

April 2017

Guide to draft *Retirement Villages Regulations 2017*



**Government
of South Australia**

SA Health

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BACKGROUND

The *Retirement Villages Bill 2016* completed its passage through Parliament in November 2016 and is now the *Retirement Villages Act 2016*. It is intended that the new Act will commence in early 2018 and replace the current *Retirement Villages Act 1987*.

The new Act is a result of over three years' significant consultation, and successfully balances increased consumer protection with the interests of operators across the diversity of retirement village operations.

Regulations are the next important step in ensuring the *Retirement Villages Act 2016* fulfils its intended objectives. The Office for the Ageing is seeking feedback on the draft *Retirement Villages Regulations 2017*.

How do I provide feedback on the draft Regulations?

1. Go to:

<https://yoursay.sa.gov.au/decisions/retirement-villages-regulations/about>

and download the draft Regulations and reference documents.

2. Follow the link to the online survey to complete the feedback form.

Consultation closes at 5pm on Wednesday 24 May 2017.

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1. Moving into a retirement village

1.1 Payments excluded from the definition of ingoing contribution – Regulation 4

The *Retirement Villages Act 2016* (the new Act) replaces the term 'premium' with 'ingoing contribution'. Payments made under the following Acts are included in the types of payments which are excluded from being considered ingoing contributions:

- the *Residential Parks Act 2007*(SA)
- the *Residential Tenancies Act 1995* (SA)
- the *Aged Care Act 1997* (Cwth)

This provision aims to ensure that the new Act only applies to accommodation which is operating as a retirement village.

1.2 Preparation and provision of documents – Schedule 1, Code of Conduct, CI 3

The draft Regulations prevent an operator from charging a fee for the preparation of documents that are required to be provided to a resident under section 22 and section 23 of the new Act. These documents include the disclosure statement, the residence contract and the premises condition report.

1.3 Disclosure statements – Regulation 6

Section 21 of the new Act introduces the requirement for a person to be provided with a disclosure statement prior to signing a residence contract. The disclosure statement aims to draw a prospective resident's attention to key provisions of the residence contract. The format of the disclosure statement is prescribed in the draft Regulations.

An example disclosure statement that meets the requirements under the draft Regulations can be found at the end of this Guide.

1.4 Residence contracts – Regulation 5

Section 20 of the Act includes requirements about the residence contract. The draft Regulations provide additional detail as to what needs to be in the residence contract. This includes:

- information about the certificates of title relating to the village
- any exemptions granted in relation to the retirement village
- facilities available to the resident
- financial information about the retirement village scheme
- information about funds to which the resident is required to contribute
- the manner in which the exit entitlement will be calculated
- remarketing costs including the manner of calculation.

2. Living in a retirement village

2.1 Meetings of residents – Regulation 11

The draft Regulations contain further details about procedures for annual meetings of all residents. The Regulations require that if a question is asked at an annual meeting, the operator should include the question and the answer to the question with the minutes of the annual meeting provided to all residents. An operator is also required to include copies of questions it has received in writing with the minutes of the meeting. This is to ensure that all residents within a village are provided with all questions and answers asked at the annual meeting.

2.2 Standards for financial information – Regulation 10

The new Act includes provisions that require all funds to which residents contribute either directly or indirectly are to be audited. This financial information is to be provided to residents prior to an annual meeting.

The draft Regulations retain current requirements that financial information provided to residents prior to an annual meeting need to relate to the retirement village.

The draft Regulations also require that financial information should be prepared in accordance with general accounting standards. An audit must be conducted by a registered company auditor within the meaning of the Commonwealth *Corporations Act 2001*.

2.3 Residents' committees – Regulation 12

The new Act provides for the Regulations to make provisions about residents' committees. The draft Regulations introduce some minimum requirements which all residents' committees must abide by. These include core rules of a residents' committee as well as auditing and record-keeping requirements.

The draft Regulations retain the requirements for an operator to consult with a residents' committee in relation to certain matters, including maintenance issues raised by residents and the preparation of an annual budget.

Where the costs will not exceed \$5,000 in total, an operator must consult a residents' committee on any unbudgeted proposal to alter or improve a building, fixture or fitting where residents will be expected to finance some or all of the capital or recurrent costs.

The draft Regulations require a residents' committee to hold an annual meeting with all residents of the village. This meeting should be held within 4 months of the end of the financial year which applies to the retirement village. Re-election of residents' committee members should occur at the annual meeting convened by the committee.

The residents' committee must have a person who is not a committee member undertake an annual audit of its finances. At the residents' committee's annual meeting the committee must provide residents with a report on its audited finances.

Where a residents' committee holds a meeting of all residents, the residents' committee is required to make minutes available for inspection by residents. The minutes should have regard to not disclosing personal information about residents.

If a residents' committee disbands then the records of past meetings should be held by the operator. The records of past meetings should be retained for seven years.

A residents' committee is also required to undertake reasonable consultation with residents when developing or amending the residents' committee's procedures.

2.4 Additional Consultation with residents – Schedule 1, Clause 6

The draft Regulations outline the requirements for when an operator must consult with residents. This includes a requirement to consult on any matter that could have a significant impact on residents' financial affairs, the amenity of the retirement village or the residents' way of life. Under the draft Regulations reasonable consultation is taken to have occurred where an operator at least:

- notifies residents in relation to any matter that could have a significant impact on their financial affairs, the amenity of the retirement village or their way of life
- gives residents an opportunity to provide feedback within a reasonable times and
- considers any response provided by residents.

2.5 Dispute resolution policy – Regulation 18

The draft Regulations provide minimum requirements for a village's dispute resolution policy. The policy must at least address:

- the person representing the operator that a resident may contact in the event of a dispute
- how a resident can make a complaint
- how the operator will handle a dispute including a timeframe
- options for residents if the dispute is not resolved satisfactorily at the village level including the persons or bodies from whom a resident may seek advice in the event
- that the operator will keep accurate written records of the dispute as well as steps taken to resolve the dispute and any resolutions
- what options are available to residents who have a dispute with another resident. For example, access to community mediation services.

A village's dispute resolution policy must include a statement that the resident has a right to be accompanied by a person of their choosing at any meeting held to resolve a dispute.

Consultation should occur with residents if an operator proposes to change a village's dispute resolution policy.

2.6 Operator and Residents Code of Conduct - Schedule 1

The Select Committee into the review of the *Retirement Villages Act 1987* recommended that the current Code of Conduct be extended to encompass behavioural policies which protect operators and residents from harassment and intimidation, and that promote a safe and secure environment.

The draft Regulations include codes of conduct for operators and residents.

The Operator's code of conduct states that the operator of a retirement village must:

- ensure that residents are able to exercise self-reliance and autonomy in their personal, domestic and financial affairs
- ensure that the retirement village is safe and secure
- not harass or intimidate residents of the retirement village
- respect the peace, comfort and privacy of residents
- respond to requests for repairs and maintenance within a reasonable time
- consult residents in relation to the financial affairs of the retirement village
- ensure that a resident has access to information about the resident held by the operator
- allow a resident to appoint an agent to receive notices and documents on the resident's behalf.

Retirement village residents must:

- respect the peace, comfort and privacy of other residents and persons in the retirement village
- not harass or intimidate other residents and persons in the retirement village (including the operator and any person employed in the retirement village scheme)
- not act in a manner that may place the safety of other residents and persons in the retirement village at risk of harm
- comply with residence rules.

2.7 Residence rules - Regulation 15

It is a requirement under section 22(d) of the new Act that a person is provided with a copy of the residence rules prior to entering into a residence contract. The draft Regulations clarify that these rules relate to the use, enjoyment, control and management of the retirement village.

Residence rules may relate to but are not limited to the following:

- visitors to the retirement village including overnight and short or long term guests
- noise within the retirement village
- the parking of motor vehicles within the retirement village
- the collection and disposal of rubbish
- gardens and landscaping within the retirement village
- the use and operation of services or facilities (including restrictions on their use).

Consultation with residents is required when any changes are made to residence rules.

2.8 Surplus and deficit policy – Schedule 1, Clause 4 and Schedule 2 – Transitional regulation, surplus and deficit policy

Under the new Act an operator must adopt a surplus and deficit policy to apply to the retirement village within 6 months of the new Act commencing. If an operator fails to adopt a policy of their own, the policy set out in the draft Regulations will apply.

The policy in the draft Regulations is that a surplus or deficit must be accounted for in the statement of accounts in respect of the financial year following the year in which the surplus or deficit is incurred.

An operator is required to consult with residents on any changes to a village's surplus and deficit policy. The changes to the policy are to be put to a special resolution of residents. An amended copy of the policy is to be provided to each residence within 10 business days of the policy being changed.

3. Leaving a retirement village

3.1 Remarketing policy – Regulations 9 and 17

As well as retaining current requirements for a remarketing policy, the draft Regulations also introduce a number of new requirements to reflect changes to the new Act.

The new Act allows a resident to remain in occupation while their residence is being relicensed. The remarketing policy in the draft Regulations allows an operator to establish guidelines for residents who have elected to remain in occupation while a residence is being remarketed. These guidelines must be reasonable and may include but are not limited to:

- requirements for how inspections of the residence by prospective residents will be managed
- requirements relating to the presentation of the residence
- requirements relating to the period of vacant possession an operator requires prior to settlement if a residence is relicensed prior to 18 months.

The draft Regulations also address what is to occur where a resident provides a notice of their intention to vacate their residence and remain in occupation while it is being remarketed. If the resident subsequently withdraws that notice they are liable to pay all remarketing costs incurred up to the time when they withdrew the notice. These costs may be deducted from the exit entitlement when the resident leaves the village.

The draft Regulations require that monthly remarketing reports must contain information about what activity the operator has undertaken in an effort to relicense the residence and should include but is not limited to:

- how many enquiries about the residence the operator has received
- the number of people who have viewed the residence
- the number of other residences for sale in the retirement village
- how many residences have been relicensed in the preceding month in the retirement village.

Section 32 of the new Act provides that a resident or a person claiming under the resident can participate in the remarketing of the premises in accordance with the prescribed scheme if the residence is not relicensed within 9 months of the resident ceasing to reside in the village or providing a notice to vacate under section 27(3) of the new Act.

For the purposes of section 32, the draft Regulations prescribe that the person can engage a real estate agent to sell the right to reside in the residence. If the person engages a real estate agent they must pay that agent's costs and commission (if any). The person must also comply with any reasonable request of the operator in relation to the remarketing of the residence undertaken by the agent.

The person's participation in remarketing will be in addition to any remarketing efforts undertaken by the operator.

The draft Regulations allow a remarketing policy to be changed by consultation with residents.

3.2 Vacated premises report – Regulation 16

A number of amendments were made to the new Act which has changed the use and purpose of the PCR. The PCR is to be used to show the actual condition of a residence at the time a resident takes up occupation. The draft Regulations require a vacated premises report to be provided when a person ceases to reside in a residence.

The vacated premises report will record the condition of the premises when a resident ceases to reside and is to be used in conjunction with the premises condition report.

Terms relating to who is responsible for repair and replacement of items within the residence are required to be included in the residence contract.

3.3 Arrangements if resident leaves to enter residential aged care facility – Regulation 8

Section 30(2) of the new Act provides that an operator may require a resident to provide evidence of their financial assets where they are seeking early access to an exit entitlement to secure entry into aged care.

The draft Regulations prescribe that the evidence required for application under section 30 is evidence of the value of the resident's assets as determined by the Secretary under the *Aged Care Act 1997* of the Commonwealth.

This assets assessment (Aged care income and assets assessment) is undertaken by the Department of Human Services (DHS) or the Department of Veterans' Affairs (DVA). This assessment is used to determine the costs that a resident can be asked to pay for aged care.

3.4 Repayment and Valuation - Regulation 7(3)

Section 27(5)(e) of the new Act provides that a resident may elect not to receive repayment of their exit entitlement at 18 months and wait for conditions specified in the contract to be fulfilled. Under the draft Regulations the prescribed period in which the resident must make this election is a minimum of 15 months after providing notice to vacate a village, or 15 months after vacating a village.

Section 27(16) of the new Act allows a resident to require a valuation where there is a dispute about the market value of their residence. The draft Regulations require the independent valuation to be undertaken by a person authorised to carry on business as a land valuer under the *Land Valuers Act 1994*.

Example - Disclosure Statement

NOTE:

- (i) the disclosure statement is not a replacement for the residence contract but is intended only as a summary of certain information contained in the contract; and
- (ii) the prospective resident must ensure that they understand the terms of the residence contract; and
- (iii) it is recommended that the prospective resident seeks legal and financial advice about the residence contract

Operator	
Retirement Village Name and Location	
Resident	
Residence	
If the residence is to be constructed or is under construction Anticipated completion date -	
Insurance arrangements in place for the village	
Type	Insurer

Fees and charges – prior to occupation

Ingoing Contribution [*]	\$..... Deposit of \$.....due..... Balance of \$.....due.....
Fees and Charges prior to entering into occupation	[*]

[*] Must include a description of the fee, the amount or manner of calculation, and what is done with the fee or charge

Fees and charges - during occupation

Recurrent charges	[*] / (frequency)
Fees and Charges for additional/personal services and facilities	[*]
Other fees and charges within contract	[*]
Utilities, services or facilities provided or available to residents that the operator has an interest in or would obtain a fee or reward in relation to	
Resident responsibility	
NOTE: A resident may be required to pay a fee, charge or other amount to the operator to enable the operator to recover an unforeseen expense of the retirement village (a special levy)	

Fees and charges - upon termination

exit fee means the amount of money that is, under a residence contract, payable by a resident of a retirement village on the resident ceasing to reside in the retirement village or on the sale of the resident's right to reside at the retirement village;

Note—This would include, for example, any deferred management fees, refurbishment costs and remarketing costs.

Manner of calculation of exit entitlement	[*]
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[*] Must include a description of the fee, the amount or manner of calculation, and what is done with the fee or charge

Termination during the settling in period

Market Rent	[*]
Other fees and charges	[*]

Termination after the settling in period

Deferred management fee	[*]
Capital fund contribution	[*]
Remarketing fee or charge	[*]
Refurbishment or reinstatement	[*]
Other fees and charges	[*]

Timing of payment and arrangements if resident leaves to enter residential aged care	<i>Please refer to Sections 27 and 30 of the Act which provide for exit entitlements and allow for daily accommodation payments to the relevant aged care facility, for residents entering aged care who meet the stated requirements.</i>
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Signed

Date

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Signed

Date

[*] Must include a description of the fee, the amount or manner of calculation, and what is done with the fee or charge

For more information

Office for the Ageing
Department for Health and Ageing
PO Box 196 Rundle Mail
Adelaide 5000
Telephone: (08) 8204 2420
Email: Health.RVActReview@sa.gov.au
www.sahealth.sa.gov.au

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