

9 May 2025

To: Office for Ageing Well, Department of Human Services
PO Box 196, Rundle Mall, Adelaide SA 5000
rvactreview@sa.gov.au

To whom it may concern,

RE: Draft Retirement Villages (Miscellaneous) Amendment Regulations 2025

Thank you for the invitation to provide a submission on the draft Retirement Villages (Miscellaneous) Amendment Regulations 2025.

The retirement living sector in South Australia plays a crucial role in housing and supporting older Australians. The regulatory framework must balance resident protections with operational viability, ensuring that villages remain sustainable while fostering transparency, trust and financial clarity.

Ageing Australia is the national industry association for over 1,000 aged care providers offering retirement living, seniors housing, residential care, home care, community care and related services.

We support the overarching objective of enhancing transparency, consumer protections and clarity for both residents and operators. Our submission reflects feedback from our members and a legal analysis of the draft regulations. We provide specific commentary on each consultation question and make clear recommendations to support workable and balanced regulation.

Our major concern raised by Ageing Australia members is the inclusion of criminal penalties for breaches of the Code of Conduct. We consider this unacceptable and disproportionate. The retirement living workforce - including staff and contractors - should not face criminal liability for failing to meet unclear or subjective behavioural standards. This approach risks undermining workforce participation and sector confidence.

More broadly, overregulation may deter investment and development in the sector at a time when new retirement villages are urgently needed to meet the needs of an ageing population. The regulatory framework should avoid placing unnecessary constraints on operators that could delay or discourage new supply, particularly in areas of underservice.

Listed on the following page are a summary of our recommendations.

Rec	Summary
R1	Ensure residence contract disclosure obligations focus on charges and services managed by the operator, while allowing external or third-party costs to be described in general terms only.
R2	Introduce a clear definition or threshold for 'major capital item expenditure'.
R3	Clarify the scope of reinstatement and repair responsibilities, confirm the ability to include photographic evidence in reports and ensure that timeframes for response are defined with a fallback mechanism in the event of non-response.
R4	Criminal penalties must be removed from the Code of Conduct. The Code should be redrafted to provide clear and enforceable behavioural standards, using civil mechanisms rather than criminal liability. Further, the Code should reflect mutual obligations, explicitly applying to all parties - including operators, staff, residents, prospective residents and others - and address inappropriate or vexatious behaviour, including conduct by residents involved in committees.
R5	Revise regulation 18(j) to allow operators to update the dispute resolution policy when required to meet legal or regulatory obligations, or to ensure the policy remains current and workable. These updates should involve consultation and notification, with formal approval by residents required only for material changes that affect resident rights.
R6	Clarify that operators may require additional documentation where payments are made to estates and ensure the regulation supports flexibility in payment methods.
R7	Clarify the definition of 'emergency procedures' and the standard of safety expected under the new duty, particularly in the context of independent living. The scope of obligations should be limited to risks within the operator's control and resourcing.
R8	Clarify that operators may require additional documentation where payments are made to estates and ensure the regulation supports flexibility in payment methods.
R9	Remove or revise the requirement to state a reason for partial scheme termination and clarify the scope of 'proposed future use'. Regulation should focus on financial protection, with land use matters managed through existing planning frameworks.

The following pages provide detailed responses to each of the consultation questions. Each response outlines our assessment of the proposed regulation, relevant considerations for operators and residents, and a corresponding recommendation to improve clarity, practicality or implementation.

Question 1: Residence contracts

Do the proposed updates to regulation 5 include all the additional information that should be included in a residence contract? If not, what additional mandatory information should be included?

We support the objective to improve clarity in residence contracts, particularly the clarification that operators are responsible only for describing services and facilities they directly provide or arrange. However, expanding the disclosure requirement to cover all types of charges - including those levied by third parties - may unintentionally create confusion. Operators typically lack access to the level of detail necessary to explain third-party charges which are often highly variable and subject to external influences. For instance, external care costs have fluctuated significantly due to global events such as the COVID-19 pandemic, and these are not within an operator's ability to predict or control accurately. It would therefore be impractical and potentially misleading to require them to do so.

Additionally, there is growing concern about whether requiring operators to document highly variable or ad hoc personal services (e.g. paid guest meals or private services) adds value or clarity. These often fall outside the core contract framework and are subject to frequent change.

We also support moving the dispute resolution policy and section 45 statement to the suite of pre-contractual documents provided under section 22. This approach better reflects contemporary disclosure practices and helps streamline the residence contract itself.

Recommendation 1: Ensure residence contract disclosure obligations focus on charges and services managed by the operator, while allowing external or third-party costs to be described in general terms only.

Question 2: Disclosure statement

Do the proposed updates to schedule 2 include all additional information that should be included in the disclosure statement? If not, what additional mandatory information should be included?

We support the intention to improve the financial transparency of the disclosure statement by including indicative exit entitlement estimates and associated fees at 2, 5 and 10-year intervals. This provides useful reference points for prospective residents when evaluating financial implications. The inclusion of an explanatory note that these are estimates is essential to avoid unrealistic expectations.

However, the requirement to include information on upcoming major capital item expenditure in the next 2 years is likely to lead to confusion unless it is more precisely defined. Feedback from our members suggests a lack of clarity on whether this includes projects funded by the operator, those funded through resident levies, or both. Without clear thresholds or definitions, operators may take inconsistent approaches to disclosure, undermining the goal of transparency.

Recommendation 2: Introduce a clear definition or threshold for 'major capital item expenditure'.

Question 3: Premises condition report and vacated premises report

Are the proposed requirements for the premises condition report and vacated premises report appropriate? Why or why not?

Establishing clear and consistent entry and exit reporting procedures is critical to minimising disputes, ensuring transparency and protecting both residents and operators. The introduction of standardised requirements is a positive step, but several elements of the proposed regulations require clarification to be workable in practice.

Regulation 6B / section 23: Premises condition reports (entry)

- The report must specify who is responsible at the end of the contract for reinstating or improving the premises. This is essential information and should be cross-referenced from the residence contract to avoid duplication or inconsistency.
- Where the operator is undertaking improvements or repairs, the nature of the work and expected timeframe must be documented. However, it should be clarified that this refers to pre-entry works and not anticipated future renovations.
- The report must outline that any disputes are subject to the dispute resolution policy, unless an alternative resolution process is agreed. This means dispute resolution policies will need to cover condition reporting with incoming residents.
- There are formatting requirements (e.g. font size, written format). To the extent that there is a new requirement under new section 23 of the report to be in writing, it is not clear whether this requirement excludes the use of supporting photographs or diagrams. Given the importance of visual evidence in documenting property condition, clarification is needed to confirm that these can be included as part of the formal report.

Regulation 6C: Vacated premises reports (exit)

- This regulation replaces the old regulation 16 but does not clearly connect to a specific section of the Act. The legal foundation under section 69(1) should be confirmed.
- The resident is given a 'reasonable' period to respond - this term is ambiguous. A specified timeframe would reduce uncertainty.
- The report must 'make provision' for the inclusion of any subsequent agreement signed by the operator and former resident in the event of disagreement about the initial report. It is unclear how this would work in practice, particularly where the dispute is prolonged or complex. The regulation should clarify that any such agreement may be annexed to the report once finalised.
- The report must also state that any dispute must be resolved under the dispute resolution policy, unless both parties agree to another process. This implies that dispute resolution policies will need to be framed to handle disagreements with former residents or their legal representatives.
- No deeming provision exists for when residents fail to respond. This omission could delay re-entry works, remarketing and buyback timelines.

Recommendation 3: Clarify the scope of reinstatement and repair responsibilities, confirm the ability to include photographic evidence in reports and ensure that

timeframes for response are defined with a fallback mechanism in the event of non-response.

Question 4: Code of conduct

Are the proposed standards of behaviour to be included in the Code of Conduct adequate? Are there any others that should be included?

We acknowledge the importance of fostering respectful and safe retirement village communities. However, the proposed Code of Conduct goes too far by introducing criminal penalties for staff, contractors and operators based on vague or subjective behavioural standards. This approach is disproportionate and will severely impact workforce morale and retention. It is entirely unacceptable to expose the retirement living workforce and external contractors to the risk of a criminal record for perceived failures to meet unclear expectations around timeliness, tone or interpretation of resident rights.

The aged care sector, after extensive consultation, stepped back from such an approach due to its likely chilling effect on workforce participation. The retirement village workforce, which is already under strain, should not be subjected to this uncertainty. South Australia would be the only state to introduce such convictions.

At the same time, the proposed Code fails to adequately reflect the reality that inappropriate or vexatious behaviour by some residents can significantly undermine a safe and respectful community. This is particularly important where residents engage in disruptive behaviour while serving on committees. The Code should be balanced - clearly applying to operators, staff, residents, prospective residents and others equally.

A fundamental concern is the vague and subjective nature of several obligations within the Code. The repeated use of terms such as 'reasonable' introduces significant ambiguity and legal uncertainty. For instance, the requirement to respect the peace of residents may be interpreted inconsistently - raising the question of whether routine activities such as early morning lawn mowing could trigger a breach. Similarly, expectations around response times for maintenance requests or resident enquiries are undefined. This vagueness is particularly problematic in the context of criminal liability, as it is essential that individuals and organisations understand exactly what conduct may lead to prosecution. Ill-defined behavioural standards are not an appropriate basis for criminal offences and risk undermining the objectives of the Code itself.

In effect, the Act and Regulations criminalise what in any other legal or service context would be civil matters - such as breaches of contract or performance obligations. These are appropriately handled through SACAT's civil jurisdiction. The Code also conflates general principles with enforceable conduct, meaning it is unclear whether aspirational standards - such as being 'transparent', 'accountable' or providing 'good quality services' - could attract criminal penalties.

Other ambiguous provisions include duties to disclose information even where it may breach another resident's privacy or conflict with commercial confidentiality. Requiring operators to 'demonstrate knowledge of all relevant laws' or 'consult on the financial affairs of the village' opens the door to legal overreach and unrealistic expectations.

Many operators fear that any minor procedural departure could now be construed as a breach of the Code. Similarly, the obligation to 'take reasonable steps' to ensure that others (including contractors) comply with the Code creates liability for the actions of third parties. In short, the Code introduces a level of complexity and risk that is out of step with the goal of supporting a positive village environment.

These concerns are compounded by a series of additional legal and drafting issues:

- Obligations such as 'unreasonably restrict access', 'act in good faith' or 'consult on financial matters' are vague and undefined, potentially leading to overly broad interpretations.
- Duties to act 'transparently' may conflict with resident privacy or commercial confidentiality obligations.
- Operators may face criminal liability for deviating from internal policies, even when justified.
- Consulting on matters such as 'distribution of information' or 'establishment of programs' lacks clear scope, creating confusion about when and how consultation should occur.
- The expectation to ensure staff and contractors comply with the Code lacks guidance on what constitutes 'reasonable steps' or 'appropriate action'.
- Breaches of the Code are also contractual breaches under section 63(2), adding further legal and financial exposure.

Recommendation 4: Criminal penalties must be removed from the Code of Conduct. The Code should be redrafted to provide clear and enforceable behavioural standards, using civil mechanisms rather than criminal liability. Further, the Code should reflect mutual obligations, explicitly applying to all parties - including operators, staff, residents, prospective residents and others - and address inappropriate or vexatious behaviour, including conduct by residents involved in committees.

Question 5: Alterations to residence rules

Are the proposed requirements for suggesting changes to residence rules appropriate and accessible?

We support the proposed dual pathways for residents to suggest changes to residence rules either via the residents' committee or through a petition signed by 20% of residents. Our position on 20% of residents is based on the condition that there is one vote per residence to ensure equality amongst all residents. These mechanisms are appropriate and reflect a fair and balanced approach to community participation in village governance.

Question 6: Dispute resolution policy

Are the proposed updates to the Dispute Resolution Policy appropriate? If not, why not?

We support the requirement for operators to have a clearly defined dispute resolution policy and to make this available as part of pre-contractual disclosure. Providing prospective residents with visibility of how issues can be raised and addressed is essential to building trust and setting realistic expectations.

The updated regulation appropriately requires the policy to specify how and to whom complaints should be submitted, and the timeframe within which complaints must be acknowledged and responded to. It is also appropriate that the policy includes guidance on how the operator may assist in disputes between residents.

However, subregulation (j) remains problematic, as it requires any variation to the policy to be approved by a majority of residents. This raises serious issues. If changes to the Act or Regulations require a policy to be updated, an operator may be placed in a position where it is unable to comply with the law unless the majority of residents agree. Similarly, if a policy becomes outdated or unworkable, the operator is left without a clear pathway to update it. There needs to be a mechanism, such as approval by the Office for Ageing Well or SACAT, that enables operators to make necessary changes where resident agreement is withheld.

Recommendation 5: Revise regulation 18(j) to allow operators to update the dispute resolution policy when required to meet legal or regulatory obligations, or to ensure the policy remains current and workable. These updates should involve consultation and notification, with formal approval by residents required only for material changes that affect resident rights.

Question 7: Remarketing policy

Are the proposed updates to regulation 17 clear? Do they address the matters that must be included in an operator's remarketing policy? If not, what other matters should be included

We support the intent of the updated regulation to require operators to have a clearly stated remarketing policy that aligns with their contractual and financial model. Providing clarity to outgoing residents and their representatives about resale processes, marketing strategy, and timeframes helps to manage expectations and reduce disputes. We note that the remarketing policy can state that it does not apply in particular circumstances, namely if there is no exit entitlement, if the exit entitlement is not contingent on the sale of the residence, or if the residence will be sold without going on the market.

Question 8: Payee details

Are the proposed payee details adequate to enable payment to be made in a timely and secure manner?

We agree with the intent of ensuring timely and secure payment of exit entitlements. However, the regulation should acknowledge that payments may involve estate executors or administrators and that further documentation (e.g. probate) may be required in some cases.

Recommendation 6: Clarify that operators may require additional documentation where payments are made to estates and ensure the regulation supports flexibility in payment methods.

Question 9: Unclaimed property

Is the proposed process for managing unclaimed property appropriate? Are there any other matters that should be included?

We support the establishment of a structured and transparent process for managing unclaimed goods left behind by residents. This will help ensure legal clarity and fairness to all parties.

However, the requirement that vacant possession be given before removal may be impractical in certain circumstances. For example, goods may need to be cleared to facilitate cleaning, repairs or safety access before full possession is obtained. The regulations should allow for limited removal of items before formal possession where necessary.

As currently drafted, it is unclear where this links to the Act (reg 19E does not link to a specific section of the Act). Clarity is required to determine if the power to make regulations under section 69(1) is adequate.

Question 10: Other matters – prescribed safety information

Are the proposed requirements relating to the operator's duty to ensure safety adequate? If not, what other requirements could be considered?

While the policy intent is supported, the proposed drafting raises several issues that require clarification.

Operators are required to review emergency procedures at least annually or following significant changes to the village (such as major works or partial termination). However, the term 'emergency procedures' is undefined. It is unclear whether this refers solely to fire or natural disaster responses, or if it extends to clinical and medical incidents (e.g. a resident health event). This lack of clarity is problematic, particularly as retirement villages are primarily designed for independent living and not clinical care.

Although the content of the emergency plan is prescribed and includes evacuation procedures, the standard of response expected remains undefined. It is also unclear how this aligns with standards applied in other industries or comparable residential settings.

Safety inspections must be conducted annually and after significant changes to the village land or premises. The proposed formatting and distribution requirements for emergency plans are appropriate, provided that they do not contravene other legislative requirements. However, they do not appear to set a minimum threshold for what constitutes an adequate or compliant safety response.

Recommendation 7: Clarify the definition of 'emergency procedures' and the standard of safety expected under the new duty, particularly in the context of independent living. The scope of obligations should be limited to risks within the operator's control and resourcing.

Question 11: Other matters – consent to lease before exit entitlement paid

Do the proposed regulation require an operator to provide a former resident with enough information to enable them to provide informed consent to the leading / renting of the premises prior to them receiving the exit entitlement? If not, what additional information is needed?

Regulation 19A / section 57 introduces a new obligation requiring operators to obtain informed written consent from a former resident before leasing a unit where the exit entitlement has not yet been paid in full. This principle is supported as it promotes transparency and safeguards the interests of outgoing residents.

However, the regulation also imposes a requirement that a 'reasonable period' must be given for the former resident to ask questions. The use of such a vague, undefined term is concerning, particularly where breach of this provision may constitute an offence under section 57B, which carries a penalty of \$10,000. Clarity is needed around what constitutes a 'reasonable period' to ensure legal certainty and fair application.

More broadly, the rationale for allowing operators to lease a residence prior to fulfilling their buyback obligation is unclear. From a commercial perspective, leasing implies the unit is not yet ready or intended for resale - raising the question of why a buyback has not occurred. In most cases, if there is a commercial or strategic purpose for the unit, it

would be more appropriate for the operator to repurchase it. The current drafting risks creating unintended consequences or being applied too broadly. The only practical application appears to be in 'try-before-you-buy' arrangements, but these would trigger the obligation to repay the former resident.

Recommendation 8: Clarify what constitutes a 'reasonable period' for consent to be given and ensure that compliance obligations under the regulation are proportionate to the operational risks involved.

Question 12: Termination of a retirement village scheme (or part of)

Is the proposed information that must be provided to residents and the Minister relating to a proposed termination sufficient? If not, what other information could be considered?

Regulation 19B introduces new requirements for the termination of part of a retirement village scheme, including the need to issue a pre-action notice containing prescribed information such as maps and reasons for the proposed termination. While improving transparency is important, the requirement to state a "reason" for termination is problematic. There is no equivalent requirement to justify expansion of a scheme; mandating justification for contraction creates an imbalance.

Further clarity is needed around what qualifies as a valid "proposed future use" of the land. Operators may wish to terminate a portion of the scheme and retain flexibility to determine the use of the land at a later date. The current drafting risks limiting this flexibility and exposing operators to scrutiny over commercial decisions that may evolve after termination is approved. There is also a risk of discovery in future disputes relating to the stated purpose for termination.

Historically, the focus of scheme termination processes has been on protecting the financial interests of residents, particularly with respect to their exit entitlements. The shift toward regulating amenity and land use veers into areas better addressed under planning laws. While retirement village residents do face barriers to relocating (such as exit fees), planning protections—not operational regulations—are the more appropriate tool to manage this tension.

Recommendation 9: Remove or revise the requirement to state a reason for partial scheme termination and clarify the scope of 'proposed future use'. Regulation should focus on financial protection, with land use matters managed through existing planning frameworks.

Question 13: Disqualified persons

Is there any other evidence that an operator should require to satisfy themselves that a person is not a disqualified person?

This approach is proportionate, provided that further guidance is issued on recordkeeping, frequency of rechecks and treatment of long-term staff or contractors engaged prior to the changes.

Question 14: Information on the register

What other information would you find useful on the register of retirement villages?

Expanding the public register to include additional information could provide significant benefits for transparency, sector benchmarking and policy analysis. For example, it would be useful to include:

- The number and type of units in each village (e.g. independent living units, serviced apartments).
- Whether the village is co-located with an aged care service and / or provides home care.
- Contract types available (e.g. loan/licence, lease, strata, freehold).

This data would assist prospective residents and families in comparing options, and support researchers, peak bodies, planners and government agencies in understanding trends across the sector.

Question 15: Any other feedback

Do you have any other feedback about the draft regulations?

Consideration should be given to the development of a consolidated guidance resource or regulatory handbook to assist both new and existing operators in interpreting and applying the new requirements in practice. This would help ensure consistency in implementation and reduce the risk of unintentional non-compliance.

If you have any further questions or would like to discuss, please contact Mark Prosser, Director Retirement Living & Seniors Housing at mark.prosser@ageingaustralia.asn.au.

Yours sincerely,



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