

*Submission to the
Select Committee inquiry into the
South Australian Review of the
Retirement Village Act 1987*

June 2013

National Seniors

Australia

About National seniors Australia

With around 200,00 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.

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National Seniors Recommendations

1. that the South Australian *Retirement Villages Act 1987* specifies the provision of Plain English information which lists:
 - all fees and charges upon entry to, residence in, and exit from retirement villages, or mechanisms for determining such fees and charges and
 - responsibilities of operators and residents in retirement villages during each phase.
2. that the South Australian Government investigate the treatment of residents' assets on entry to and exit from retirement villages and suggest consistent treatments linked to the current range of occupancy arrangements under the *Retirement Villages Act 1987*.
3. that the South Australian *Retirement Villages Act 1987* adopts standard contracts for entry to retirement villages. The contracts should provide clarity regarding the type of occupancy arrangements, maintenance and other ongoing fees and charges, conditions on exit from the village and the resident's right to refund of their assets (or premium as in the Act).
4. that the South Australian *Retirement Villages Act 1987* Section 17(2)(b) be amended to require the residence contract to specifically list conditions relating to refund of the resident's assets/ premiums including requirements to refurbish and ongoing responsibility for fees and charges on exit from retirement villages.
5. that the South Australian *Retirement Villages Act 1987* Section 17(3) be amended to require the documents eg the premises condition report and residence rules, accompanying the entry contract to include specific information on the matters raised in Recommendation 4.
6. that the South Australian *Retirement Villages Act 1987* Section 20(2)(b) be amended to remove the option for operators to charge residents who exit retirement villages because of a move to aged care, or their estate because of death, ongoing maintenance and fees and charges for a period of up to six months. The six month period should be amended to two months.
7. that the South Australian *Retirement Villages Act 1987* include greater protection for residents in determining the fair market value of the residence or the resident's share of the village on exit from the village. One option would be for Government to require all villages to publish a panel of independent accredited valuers and to encourage residents to pursue an independent second valuation.

8. that the South Australian *Retirement Villages Act 1987* include specific conditions to be met by operators and greater protection for residents in the event a retirement village enters financial difficulties.
9. that the South Australian *Retirement Villages Act 1987* include closer monitoring by the Office of the Ageing of administering authorities' compliance with the Act and a requirement for accreditation or registration of administering authorities and operators who must meet specified qualifications and skills.

Introduction

National Seniors Australia (National Seniors) is the consumer lobby for older Australians with around 200,000 individual fee-paying members aged 50 and older across the country. South Australia has 8,500 National Seniors members.

Our members across Australia have a keen interest in understanding and protecting their rights while residing in retirement villages. Key considerations for seniors who move into retirement villages are security of property ownership or tenure with right to occupy or rental; limitations on maintenance responsibilities; social contact; and higher levels of personal safety and support.

The proportion of people aged 65 years or over is projected to increase from 13 per cent in 2010 to 23 per cent by June 2050. By 2030, it is anticipated that 20% of the Australian population will be aged 65 and older.¹

Thus between now and 2050 the number of older people (65 to 84 years) is expected to more than double and the number of very old people (85 and over) is expected to more than quadruple, from 0.4 million people today to 1.8 million in 2050 (1.8% to 5.1%.)

By 2050, for every person aged 65 or over, there will be only 2.7 persons of working age. In 2010, the ratio is five (5) persons of working age for every person aged 65 or over. This contributes to a slowing rate of growth and presents challenges to productivity and funding of care for the aged.

South Australia has the second lowest rate of growth in Australia at 1%. This growth rate is 60% of the 1.7% growth rate for Australia and higher only than Tasmania at 0.1%.² The over 65 cohort in Australia is growing at double the rate of the rest of the population, and life expectancy is rising for men and women.

In June 2011, the South Australian population of 1,596,572 had the second highest median age of all States and Territories at 39.5 years compared with the national median age of 37 years and Tasmania's highest median age of 40.4 years. The proportion of seniors in South Australia is consistently higher than for Australia in all age groups from 50 to 85 years and older³. In 2012, 36% of the population were estimated to be aged 50 and older, slightly less than for Tasmania (37.5%) and higher than for Australia (32%).⁴

¹ Commonwealth of Australia, 2010. *Australia to 2050: Future Challenges. The 2010 Intergenerational Report 2010*. Commonwealth of Australia.

² Australian Bureau of Statistics 2013. *3101.0 Australian Demographic Statistics September 2012*. [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/20927044868802B5CA257B50001A9D5E/\\$File/31010_sep%202012.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/20927044868802B5CA257B50001A9D5E/$File/31010_sep%202012.pdf)

³ Australian Bureau of Statistics, April 2013. *Where and how do Australia's Older People Live? 2011 Census*. <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2071.0main+features602012-2013>

⁴ Australian Bureau of Statistics 2013. *3101.0 Australian Demographic Statistics September 2012*.

In 2011, South Australia also had the equal largest proportion of people aged 65 and older; with 260,600 people representing 16% of the state's population (the same proportion as for Tasmania compared with the national 14%) and both men and women contributing to this effect.⁵

Women outnumber men among those aged 65 and older and constitute 17% of the group compared with men at 14%. The median age of females (40.5 years) in South Australia was higher than for males (38.4 years).⁶

When considered alongside the preference among South Australians to live in separate houses and semi-detached homes (90.6% compared with 85.5% across Australia), it is likely that older South Australians will opt to live independently for as long as possible.⁷

However recent research by National Seniors indicates that there is a significant disconnect between the stated desire of many Australians to age in their own home and their ability to do so.⁸ Among the 10,000 people surveyed, two in three people aged over 50 intended to remain in their current home as they age, yet only 1 in 3 (38%) had plans in place to prepare for getting older and becoming frailer. Furthermore, for those who intended to remain in their own home, 36% did not have any design features in their home to assist frail people, and 29% did not think they could afford such changes.

Therefore it is highly likely that South Australian seniors will have a higher need for support and assistance in their own home when compared with seniors across Australia. In 2011, almost one in five older Australians (19%) had a need for assistance with one or more of the core everyday activities of self-care, mobility and communication. The rate was higher for women than men (22% compared with 16%) and increased with age for both sexes.⁹

Thus the South Australian population will continue to age with an even greater demand for appropriate aged care housing and specific aged care support and services. The needs of older South Australians and protection of their rights while living independently in retirement villages must be at the forefront of Government considerations.

⁵ Australian Bureau of Statistics, April 2013. *Where and how do Australia's Older People Live?* 2011 Census. <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2071.0main+features602012-2013>

⁶ Australian Bureau of Statistics, August 2012. *Population by Age and Sex, Regions of Australia*, 2011. <http://www.abs.gov.au/ausstats/abs@.nsf/Products/3235.0~2011~Main+Features~South+Australia?OpenDocument#>

⁷ Australian Bureau of Statistics, 2012. *South Australia 2011 Census Quick Stats*.

⁸ National Seniors Australia and Group Homes Australia, 2012. *Where Will I Live as I Age?: Senior Australians' Needs and Concerns about Future Housing and Living Arrangements*. National Seniors Australia.

⁹ Australian Bureau of Statistics, April 2013. *Where and how do Australia's Older People Live?* 2011 Census. <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2071.0main+features602012-2013>

Our Position

National Seniors has responded to reviews of retirement living legislation in a number of States across Australia. Our response to the South Australian review of the *Retirement Village Act 1987* draws on general issues raised by members and their responses to a survey in April 2013.

Our members' concerns include the lack of clarity in retirement village contracts; entry charges; maintenance fees and charges and other conditions of their continued residence; and the valuation and treatment of capital assets upon exit from the villages.

Of greatest concern to members is the requirement to continue to pay maintenance fees on unavoidable exit from the village (eg to aged care residential facilities) and uncertainty regarding the apportioning of the capital assets arising from sale or new leasing of the unit.

In some instances, residents have discovered that they are not living in retirement villages and are instead residing in a range of supported residential villages or parks with limited security of tenure and obligations to partake of shared catering.

Such concerns and misunderstandings point to a lack of transparency in the discussions between providers and prospective or current residents and the current promotional materials and contractual documents in use by operators.

It is essential that older South Australians have confidence in the ability of retirement villages to provide secure housing and allow them to receive the support they need to continue living independently at an affordable cost and in accommodation of their choosing.

Approximately 72% of South Australians aged 65 and older were in receipt of the aged care pension in 2011, similar to Tasmania and a higher percentage of the eligible population than in other States and Territories. Of the 194,181 aged pensioners, 82,081 (42.3%) were males and 112,100 (57.7%) were females.¹⁰

In 2008_2009, South Australia also had the highest proportion of self-funded retirees in Australia, with 93,109 people¹¹ comprising approximately 6% of the State's current population.

South Australia reports several economic measures at levels below the national average, including the median weekly household income (\$1044 compared with \$1234), monthly mortgage repayments (\$1500 compared with \$1800) and

¹⁰ Commonwealth of Australia, 2012. *Income Support Customers: A Statistical overview 2011. Statistical Paper No. 10.* Department of Families, Housing, Community Services and Indigenous Affairs.

¹¹ ABS Data from the Multipurpose Household Survey 2008_2009.

weekly rent (\$220 compared with \$285).¹² Fewer South Australians work full-time compared with Australians as a whole, with a corresponding increase in people working part-time.¹³

The Selected Living Cost Indexes report indicate that the proportion of expenditure allocated to food and non-alcoholic beverages is highest for age pensioner households and that they and self-funded retirees face proportionately higher health care costs than other households.¹⁴

Thus pensioners and self-funded retirees residing in retirement villages are experiencing considerable cost of living pressures and require certainty regarding their living arrangements and security of their assets, especially those assets invested in retirement village units.

The following feedback from members is provided under key headings and referenced to the Inquiry's Terms of Reference where relevant.

Factors that impact on the quality of life in a retirement village

There are 522 registered retirement villages in South Australia, with approximately 24,400 residents. This compares with the sometimes quoted figure of more than 160,000 Australians residing in retirement villages.¹⁵ While many of these villages provide or facilitate on-site aged care services and allow people to age in place, others are focused on lifestyle amenities and residents may have to exit the village if they require on-going aged care services.

A report on recent research commissioned by National Seniors revealed that the factors encouraging consideration of a move to retirement village include:

- assistance in case of declining health,
- family not having to provide care,
- convenient location to facilities and
- assistance with household/gardening chores.¹⁶

However, a fear of losing independence and concerns about privacy were most frequently cited as being likely to discourage a move.

¹² Australian Bureau of Statistics, Selected Living Cost Indexes, Australia, Mar 2013

<http://abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6467.0Explanatory%20Notes1Mar%202013?OpenDocument>

¹³ Australian Bureau of Statistics, April 2013. Where and how do Australia's Older People Live? 2011 Census.

<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2071.0main+features602012-2013>

¹⁴ Australian Bureau of Statistics, Selected Living Cost Indexes, Australia, Mar 2013

<http://abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6467.0Explanatory%20Notes1Mar%202013?OpenDocument>

¹⁵ Retirement Village Council <http://www.rva.com.au/> accessed 3 June 2013

¹⁶ National Seniors Australia, 2013. *Relocation to a Retirement Village: Who Considers Relocation and What are People Looking for?* Productive Ageing Centre, Melbourne.

The findings indicate that the following features are most likely to appeal to prospective residents:

- provide outdoor living areas,
- support the maintenance of independence,
- provide assisted living facilities, and
- facilitate access to medical services.¹⁷

A recent much smaller survey of South Australian members yielded similar factors. Lifestyle, security, social interaction, reduced costs and opportunity to age in place are factors that influence the choice of our South Australian members to live in a retirement village. Although many residents were content with their experience on first moving to retirement village living; over time increases in costs, reduction in services, changes to rules, and attrition of the purchasing power of their fixed or limited incomes reduce their satisfaction.

Members report a variety of factors affecting their choice to live in retirement villages:

Social networks and lifestyle are very important whilst we are there. Our main reason to live in a retirement village was the freedom to come and go at will, knowing that our home is safe and looked after while away. The management also collect and forward our mail.

Less maintenance, safety, more time to enjoy lifestyle eg holidays.

One big advantage for me is no longer having to struggle to maintain a home and a garden. I also feel safer here than by myself in the community

What one has to pay for a lifestyle in these places and the monies they make and what they give back is a joke. Residents need to be given more for their money.

The retirement village has an ageing for life policy, so you can go in being independent and not have to move once you need nursing care full time. Also to be allowed to have your own small workshop area plus own garden. Some retirement villages are very costly.

However the reality of life in the village can often be at odds with the expectations. Residents are not always clear about their occupancy conditions eg own, lease, right to occupy or rent the home.

Members' responses:

I'm very pleased a select committee is going to review the RVA in South Australia. It is long overdue. Consumers in villages need more protection

¹⁷ National Seniors Australia, 2013. *Relocation to a Retirement Village: Who Considers Relocation and What are People Looking for?* Productive Ageing Centre, Melbourne.

because unscrupulous owner/operators have been taking advantage of residents for many years.

We paid a lot of money to buy into a village but then you are treated like you are renting. They seem to delight in telling you (that) you don't own the house! If we wanted to move out we would lose so much money that we would not be able to buy another house.

We moved in for security and facilities, especially as we get older. Costs were reasonable and staff were on site 24 hours per day when we first moved in. Sadly this is not the case now!

We consult widely to potential residents and those already who live in them and want to get out. Most indicate that they were sold a concept that increasingly does not meet their needs now or perceived needs for the future. They were unaware of personal and financial losses due to the complexities of the contract.

We as residents pay out so much for a lifestyle that a good many of these costs should be included in our fees. These retirement village complexes are just money making businesses at the expense of retirees hoping to get a fair go for their money. They bleed you dry.

Communal living also has significant stresses for residents and can severely impact on the comfortable lifestyle and retirement many were seeking. As people age and require further support they report experiencing a loss of independence and autonomy within the village.

Members' responses:

Although we enjoy the lifestyle, we did not foresee the continual clashing of personalities.

We have no control over how much water is being used by residents that overwater their gardens, etc.

It pays to go into such a village younger (at least 55yrs old) so you can use all the facilities rather than going in at say mid 70's.

I sometimes feel that there are too many rules and regulations to abide by and we are treated as old and unable to make our own decisions.

Responses to the Terms of Reference

Although improved clarity and transparency are clearly required under the Act, members' experiences are through direct interaction with operators of the villages and other residents and not through the Act itself. Therefore measures to improve and ensure compliance with the Act by operators will have greatest impact on the experiences of residents.

In particular, residents require clarity regarding:

- the costs and responsibilities for entry,
- maintenance and other fees and charges while living in the village, and
- exit fees, agreed valuations and apportioning of capital upon the sale of units.

National Seniors' members across Australia consistently raise the importance of plain English contracts and would like them to be mandatory for entry to all retirement and other types of village living. While most operators would comply with the inclusions that must be included in a contract under Section 17 of the Act and Section 5 of the Regulations and would supply the prescribed documents, this information must be presented in an easily understood language, logical order and format.

Members' responses:

It should be compulsory for management to supply a "plain English" version because management's main objective is to sell a unit, especially in a new village. We were provided with a copy of the rules and regulations but it is easy to get carried away in the excitement.

A plain English document that you don't need a solicitor to interpret.

Put things in laymen terms that the every-day person can understand.

Such Plain English contracts/ disclosure documents have been developed for New South Wales. The Victorian Government has also recently released a Regulatory Impact Statement for changes to retirement village information disclosure requirements. South Australian residents would benefit from Government adopting a similar approach.

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1. National Seniors **recommends** that the South Australian *Retirement Villages Act 1987* specifies the provision of plain English information which lists:
 - all fees and charges upon entry to, residence in, and exit from retirement villages, or mechanisms for determining such fees and charges and
 - responsibilities of operators and residents in retirement villages during each phase.
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The variety of contractual arrangements determining residence in a retirement village can contribute to confusion and erosion of assets over the period of residence in a village. Some members have suggested that occupancy and servicing arrangements require untangling to allow an approach that is more receptive to the needs of individual residents.

Members' responses:

Villages for seniors (operate) on much the same lines as aged care facilities. They are in the main irrelevant to the needs of the modern

senior (aged 50 - 80) who see themselves very much as a person who simply has different housing needs as they did when raising a family.

The current model .. should be more community titled or strata owned - the existing licencing financial model is disgraceful. Investors in villages which in effect are no different to developments, are able to secure huge returns at the cost to senior citizens who are in need of more affordable housing which they can actually own - not just have a license to occupy.

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2. National Seniors **recommends** that the South Australian Government investigate the treatment of residents' assets on entry to and exit from retirement villages and suggest consistent treatments linked to the current range of occupancy arrangements under the *Retirement Villages Act 1987*.
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South Australian National Seniors members responded to questions regarding the Terms of Reference as follows:

1(c) the Act makes clear the obligations of residents and administering authorities; Q. *Were you clear about the obligations on residents and operators of retirement villages when considering entry to a village?*

Only half of the survey respondents felt that they were clear about respective obligations.

Members' responses:

I thought I was clear about the obligations of operators but quickly discovered that in this Village looking after the residents was not a high priority.

I wasn't prepared for the struggles I've had to go through to have defects rectified in my unit. This fact has caused me considerable stress over the years.

To my dismay I discovered that the owners of the village did not consider the rights of residents in many matters from the beginning. Ignoring requests to rectify building/fittings faults to protect the builders who were responsible for shoddy workmanship caused frustration for those affected by the faults.

Nepotism and cronyism was rife with the owners' family members and friends occupying management and maintenance positions.

1(d) the Act provides for adequate contractual disclosure to enable residents to make an informed decision about entering a retirement village and whether standardisation of contracts would increase transparency and assist residents in their decision-making process;

Q. *Was your product information document clear and easy to understand?*

Only half of the respondents felt that their product information was clear and easy to understand and that they were clearly informed on entry to the villages.

Members' responses:

we did not realise that the owner, developer, authority and manager could be the same person ... surely a conflict of interest.

Some of the wording in the contract is ambiguous and is open to interpretation.

Q. Do you feel that you were completely informed on each of the operator's and your own rights when entering the retirement village?

Only half of the survey respondents felt that they were clear about respective rights when entering the retirement village.

Members' responses:

Yes & no. There will always be circumstances which are not asked about when you are considering moving in & are not indicated in the documents.

we did not realise that if the manager refuses to abide by the rules, there appears to be no easy recourse and no enforcer of the rules and obligations. This makes the rules useless and of no consequence. When the manager says no to a reasonable request, who do you turn to?

Rights stated in the RVA were not adhered to in many instances.

Q. Would standard disclosure contracts increase transparency and assist you/ residents in their decision-making process?

Survey respondents (93%) overwhelmingly supported the adoption of standard contracts. Many members report confusion when trying to compare different villages. Standard contracts would improve understanding of the industry as a whole and allow for informed consumer choice. The compulsory plain English standard contracts introduced recently in New South Wales cover issues such as:

- the type of residence being acquired in the village, ie ownership in a strata or community scheme, leasehold arrangements or other forms of occupancy,
- all costs the resident must pay to enter, live in and leave the village,
- if and how any capital gains are to be shared,
- the settling-in period,
- services and facilities,
- alterations and additions, and
- repairs and maintenance.

The variety of occupancy arrangements in retirement villages as defined within the Act and listed below, have potential to cause considerable confusion for residents and can make comparisons between villages prior to entry extremely difficult. The range of occupancy arrangements include:

- (a) residences are occupied in pursuance of lease or licence; or
- (b) a right to occupation of residences is conferred by ownership of shares; or
- (c) residences are purchased from the administering authority subject to a right or option of repurchase; or
- (d) residences are purchased by prospective residents on conditions restricting their subsequent disposal.

Residents are frequently confused regarding their entitlement to a refund of the initial entry fee, as these vary depending on their occupancy agreement. They may pay market price for a licence or a reduced entry contribution for right to occupy and the arrangements for refund of a portion of the entry fee can vary within each occupancy category, thus leading to further confusion.

While plain English contracts can help to alleviate this confusion, the Act should also strike a balance between the rights of the owner and operator to conduct a viable business and those of the resident to realise their assets. It should also seek to protect residents from unintended consequences.

Although the *Retirement Villages Regulations 2006* provide much greater guidance on the information to be included in the contract, there is no requirement for standardised entries and plain English versions of the contracts.

Members' responses:

Abolish the existing 'license' scheme and replace it with strata or community title ownership. Many resorts have excellent management models that work superbly well both for residents and investors - they fit the needs far greater for seniors than do those of the RVAct.

All village documents are unique to each village thus are open to varying interpretation. Strata and community title are in the main simple legal documents which can be easily understood by agents and seniors advisors including family members.

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3. National Seniors **recommends** that the South Australian *Retirement Villages Act 1987* adopts standard contracts for entry to retirement villages. The contracts should provide clarity regarding the type of occupancy arrangements, maintenance and other ongoing fees and charges, conditions on exit from the village and the resident's right to refund of their assets (or premium as referred to in the Act).
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Q. Are/ Were disclosure contracts for entry to a retirement village clear regarding your obligations and fees and charges eg regular maintenance charges, utilities such as gas and electricity?

Many residents report inability to manage the cost of their utilities. They also experience difficulties in accessing concessions available to other pensioners, concessional card holders and seniors when there is no individual metering of their utility usage. This is a significant stress for residents who are managing on limited incomes.

Members' comments

Promises made eg. cheap phone calls, choice of elec. company, etc. are not true. Maintenance fees have risen steeply over the past few years when we were told they would only rise by cpi.

Day to day living expenses like service fees rise each year but our income does not keep pace with the rises.

Dramatic increases in maintenance fees and living on a very limited, fixed income since retiring from work is causing concern for me.

1(e) the Act ensures sufficient contractual disclosure and transparency of fees a resident will be responsible for when leaving a village;

Q. Are the entry contracts clear about the fees and requirements if you choose to exit a retirement village? Are the requirements easy to understand?

Member's comment:

No one we have spoken to understood the fees they would have to pay if they wanted to move out of the village. You needed to be a lawyer to understand it and I'm not convinced that they would even understand it.

The Act does not require sufficient clarity in the residence contract regarding the fees and requirements if the resident exits the retirement village. Section 17(2)(b) specifies the information to be provided in the residence contract. Therefore this section must be strengthened to specify the conditions which are set out in Section 20 regarding arrangements if a resident is absent or leaves.

These conditions should be inserted following *(v) the right to terminate the right to occupation of the residence and receive a refund of the premium paid*. The insertion should cover the conditions relating to refund of the resident's assets (premiums under the Act) and ongoing responsibility for fees and charges on exit from the village. In particular, the following should be specified:

- specific conditions on treatment of assets eg home ownership or premiums the resident holds in the village, including requirement to

refurbish to original standard OR apportioning of the responsibility to refurbish to current standards,

- responsibility for payment of ongoing fees and charges eg maintenance if the home remains vacant, and
- rights of the resident to challenge any of the above at the time of exit.

4. National Seniors **recommends** that the South Australian *Retirement Villages Act 1987* Section 17(2)(b) be amended to require the residence contract to specifically list conditions relating to refund of the resident's assets (premiums in the Act) including requirements to refurbish and ongoing responsibility for fees and charges on exit from retirement villages.

5. National Seniors **recommends** that the South Australian *Retirement Villages Act 1987* Section 17(3) be amended to require the documents (eg the premises condition report and residence rules) accompanying the entry contract to include specific information on the matters raised in Recommendation 4.

National Seniors supports the protection of consumer rights in Section 20 and 21. In Section 20(3), (4) and (5) amounts recoverable cannot be recovered until the premium is due to be repaid, cannot exceed the premium refund and there is a limit on the prescribed period for recovery of maintenance and recurrent charges from the date the resident ceased to reside in the village.

Conditions related to apportioning the proceeds of a sale or responsibility to continue paying maintenance and other fees while the home is vacant or until it is sold can become major obstacles to finalising exit from the village.

However we believe that the resident should not be responsible for continuing to pay for the maintenance and recurrent charges when they experience a change in circumstances or health eg a move into an aged care facility or their or their partner's death. Delays in finalising assets and responsibilities can have far reaching impacts on their or their family's health and finances.

The special provision relating to release of refundable premiums within 60 days to allow residents who need to move to residential aged care to meet the payment of accommodation bonds does not align well with the current requirements for residents in aged care facilities to pay an accommodation bond upon entry.

If the current *Living Longer Living Better* reforms to accommodation payments are adopted in July 2014, residents will have 28 days in which to decide their preferred method of payment of their accommodation charges. This 60 day delay in refund of their assets can cause considerable stress for older Australians.

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6. National Seniors **recommends** that the South Australian *Retirement Villages Act 1987* Section 20(2)(b) be amended to remove the option for operators to charge residents who exit retirement villages because of a move to aged care or their or their partner's death, ongoing maintenance and fees and charges for a period of up to six months. The six month period should be amended to two months.
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Summary of concerns regarding fair valuations:

The most common problem ... is the matter of selling when one leaves. Where a resident has the 'right to occupy' the company which owns the village often values the property and buys it from the resident. The resident has the right to challenge the valuation and get their own valuation.

If it is not challenged the tenant receives the owner's valuation after the sale, less a contractually agreed percentage, depending how long the tenant has been in the premises. Most people, of course, don't resort to an independent valuation but might leave their premises with thoughts that they have not achieved an equitable valuation.

If residents wish to confirm that the price offered is fair and reasonable, they have to engage the services of a competent valuer. If discrepancies arise, disputes with the owner may ensue in order to arrive at an agreed valuation. Many residents or their families feel at a disadvantage in such situations and report instances of coercion or stand-over tactics such as steering potential buyers towards other homes in the village.

Residents require valuations that are seen to be independent and fair, with the added assurance that they can seek an additional valuation if they are still not satisfied. In other words the valuation must be independent in the first place. One option to achieve this is to allow the resident or their representative eg family to nominate the valuer from a panel of independent valuers.

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7. National Seniors recommends that the South Australian Retirement Villages Act 1987 include greater protection for residents in determining the fair market value of the residence or the resident's share of the village on exit from the village. One option would be for Government to require all villages to publish a panel of independent accredited valuers and to encourage residents to pursue an independent second valuation.
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1(f) the Act provides adequate certainty, accountability and transparency for residents about their financial obligations;

Q. Were you clear about your financial obligations on entering a retirement village?

Members' Responses:

Some things I have asked to have repaired or replaced I have found out they don't cover and it will be my responsibility to arrange and pay for.

Don't take virtually all of our assets.(monies) Reduce costs of entry. Some would like to pay a rental type arrangement instead of buying our place.

we did not realise that the authority could appoint staff without consulting with the residents - we pay their wages which increases the maintenance fee. .. the authority decided to appoint carers which we are obliged to pay for, no matter our age, physical condition or desire to opt out.

There have been so many changes since we moved in. We still pay our council rates, water rates (not water usage but this is part of the maintenance fee we pay the village) but fees keep rising.

The changes suggested in Recommendations 4, 5 and 6 will assist in clarifying financial obligations of residents.

Members provided more general responses to the Terms of Reference 1(g) to 1(j) and II.

1(g) the Act provides sufficient transparency and consultation with residents on recurrent charges, increases in these charges and other costs for which residents are responsible;

Q. Does the Act provide sufficient transparency and consultation with residents on recurrent charges, increases in these charges and other costs for which residents are responsible? eg service or maintenance fees and exit fees, also known as departure fees or deferred management fees.

Members' responses:

Greater transparency from the Management regarding things like Insurance. e.g. We pay but have little say in the level of cover in the policy.

Initially our management body denied residents access to the Village accounts. We now have access and the accounts are monitored by three residents. This is working for us now but what will happen once they are unable to continue doing this?

these documents are written with the owners in mind and any loop holes are non-existent and there's no latitude. If you want in you abide by the rules, costs etc and shut up. That's the truth on how you are treated.

The difficulties raised by residents are compounded because most residents are living on fixed incomes which may decrease in purchasing power over time and therefore they have little capacity to absorb escalating utility charges and other rises to their cost of living.

National Seniors acknowledges that the Government provides combined concessions to some residents who are not billed separately for utilities and this assists with the cost of living, especially as eligibility includes self-funded retirees who are holders of the State Senior card.

The plain English contract and other suggestions in Recommendations 1 – 6 will assist in clarifying recurrent charges and other costs for which residents are responsible.

1(h) the Act provides sufficient provisions to protect the interests of residents in the event a village enters financial difficulties and whether there are sufficient provisions to enable the continued operation of a village which is in financial difficulty or which is being mismanaged;

Members felt that this is an important point that

needs to be investigated closely to protect residents who in most cases would have used their life savings to enter a Village.

The Act does provide some protections to residents in a number of sections including:

- the resident's right to repayment of a premium or part of a premium have first priority as a charge on land (in Section 19(3) and (4)),
- a requirement for re-development to take account of the impact on resident rights (Section 25),
- residents are not liable for any costs incurred by the administering authority for legal advice or legal proceedings (section 26),
- termination of a village cannot proceed without Supreme Court approval or while a resident remains in occupation (section 35), and
- voluntary termination of a village can be approved by the Minister providing all residents wish to terminate the scheme (Section 36).

Regardless of the protections in the Act, residents feel that they have limited powers to prevent financial difficulties as they are not the managers of the villages. Residents experience uncertainty and anxiety when villages change ownership too frequently. One village was reported to have

changed ownership four times in 7 years.

The Act does not appear to provide specific protections in the event that a retirement village enters financial difficulties. In addition, although annual audited financial statements and other reports must be provided to residents, the Act does not specify qualifications required of an administering authority or operator or any registration of their skills.

Such a requirement may act as a preventative measure to address the common complaints regarding operation of some villages, as in Recommendation 9. However National Seniors acknowledges that increased regulation and qualifications may raise the administrative costs to residents.

8. National Seniors **recommends** that the South Australian *Retirement Villages Act 1987* include specific conditions to be met by operators and greater protection for residents in the event a retirement village enters financial difficulties.

1(i) the Act provides a timely, informal and cost-effective process for resolving disputes between administering authorities and residents;

Although members feel that the Act does provide some support, in the end resolution of disputes is hampered by an imbalance in power between operators and residents.

Members' responses:

Some years ago when our Village had a Residents Committee we approached the Government Department responsible for Villages. Their response was not as helpful as we would have liked or expected at that time.

However they (operators) refer to the documents that one signs and very rarely back down. Virtually no compassion. It's what they say and that's it.

Residents report reluctance to raise concerns with the management of the village for fear of reprisals or withdrawal of services. They also report reluctance to escalate their concerns to the South Australian Retirement Village Residents' Association or the Residential Tenancies Tribunal, partly because of the difficulty of understanding the legal contracts and the variety of arrangements in place.

As stated previously, it is preferable for the Act to provide protections to residents and for Government to monitor the compliance of operators with residents' protections under the Act.

1(j) the Act provides sufficient powers of investigation and compliance to the body responsible for its administration;

Members' responses:

Really if we had the time to sieve through all the double rules then maybe we would find things that need to be corrected but as pensioners and getting on in years the government bodies do not appear to (respond to our living conditions and financial pressures).

It has been left up to Resident Committees to sort out problems, there needs to be more assistance from regulatory bodies.

I dare say it does but they always get their way. We don't have the facilities let alone cash to go to court to fight them if we had to. Again they have everything their way.

While the Act is clear in providing protections to residents regarding their right to continue to reside in the villages, many of the difficulties arise because of non-compliance of operators or failure of the residents to fully understand the conditions of their residence and exit from the village, as outlined previously.

Penalties are included in the Act for breach of certain requirements. However such penalties are likely to arise only after significant failure of residents' rights. A more effective approach would be closer monitoring by the Office for the Ageing of administering authorities in addition to the current registration of the villages. A requirement for three yearly accreditation and/or registration of administering authorities and operators who must meet specified qualifications and skills could reduce failures of some villages.

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9. National Seniors **recommends** that the South Australian *Retirement Villages Act 1987* include closer monitoring by the Office of Ageing of administering authorities' compliance with the Act and a requirement for accreditation or registration of administering authorities and operators who must meet specified qualifications and skills.
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Terms of Reference II:

Any comments on the relationship between the Act and other South Australian and Commonwealth legislation, including the Aged Care Act.?

Some residents feel a lack of protection and impotence when faced with operators who do not respond to their concerns. Given their advancing years and limited financial and professional resources, many residents of villages are unable to mount legal challenges when operators do not respond to their complaints or queries regarding their rights.

Residents who are living in villages that are outside the scope of the *Retirement Villages Act 1987* or the *Residential Tenancies Act 1995* are particularly

vulnerable as they are not covered by the protections under these Acts. Some of our South Australian members reside in independent living units which fall under the *Supported Residential Facilities Act 1992*. Therefore National Seniors suggests that the Government may wish to review the current arrangements to ensure support is available to all residents of independent living facilities or retirement villages.

As indicated in an earlier response, the timing of decisions regarding refund of assets (premiums) on exiting the retirement village for aged care facilities may require amendment if the current reforms proposed under *Living Longer Living Better* and amendments to the *Aged Care Act 1997* progress as planned. From July 2014, residents will have 28 days to make a decision regarding how they pay their accommodation payments in residential aged care.

New means testing arrangements from July 2014 for accommodation and care fees may also affect resident's capacity to pay for care and ongoing maintenance and fees and charges in retirement villages. If residents exit to enter residential aged care, prompt refund of their assets will reduce their stress and ease decision making.

Conclusion

Residents of retirement villages have chosen this style of retirement living for a variety of reasons including security, affordable housing, reduced maintenance responsibilities and costs, and the opportunity to age in place. The current arrangements appear to leave some residents confused about their entitlements to negotiate conditions within the village and obtain refund of their assets (referred to as a premium in the Act) on exit from the village. They also report experiencing an imbalance of power and a loss of autonomy.

National Seniors has made a number of recommendations for Government to consider. The recommendations focus on improving clarity of the Residence Contract and accompanying documents and monitoring compliance of operators with the Act. The arrangements for handling villages that experience financial difficulties and professional requirements of administering authorities and operators is also addressed.

National Seniors would be interested in representing the views of our members should the Committee conduct a Hearing into the review of the *Retirement Villages Act 1987*.