

SUBMISSION TO THE

The Retirement Villages (Miscellaneous) Amendment Bill 2023

19 May 2023

rvactreview@sa.gov.au

Submission prepared by:

Jodi Slater
Policy Manager

Karna Country
Level 1, 85 Hutt Street
Adelaide SA 5000
E cotasa@cotasa.org.au
P 08 8232 0422 1800 182 324 (Country callers)
www.cotasa.org.au

INTRODUCTION

COTA SA engages widely with older South Australians across the state, in person and via phone and email. The lived experiences of the diverse community of older South Australians shape our policy and advocacy work and during this consultation period, we have heard the experiences of retirement village residents and have drawn on the insights of key consumer representatives and market and social researchers who have conducted studies on retirement village living.

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 and thoughtful consideration to the proposed changes in the *Retirement Villages (Miscellaneous) Amendment Bill 2023*. COTA SA commends it as a thorough critique of the *Amendment Bill*, including further considerations that call for greater transparency and protections for residents, including those who are currently living in retirement villages across South Australia.

COTA SA acknowledges the efforts of the Office for Ageing Well to genuinely engage with operators, residents, consumer representatives and other key stakeholders in the review of and proposed amendments to the *Retirement Villages Act*. We acknowledge that many of the recommendations outlined in the report, *Review of the Retirement Villages Act 2016 (SA)*, that pertain to legislative change have been addressed.

In COTA SA's review of the *Retirement Villages Act (2016) SA* in 2021, we outlined five central principles that are important to residents and prospective residents, and their families.

These principles are:

1. Transparency and Disclosure

Retirement village contracts are among the most significant contracts entered into 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

The Act and Regulations and the subsequent agreements between residents and providers must be as simple, useable and easy to understand and interpret as possible so that residents' rights and responsibilities are known and comparable.

3. Consumer protection and support

It is important that the Code of Conduct is clear and adhered to, and that penalties and consequences are exercised in full to deter unfair and harmful behaviours.

4. Village Relationships

Many older people report enjoying long and happy lives in retirement villages. A harmonious relationship between provider and resident and between residents is highly valued.

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 regular review of the Act and urge that there are opportunities for continuous review and innovation.

We continue to adopt these principles as our frame in considering the proposed amendments.

BEFORE MOVING INTO A VILLAGE

In our 2021 submission to the review of the *Retirement Villages Act*, COTA SA made the following points:

- More clarity is required in relation to deposits and exit fees. Disclosure statements are important to provide critical information to prospective residents about the essential terms of their prospective occupancy and they must be clear about the matters that may be subject to change during occupancy, including the existence and implications of embedded networks.
- 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 did 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.
- Repayment of the ingoing contribution be required within 10 business days of cooling off.

COTA SA make the following comments about the proposed amendments.

- Regarding 2.1.4, it is important that a premises condition report is completed by the operator and agreement between the operator and resident about the fixtures, fittings and furnishings that will remain in the premises for the resident to enjoy and benefit are provided at the same time as (or in) the residence contract.
- Regarding 2.1.3, many of the conversations we have had with residents is that exit fees are complex and difficult to understand. We welcome a simpler explanation of these fees and disclosure of estimated exit entitlement at the two, five and ten year mark. Further, it is important that the data used to derive the inbuilt assumptions can be easily verified. Given the critical importance of this information for older people in determining the financial viability of moving into, and out of, a retirement village, it is important that the layout and explanation of these fees are co-designed (or at least tested) with older people.
- Regarding 2.2, we support the inclusion of information in the Disclosure Statement if a resident is required to purchase utilities or services from certain providers because it is part of an embedded network. These must be updated in line with changes to any regulatory frameworks for embedded networks. Disclosure of a residents' consumer rights and protections should also be referenced.
- Regarding 2.3, we understand that the right balance between consumer protection and consumer choice must be achieved and we consider that amendments to *the Act* relating to waiving the 10-business day waiting period are reasonable in providing safeguards for prospective residents. We support SARVRA's position that this period be extended to 15 days to allow enough time for legal and financial advice to be obtained.
- COTA SA supports the proposed amendments relating to: information required before signing a residence contract, deposits and repayment of ingoing contribution after rescinding a contract.

LIVING IN A VILLAGE

In our 2021 submission to the review of the *Retirement Villages Act*, COTA SA made the following points:

- There must be improvements in the disclosure and transparency related to expenditure and charges levied on residents. We encouraged the overhaul of requirements to improve transparency and the adoption of better practice of regular reporting and accountability to residents.
- Better protections must be in place to reduce and address instances of poor management, dysfunctional relationships between residents and operators, which can include bullying and harassment experienced by residents.
- The Code of Conduct must become an active tool in supporting positive relationships between residents and providers, and also between residents.
- We proposed 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.

- Transitions to new management or ownership of retirement villages can be unsettling and fraught, particularly where existing culture or routines are not respected or when residents are not engaged in changes.
- COTA SA acknowledged the increasing involvement of some retirement village operators in offering rental options, which is greatly valued by older people who do not have the capacity to buy a license. There is a 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.

COTA SA make the following comments about the proposed amendments.

- Our conversations with residents highlight that some applications to make alterations to the outside of their home to prevent adverse health outcomes are declined by village management. COTA SA believes that a provision should exist in the *Retirement Villages Act* which prevents refusal of alterations if they are necessary to prevent ill-health or promote resident safety. We recognise that the contract agreement must be explicit in who is responsible for fixing any damage caused by the alteration at the end of occupancy.
- Regarding 3.2, COTA SA acknowledges that the proposed amendments improve increased transparency and reporting of expenditure and charges at meetings. COTA SA supports SARVRA's view that residents should have to consent to the appointment of the auditor each year, in line with NSW legislation.
- Regarding 3.4, COTA SA considers whether documents that disclose relevant insurance information, particularly if they are included in recurrent fees, are provided in the Disclosure Statement or contract agreement to allow for greater transparency of these costs and the insurance policies in place.
- Regarding 3.5, COTA SA considers that bespoke emergency plans must be implemented and reviewed so that the risk to residents is sufficiently addressed and mitigated. For example, retirement villages situated in a bushfire zone will need different plans than those living in urban areas. Plans must also consider the assistance some residents may need to move to an evacuation point. Whose responsibility is this? How can they be best assisted to safety if necessary?
- Regarding 3.6, COTA SA supports the amendments to the legislation to provide separately for residential and commercial leases, and that the five-year maximum term be removed on residential leases.
- Regarding 3.8, during the consultation period, we heard from many residents who felt frustrated, disempowered and concerned about an operator's dispute resolution policy and this has also been reflected in SARVRA's submission. This is one area that is critical to ensure harmonious village relationships particularly between residents and a village operator, and ensures disputes handled consistently and every effort is made to resolve a dispute within the village. COTA SA supports the proposed amendments.
- Regarding 3.9, COTA SA notes that a 'party to a retirement village' in section 46 must be defined to clarify whether this can mean a group, including the Residents' Committee or SARVRA.
- Regarding 3.9, we support the amendments proposed to *the Act* that support village staff to be trained in the Code of Conduct to ensure this is an active tool in the

management of village relationships and disputes. We consider that the Code of Conduct be reviewed and, if necessary, redesigned with village residents and staff to ensure it is fit for purpose.

- Regarding 5.3, we support an amendment that allows for the introduction of a new operator to ensure the smooth transition to a new operator.
- Regarding 5.5, we support changes to the Register to make it a significant source of information, including for prospective residents who wish to make an informed decision about the suitability of a retirement village. We acknowledge that not all information will form part of the Register or be made publicly available, and we recommend further consultation around this to ensure the Register discloses sufficient information.

LEAVING A VILLAGE

In our 2021 submission to the review of the *Retirement Villages Act*, COTA SA made the following points:

- 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, all expenses payable on exit need clarification and, in the case of capital replacement fund contribution, capped.
- 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.
- The mandated buy back period of 18 months prescribed in the current act is too long. We urged that the period be reduced to a maximum of 6 months with operators able to reduce it further.
- COTA SA supported a reduction to three months in the length of time where rates can be charged to an outgoing resident.

COTA SA make the following comments about the proposed amendments.

- Regarding 4.2, we continue to advocate for the timeframe for payment of exit entitlement be as short as possible and acknowledge that a shorter timeframe compared to the current 18 months could be achieved through Options 1 and 2, although this will be longer than a maximum of six months which we urged for in the review. In considering Option 1, what isn’t known is the trend of average selling days in South Australia and how this differs between metropolitan and regional areas and whether any data has been modelled to give an indication of whether the average selling days is likely to rise or fall in the future. Further, what is the process and average timeframe to have a case heard before the Tribunal and what supports are in place to support an outgoing resident, family members or other parties to navigate this process? What evidence will be required to show that the operator has unreasonably delayed the remarketing of the residence? We do not see it reasonable that delays in remarketing are borne by the resident in both delay in exit entitlements and effort required to apply to the Tribunal. In Option 2, we understand based on the data on average selling days

that a shorter timeframe than the proposed 12 months will be achieved on average. Option 2 provides a simpler process for outgoing residents, their families or interested parties. There must continue to be provision that operators are able to reduce the timeframe further. We support SARVRA in their comments that question whether current residents have a choice to continue with the conditions of their own current contract or adopt the new conditions depending on which are better.

- Regarding 4.2.3, we support capping the capital fund contributions, however we understand this may disadvantage current residents whose current agreements calculate the contributions based on the purchase cost and not the current market value. We therefore support SARVRA's recommendation that that the cap should be applied to the price stipulated in the resident's current contract.
- Regarding 4.3, we support introducing limits to the length of time recurrent-like rates can be charged to an outgoing resident, and we continue to advocate for this being limited to three months instead of six months as proposed.
- We support SARVRA's comments that 'reasonable costs' in relation to remarketing is defined in the Regulations.
- Regarding 5.1, we support including a recommendation to seek legal advice about the termination of a retirement village scheme and recommend that the 'reasonable timeframe' to seek such advice is defined.
- COTA SA continues to advocate for a definition of 'fair wear and tear', and we support SARVRA in pointing to the definition given in the legislation in Victoria as a best-case example.

OTHER COMMENTS

Receiving home care packages while living in a Retirement Village

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

Ageing in place is incredibly important to older people and a resident of a retirement village must have some certainty about continued tenancy even as frailty, cognitive decline or other health events necessitate the need for care.

Currently there is provision in Section 44 of *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.

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 as agreed. However, COTA SA is aware that some villages either do not offer this as part of its value proposition and may exercise their right to terminate a resident's occupation under Section 44 of *the Act*; or home care services are only available from the provider.

COTA SA continues to highlight this issue as one that requires ongoing monitoring to ensure prospective residents are fully aware of the level of home care they will be able to access in

their home and by which provider/s. Indeed, we strongly encourage this information be disclosed in the Disclosure Statement (if it is not already) or on the Register.

Rights for current residents

We support the concerns raised by SARVRA that current retirement village residents are often excluded from the new provisions when changes occur and that their current contract remains in place. We have spoken to many residents who are currently dissatisfied with the operation of their village and have toxic relationships with village management and operators. Further, their contract agreements were signed with less transparency and non-disclosure of terms. We support SARVRA's advocacy for current tenants to ensure the issues important to current residents are fully addressed in the amendment of *the Act*.

Who is COTA SA?

COTA SA is an older people's movement run by, for and with older people. We represent the rights, interests and futures of 700,000 older South Australians. COTA SA reflects the diversity of modern ageing in terms of living arrangements, relationships, income, sexuality, culture, health, geography 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. The COTA Federation undertake regular State of the Older Nation surveys (2018 and 2021) to understand the views, life experiences and needs of Australians aged 50+.

Acknowledgement of Country

COTA SA acknowledges and respects Aboriginal people as the traditional custodians of the land of South Australia. We honour Aboriginal peoples' continuing connection to Country and recognise that their sovereignty was never ceded. We pay our respects to First Nations Elders past, present and emerging and extend that respect to all Aboriginal people.