

7th March 2024

Hon Christopher Picton MP
Minister for Health and Wellbeing
GPO Box 2555
ADELAIDE SA 5001

Dear Minister

Retirement Villages (Miscellaneous) Amendment Bill 2024

On behalf of our members, the Aged and Community Care Providers Association (ACCPA) is pleased to provide you with our review and feedback on the *Retirement Villages (Miscellaneous) Amendment Bill 2023* (the Amendment Bill), as introduced into the South Australian Parliament on 21st February 2024.

ACCPA members account for approximately 70% of all retirement villages in South Australia. These range from small privately owned operators through to large not for profit organisations.

Retirement villages continue to be an important and necessary form of housing in the seniors living sector. They provide many physical and intangible benefits to the residents they house. It is a sector of consumer choice and welcome the opportunity to provide feedback on the Amendment Bill.

Regulation has the ability impact the growth of the sector and there are a few areas of the Amendment Bill that concern our members. Unfortunately, South Australia has seen the number of new village developments slow over the past decade at a time when the population is growing older, and we would expect village numbers to grow. In fact, the total number of retirement villages in South Australia declined in recent years. It is therefore imperative that we strike a balance between ongoing consumer protection, and the long-term viability of the industry.

We trust that you will find our review informative and suggestions well measured. If, however you would like to discuss any matter raised, please do not hesitate to reach out to ACCPA.

We thank you for your time to consider our view.

Yours sincerely



Mark Prosser
Director Retirement Living and Seniors Housing
Aged & Community Care Providers Association

ACCPA Review of the Retirement Villages (Miscellaneous) Amendment Bill 2024

Preamble

Generally, the Amendment Bill has received support from members on matters such as the 12-month statutory buyback, capping the increases in maintenance charges and the capping of capital fund contributions. We do know that there will be some members where the capping of the capital fund contribution will have an impact on their current business model and will need to review this moving forward.

We note that the Amendment Bill will place more demands on the operator by way of training requirements, safety inspections and potentially increased insurance obligations. It is likely that the cost of these requirements will be passed on to the residents via their recurrent charges / maintenance fees.

We do note that there are many instances in Amendment Bill where it refers to the Regulations for the detail. This makes it quite difficult to know of the impact of the legislation without knowing what is going to be in the regulations. We trust that all stakeholders will be given an opportunity to engage with your department in the shaping of the regulations.

Areas of Concern

Section 20 – Residence Contracts

Members have expressed concern with the amendments to section 20(3) and the retrospective nature of this section. This section (20(3)) when combined with the amendment to section 69 which allows regulations to *“make different provision according to the classes of persons, or the matters or circumstances, to which they are expressed to apply”* as allowed by clause 2(1) of Schedule 1 are that the Regulations can now provide for the following.

1. A retrospective standard contract or set of terms,
2. Retrospective variations to all contracts, and
3. Retrospective variations to all contracts of a particular operator.

If this was to remain as is then there can be no certainty of contract. This may even apply to contracts that have been in existence for years.

If there is no certainty of contract this has the potential for further unintended consequences. For example, this may impact the value of a village as any prospective buyer cannot be sure that the village financial model that is written into the contracts will exist for the life of those contracts. In turn this may deter sales and purchases of villages and reduce investment into the sector. We believe it would be difficult to attract developers who have no certainty that the contract entered into by residents will not be subject to change in the future. This at a time when new investment into the South Australian retirement village industry is already in decline.

Section 21 – Disclosure Statement

ACCPA members are supportive of providing a clear and informative Disclosure Statement to any prospective resident. We believe new section 21(1)(a)(ii) will help residents to better understand what their estimated exit entitlement will be in the future. However, we note that

operators will need to ensure that their Disclosure Statement is updated for each new ingoing contribution, as this amount will vary between each transaction.

As per our original submission from May last year, we believe that the Government should prescribe growth rate assumptions if the contract is terminated at years 2, 5 and 10. This will allow all prospective residents to make an informed decision based on the exit fees payable at that village and can easily compare this with other villages. As it stands, operators can elect to use different growth rates in their examples, which may make comparison for residents difficult.

Section 25A – Residence contract holding deposits

Our main area of concern is section 25A(2)(a) with respect to the increasing of recurrent charges / maintenance fees that occur at an annual meeting of residents. As the Bill stands the operator must not during the holding period increase a fee or charge under the residence contract that the person would be responsible for. This would mean that operators should not take deposits for 12 business days after these charges have been increased at the annual meeting, which is detrimental for the outgoing resident along with the operator as well. Perhaps fees that have been increased at the annual meeting could be excluded from this provision.

Section 31(A) – Recurrent Charges

Whilst we generally accept the new section of recurrent charges, we have some concerns with the Amendment Bill. Section 31A(3)(d) stipulates that the operator can increase the recurrent charges by a higher amount where *‘a majority of the residents whose recurrent charges will be affected by the increase agree to the increase by resolution at a meeting of those residents’*. We believe that this should be clarified as to whether this includes absentee/proxy votes.

Section 31(10) lists the prescribed maintenance contracts. We also believe that grounds/gardening/landscaping contracts and fire infrastructure contracts should be included as a prescribed maintenance contract. These often tend to be large contracts with terms that span multiple years to achieve discounts.

Section 41 – Residence rules

There is concern amongst our membership that section 41(1) which stipulates *‘If a residence rule, or a provision of residence rule is harsh, oppressive, unconscionable or unjust, the rule or provision is void’*, can be determined without any application to the tribunal. We would prefer if this clause was removed to avoid doubt that a resident must make an application to the tribunal for this to be determined.

Section 43A – Safety of common areas

The intent of this section generally receives support from ACCPA members. However, there is concern amongst our membership that an explanation of common areas of the village is not provided. Does this include all roadways, paths and front gardens that are maintained by the village? If it does, then this becomes a significant task that must be undertaken by operators on annual basis. The cost of undertaking this exercise is likely to be recovered from residents via their village budget.

Section 45 - Dispute resolution policy

Section 45(3a) is an area of concern for some ACCPA members. As it currently reads the onus is on the operator to take all reasonable steps to resolve the dispute in accordance with the dispute resolution policy. There is no requirement for the resident to do so. This should be a joint requirement for the resident and operator to take the necessary steps to try and resolve their dispute.

Our members have also expressed why the Tribunal cannot hear disputes between residents. This is becoming more frequent and there should be a mechanism in place so that these matters can be addressed without further detriment to the residents of the village.

Section 57C – Duty to insure

ACCPA have been informed by our legal partners that the requirement for an operator to be insured against '*liability in tort*' makes it extremely difficult to comply with given the wide variety of tortious claims that could be brought against the operator. We have been advised that if the Government wants to have the operator insured for Public Liability, then these words should be used in the Bill.

Sections 57D, 58 and 59A – Termination of retirement village scheme

The changes to these sections have become complex and are very difficult to navigate. Whilst operators would want to protect the rights of residents in retirement villages, South Australia has ageing villages and legislation should assist rather than hinder potential redevelopment of sites.

For example, the process of making an application to the Minister for termination when an operator believes that they have at least 90% support of the residents to make an application, and they fail, is hard to fathom that you cannot make an application to the Supreme Court for 10 years. Clearly this process should be rethought, and discussions held with the sector, residents, and government to find a workable solution.

Operators look to redevelop sites mainly because the village has aged and is no longer competitive in the marketplace. If these sites become too difficult to redevelop, residents end up paying higher recurrent charges due to the higher maintenance costs associated with older construction.

Under section 59A there needs to be a mechanism put in place that will provide the operator with certainty that a resident consents to the partial termination of the retirement village scheme. Given the time frames involved it is quite possible for an operator that a resident initially approves of the termination, but then later changes their mind. The operator is then never sure that they have approval when submitting their application for termination. The consequence of this is that the operator cannot go to the Supreme Court for the next 10 years.

This means that the operator may prefer to go to the Supreme Court for a termination application, which is often a costly and protracted process, and take the risk of failure and being prohibited from going to the Minister under section 59A for the next 10 years.

In its current form we would hope that the Minister would consider reversing the 10-year rule from the Amendment Bill.

Section 63 – Codes of conduct

We note that residents are precluded from criminal liability for a breach of the code of conduct, which we do not support. Whilst residents are required to observe the code of conduct there is no consequence if they choose not to do so, whereas an operator is subject to criminal liability. This is inequitable, especially given that the code has been expanded to include *‘persons employed or engaged to work at a retirement village’*. In our view the code has been expanded to include contractors such as plumbers and window cleaners.

Section 63A – Duty of operator to provide staff training

Whilst ACCPA endorses the professional development of staff to provide better outcomes for their residents we believe the far-reaching wording of section 63A will make this requirement time consuming and costly.

As we understand this section of the Amendment Bill, the training of relevant operational policies and procedures will include contractors engaged by the village. Some villages engage with a wide number of contractors and the time that would be required to undertake this training would be very costly to the residents of the village. Many villages engage contractors on an ad hoc basis, so perhaps if there is a requirement for training of contractors, it is limited to those who are contractually engaged (i.e. fixed term contract) to the village. This could allow for organisations such as gardeners etc, to be included in the training and not a plumber who was prepared to come to the village outside of normal working hours to attend to a problem.