is the present legislation for retirement villages in assisting prospective residents to be informed of their rights, responsibilities and obligations on issues including village closure?
2. What changes or enhancements could be made to the disclosure requirements?
3. What particular items do you consider should be particularly addressed as part of disclosure requirements for prospective retirement village residents?
4. Are the financial implications of exiting a retirement village, as detailed in the public information document, adequate?
5. Do you consider that separate financial implications should be detailed in the public information document to explain what happens should the village close?

National Seniors considers that the legislation should contain specific provisions about the closure of a retirement village and the processes and procedures involved. This information should also be provided in the PID to warn potential residents that this could occur, what their entitlements would be and the financial implications would be should this occur. Potential residents could then make informed decisions about whether they wish to enter the village. While the present provisions may be interpreted to address exit requirements, closure has the potential to have a significant effect on elderly residents and should be clearly addressed to avoid any disputes. This should include method of calculation of the exit entitlement and responsibilities of the parties in relation to reinstatement, payment of general service charges and the maintenance reserve fund, winding-down time requirements, and method of calculating and paying compensation by the village operator.

Other Considerations

Questions:

1. Are there any other issues which you think are pertinent to this discussion of closure of retirement villages which you would like to raise?
2. Are there non-legislative things which could be done to ensure residents are protected if a village closes?

It is clear that the closure provisions in the other states of Australia vary markedly. National Seniors is of the view that not only should closure provisions in all states be consistent but that the legislation governing retirement villages should be harmonised throughout Australia. This would provide certainty for not only residents but the industry as well. With ease of migration between the states and village operators possibly operating Australia wide, this would be beneficial to all parties.