16 April 2021

RV Act Review
PO Box 196 Rundle Mall
Adelaide SA 5000

Dear RV Act Review

Review of South Australian Retirement Villages Act 2016

National Seniors Australia (National Seniors) welcomes the opportunity to make a submission to the current review of the *South Australian Retirement Villages Act 2016*.

This submission has been developed with the assistance of National Seniors' South Australian Policy Advisory Group to ensure it reflects the views of older South Australians.

Given South Australia has a significant older population, second only to Tasmania, there is a strong need for affordable accommodation options for seniors.

In this regard, it is vital that the legislation governing retirement villages serve several purposes:

- Protect the rights of consumers
- Provide high quality information and advice that promotes the wellbeing of purchasers, and
- Maintains the sustainability of a high-quality housing option that provides older consumers with choice.

National Seniors accepts that, since 2013, a series of consultations and amendments have been made to the South Australian Act, with the *South Australian Retirement Villages Act 2016* and *Retirement Villages Regulations 2017* commencing on 1 January 2018, replacing the *Retirement Villages Act 1987*.

However, we believe there remain significant deficiencies in the current legislation.

Recommendations

National Seniors appreciates the current Act and Regulations have improved from 2014, however our view is that the legislation has not yet achieved adequate consumer protections as there are some deficiencies 'baked into' the current model.

The Retirement Village (RV) sector operates under different regulations in every state and territory but this is only one reason why it still has the reputation of being confusing for consumers.

Rather than ongoing amendments to the current Act, we propose a fresh start:

1) **Commencing 1 July 2022, the State Government should announce a new community consultation to:**

    a) clarify the main points of community and sector feedback gained since 2014, in order to

    b) identify the essential/preferred components of a new, state-wide, age-friendly, resident-centred, South Australian retirement village model (covering both for-profit & not-for-profit vendors).

2) **Commencing 1 July 2024,** a **new South Australian Retirement Villages Act be put in place. This new Act should:**

    a. grandfather all RV consumer contracts legally entered into prior to the new Act's implementation, with any new contract offered under the new arrangements from 1 July 2024.

    b. be used as the basis for negotiations with commonwealth, state and territory jurisdictions to create nationally consistent retirement village legislation and a national independent villages ombudsman to handle complaints.

By creating a new Act with grandfathered provisions, this will benefit existing and future village residents while also ensuring village owners can adapt to the new regime avoiding any possible collapse of the market.

If the new Act has adequate protections for new purchasers, this will bolster demand for villages, benefitting existing village residents who might otherwise find it difficult to attract new residents.

Given the existing flaws in the legislation it is critical that the interests of existing owners are protected and that can only come by ensuring that any new Act has the consumer interest "built-in" to its provisions.

Nationally consistent retirement village legislation will create less confusion and reduce the costs of compliance benefitting both consumers and operators.

Essential elements of a new Retirement Villages Act:

The new Act could be loosely based on the system currently operating in LifeStyle Villages providing independent living units. It should as a minimum, include the following:

- RV owners be authorised to charge maintenance and service fees, selling fees, but <u>NOT</u> entry or exit fees. Deferred Management Fees should no longer be legal.

- Upon sale of a RV resident's accommodation, apart from selling costs and settling of any outstanding payments or debts, the individual resident (not the owner of the land/corporate owner of the RV) will receive the entire sale sum.

- The maximum sale period for a lease/occupancy right on a RV dwelling after the resident's vacancy be reduced to the following:

    - If the former resident is able to access alternative accommodation that is not aged or disability care, and/or the resident does not have extenuating circumstances that require urgent relocation, then the **maximum sale period should be reduced from 18 months to 12 months**, as it has been interstate.

    - If the former resident is accessing residential aged care, then the sale period will be set at **three months, in line with the RAD timeline.**

- All advertising of accommodation in RVs will be required to spelled out, in plain English, what is for sale e.g. a 'leasehold' not a unit or house, under the encumbrances and terms as contained in the contract (management agreement). These terms should be itemised in plain English in a one to two-page attachment to the agreement.

- A RV should not be on-sold (to a new corporate entity, company or individual) without A) the village owner providing in writing to all residents five years notice of the intention to sell/transfer ownership and B) the new entity agreeing to maintain the village in its present or improved condition under the Act for a period of at least five years.

While our preference is to create a new Act to address these issues, these should also be considered for any changes to the existing Act to ensure current residents are adequately protected.

Why is a new Act required?

There are several issues undermining consumer confidence in the RV market which are all related to the terms outlined in the current Act.

False perceptions of consumer protection

Despite the best efforts of state and territory governments, anecdotal evidence indicates that it remains insufficiently appreciated by older people that RVs, whether for-profit or not-for-profit, operate on a buyer beware model[1], placing significant pressure on the purchaser to do due diligence.

National Seniors strongly believes most older people interpret the existence of dedicated Retirement Village legislation as conferring a degree of consumer protection. This can provide a false sense of security about the

[1] Government of South Australia 2013 *Moving into a Retirement Village.* December 2013

nature of retirement village contractual and financial arrangements. It may, in fact, inadvertently, undermine purchasers from taking a 'buyer beware' approach because they wrongly believe they are automatically protected and may be less likely to either carry out, or finalise, due diligence before entering into a contract.

Consumer cohort characteristics

There are also important characteristics regarding the retirement village consumer cohort which must be considered.

While the minimum entry age for a Retirement Village is 55, the average 'real life' residents' age is almost always much older. Across Australia, the average entry age to a Retirement Village is 74-75. The average age of residents is 81. The average residency is 8 - 9 years. Nationally, the percentage of single female residents is increasing. It is important to acknowledge that, like age care services, retirement villages are a product marketed to, and purchased by, consumers who are significantly older than the Australian median age (37 years). This is a cohort often experiencing life changing circumstances, or living through a challenging or difficult time of life.

Why does that matter? Part of the problem with the current legislation is that it is overly complex. It is not unreasonable to assume that potential buyers in any age group – let alone those over the age of 75 – might struggle with the complexity of the current arrangements. Contracts are long, detailed, and not reader-friendly. Management agreements, individual to each village, tend to be long (more than 50 pages) and contain complex legal text.

Because of historical factors and the reality of widowhood in later life, potential purchasers may not have high levels of financially literacy. Individuals may, understandably, feel embarrassed to admit that they do not understand the implications of proposed contractual arrangements.

There is abundant anecdotal evidence that potential buyers too often do not read the fine print, understand the detail/context – including the financial ramifications – and/or seek family or legal advice before signing up to a RV. This means their 'choice' is made without a full picture.

Costs of informed advice

Solicitors can charge up to $5,000 to advise on RV agreements. Given that many older people are attracted to the promise of lower up-front costs, foregoing the advice of a lawyer can be attractive.

Marketing bias

Advertising usually highlights the positive aspects of any product. This means that RV advertising materials may not stress the 'detail' i.e. the legal ramifications of entering a village. If RV advertising – even if only superficially – presents the vacant accommodation as a 'property' purchase (with strata or community title) which is attractive and cheaper than buying a stand-alone house, a consumer could commence a purchase without the full picture.

Management fees

Residents must make monthly payments to cover maintenance and services. These can be reduced through deferrals or paying a lump sum when the resident moves out (see **Exit Fees or Deferred Management Fees**, below). However, the way these operate is often complex and confusing for consumers making them difficult to compare when looking at options, especially when deferred.

Exit/Deferred Management Fees (DMF)

In 2020, www.downsizing.com.au noted that:

> *"Despite having been the mainstay of Australia's retirement village industry for decades, deferred management fees remain a poorly-understood and confusing concept for many consumers."*

Potential purchasers may struggle to understand the implications of deferring their management fees. Calculating how much this fee will eventually cost as a lump sum is not easy without knowing how long the resident will reside in the RV. While some villages cap the total DMF after 12 years it may still be difficult to fully comprehend the eventual cost.

Potential residents may be attracted to the idea of deferring the cost of their management fees but may not fully comprehend the true purchase price of a unit (lease). By obscuring the overall cost of living in a RV, deferred management fees create unequal power relations at the point of purchase which likely benefit the village owner at the expense of the potential buyer.

Moving out

In 2020, an Australian Property Council Retirement Census captured a nation-wide retirement village occupancy rate of 87.%[2] This census showed that, in South Australia, in 2018, it was 84%, down from 90% in 2014. If this trend were to become established long term, on-selling a unit (lease) could take far longer than the consumer can afford.

- Under the current RV Act, a village owner is not obligated to refund the seller for up to 18 months. This places little pressure on the village operator to sell the property in a timely manner.

- The current RV Act also requires the departing resident to provide the operator with a vacant possession of residence 15 months after providing notice to receive the exit entitlement at 18 months further disadvantaging the former resident. At the point of purchase, this aspect may not be readily apparent, or seem important.

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[2] Property Council of Australia 2021. Retirement Living: Data on retirement village occupant demographics, unit values and vacancies. Accessed 14 April 2021.

Thank you for taking the time to read and consider National Seniors' submission to the review of the SA Retirement Villages Act 2016.

Should you require further information or input, please contact Brendon Radford, Manager Policy and Advocacy via policy@nationalseniors.com.au.

Kind Regards

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