

Submission to the Inquiry into the Retirement Housing Sector

June 2016

About National Seniors Australia

National Seniors Australia is a not-for-profit organisation that gives voice to issues that affect Australians aged 50 years and over. It is the largest membership organisation of its type in Australia with around 200,000 members and is the fourth largest in the world.

We give our members a voice – we listen and represent our members' views to governments, business and the community on the issues of concern to the over 50s.

We keep our members informed – by providing news and information to our members through our Australia-wide branch network, comprehensive website, forums and meetings, bi-monthly lifestyle magazine and weekly e-newsletter.

We provide a world of opportunity – we offer members the chance to use their expertise, skills and life experience to make a difference by volunteering and making a difference to the lives of others.

We help our members save – we offer member rewards with discounts from thousands of businesses across Australia. We also offer exclusive travel discounts and more tours designed for the over 50s and provide our members with affordable, quality insurance to suit their needs.

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Introduction

National Seniors welcomes the opportunity to provide a submission to the Inquiry into the Retirement Housing Sector.

This submission has been prepared by the National Seniors Victorian Policy Advisory Group and is based on consultations with our members in Victoria. It sets out key recommendations, which National Seniors believes will strengthen the current legislation and further protect current and future retirement village residents. Broader housing affordability issues and opportunities for reform are also identified that will help older people age well in place.

Topic 1: Existing Legislation relating to retirement villages

Around one-third of Victoria's population is over the age of 50, which is expected to increase to almost 40 per cent by 2051.¹ ² The number of Victorians over the age of 65 is expected to triple by 2051.³ The retirement housing needs of this cohort are diverse and require legislative frameworks that support varied housing options.

Older Victorians have a right to live in housing that provides autonomy, security, social connectivity, amenity and affordability – a generic set of criteria for assessing the suitability of housing arrangements and designs. These criteria apply to any form of housing whether that is retirement villages, independent living units, residential parks or rented accommodation.⁴

Many older people enter a retirement village with expectations that the housing arrangements will fully meet these housing criteria. In practice, they are subsequently locked into village living arrangements that are not what they anticipated, including unaffordable increases to ongoing fees and charges and reduced service standards as well as rigid processes for exiting the village.

National Seniors believes regulation of the retirement village industry through the current *Retirement Villages Act 1986* (the Act) can be improved to enhance consumer protections. Through continued public consultation and periodic review of the legislation, Victoria can become a national leader in retirement villages.

Retirement village contracts

National Seniors recommends:

- 1. All new retirement village contracts be signed off by a solicitor acting for the prospective resident.**
- 2. Developing a standard contract for retirement villages in Victoria, which can form the basis of a nationally consistent contract.**

Retirement village contracts and disclosure statements can be overwhelming for prospective residents and undermines the ability of many older people to make informed decisions.

¹ Australian Bureau of Statistics (2015), 3101.0 - Australian Demographic Statistics, Sep 2015. Table 52. Estimated Resident Population By Single Year of Age, Victoria.

² Victorian Government. 2015. Victoria in Future 2015 Data table – Individual Years from 2011 to 2051.

³ Ibid.

⁴ Jones, A., Bell, M., Tilse, C. and Earl, G. (2007) *Rental Housing Provision for Low Income Older Australians*, Final report, AHURI, Brisbane.

As the decision about entering a retirement village often occurs during times of crisis or life changing events, the implications are not well understood and results in significant emotional and financial stress.

National Seniors acknowledges that information provided by Consumer Affairs Victoria and the factsheets required of village operators contribute to better awareness by prospective residents. However, much detail is specific to each village contract and the varying types of contractual arrangements, even within a village, continue to cause confusion for prospective residents. Specialist advice is required to ensure a prospective resident has full understanding of the contract and the implications as relevant to their personal circumstances.

Exit fees

National Seniors recommends:

- 3. Matters relating to a resident's exit from the retirement village to be prescribed in the Act, including defining items such as departure fees.**
- 4. Prescribing a requirement for the deferred management fee (departure fee) in the village contract to detail the calculation method and if calculated as a percentage per year of residency, an estimate of the total amount of the fee at appropriate increments (e.g. after 7 years and 12 years).**
- 5. Prescribing a requirement for the village contract to give details of the total exit costs (including refurbishment costs) charged to the three most recent residents to exit the village and**
 - a. If tenants, the percentage of their ingoing contribution that was refunded, or**
 - b. If strata title holders, then the selling price achieved.**

Our members consistently highlight the difficulties of transitioning out of retirement villages into other types of accommodation, including aged care and the financial stress this can cause.

The Act does not define the use of departure fees nor does it specify the length of accrual that can be allocated to fees. The average Victorian retirement village stay is 7 years and resident longevity is expected to increase. Even at current rates, the exit fees incurred are generating a financial loss to residents.

Whilst the *Retirement Villages Amendment (Information Disclosure) Act 2013* has made some improvement to prospective residents' understanding of what is expected of them upon exiting a village, it still does not adequately dispel the financial stress and uncertainty experienced by residents when they exit a retirement village.

Relevant and meaningful disclosure of information, including estimates of total exit costs in the contract and detail of exit fee calculation, will help clarify exit arrangements and resident expectations. National Seniors considers this additional disclosure is possible while still protecting the privacy of recently exited residents.

Transitions to aged care

National Seniors recommends:

6. **Retirement villages that provide onsite or attached aged care facilities declare in the contract the level of care available and the current length of waiting periods to access this aged care.**
7. **Where a resident has to exit a retirement village and move into an aged care facility, the waiting time for releasing all funds from the sale or re-tenancy of the retirement village unit to be a maximum of three months.**

Retirement villages are increasingly promising independence through onsite or attached aged care, which many prospective residents perceive as an advantage. However, the usefulness of this care can be limited depending on the care needs of each resident and the waiting times prohibitive. Providing relevant details about the aged care facilities either on site or attached to a retirement village will help prospective residents make more informed decisions.

While there has been some improvement in rules when existing to aged care, with the village operator required to advance either the full exit entitlement or refundable accommodation deposit, the ongoing charges remain an issue.

Currently, village operators levy maintenance charges for six months if a resident is a non-strata title owner and will continue to levy charges until the unit is sold for residents who are strata title owners. Having to pay charges for a vacant village unit as well as daily fees in aged care is unreasonable for such lengthy periods of time. National Seniors suggest the period to levy ongoing charges be capped at three months.

Ongoing costs

National Seniors recommends:

8. **Specifying in the Act that the village operator must consult with residents on all maintenance charges adjustments above the Consumer Price Index (CPI).**
9. **Residents be given a choice of separate or bundled billing arrangements for essential services.**

Maintenance charges are determined according to the regulations, which provides for adjustments linked to CPI and for higher than CPI increases subject to approval by the majority of residents or residents' committee. Above CPI increases in maintenance charges appear to be common across the sector and there is a lack of transparency on factors contributing to the increase. This is particularly for increases that arise from rates, taxes, salaries or wages paid to village employees that do not require resident approval.

Specifying in the Act a process for consulting with residents or the resident committee on all maintenance charge increases above CPI would empower residents to seek justification from the village operator. It would also provide an opportunity for residents to explore cheaper alternatives with the operator.

National Seniors also believes there should be greater transparency of bundled billing arrangements for essential services such as electricity. Feedback from members highlight the varied billing

arrangements for electricity between villages and a lack of transparency about attributing costs to each resident, even where village accommodation is individually metered.

In some instances, residents pay in advance each month for electricity and at the end of the year, the resident's consumption is checked against what has been paid and the difference reimbursed. However, it is unclear whether the relevant pensioner or seniors discount is being applied and if costs are being accurately reconciled against usage. Residents should be given a choice of making regular, bundled payment to the village operator for these services or receiving separate bills and paying individually for all these services.

Capital items

National Seniors recommends:

10. Prescribing in the regulation a definition of capital items and examples of how to categorise village items.

While the *Retirement Villages (Contractual Arrangements) Regulations 2006* provides for the village contract to specify who is responsible for capital items, it does not clearly identify what is considered to be a capital item.

National Seniors suggests prescribing a definition of capital items in the regulation, with examples of how to categorise typical village items so there is consistency across the retirement village industry. This would improve resident awareness of what maintenance is their responsibility and would improve residents' confidence that costs are being fairly attributed between the village owner and residents.

A consistent approach to capital items could be considered as part of developing a standard village contract.

Residents Committee

National Seniors recommends:

11. Clearly defining the role of the Residents Committee and associated appointment processes in the Act.

The Act includes some reference to a residents committee but does not articulate how the committee is formed or what role the residents committee is required to fulfil. This lack of clarity causes confusion and conflict between the residents and management.

Feedback from our members highlights that residents are often unaware of what is occurring within their retirement village. There is also the perception that the role of the committee is social and many residents do not understand how the committee can assist with broader village issues.

National Seniors believes the role of the residents committee should be clearly defined in the Act to improve communications amongst residents and improve resident dealings with village management. The Act could specify that minutes of meetings are taken for each meeting of the

residents committee and that the minutes be made available to all residents in the village. Section 129A of Queensland's *Retirement Villages Act 1999* specifies a similar provision⁵.

Further, we believe the Act should provide for the resident committee to have input into the annual village budget and also provide a mechanism for the committee to query items in the budget with the village operator. The improved accountability will go some way towards better aligning the increasing fees and charges with corresponding high standards of maintenance in the village.

Retirement village design

National Seniors recommends:

- 12. All future Retirement Villages be built to universal ageing design standards so residents can access home care and other care needs without relocating.**

In Victoria, the average age of new residents entering a village is 75 and the average age of residents currently in the village is 82.⁶ The main reason for entering into a retirement village was to downsize into lower maintenance housing, safety and security and the opportunity to transition more easily into home care arrangements.

The effort of moving home is challenging at any age, even more so for those over 70 with complex health conditions. Ensuring a universal design standard for future villages would enable residents to access in home care and increase their tenancy within the village. Staying within their community for longer has a direct, positive impact on an older person's overall wellbeing.

Topic 2: Retirement Housing Commissioner

National Seniors recommends:

- 13. Establishing a Retirement Housing Commissioner whose brief covers all legislation concerning retirement housing, including but not limited to, the *Retirement Villages Act 1986* and the *Residential Tenancies Act 1997*.**

National Seniors believes establishing a Retirement Housing Commissioner would improve consistency of arrangements across the sector and provide additional safeguards for existing and prospective residents. A Commissioner is preferred over an Ombudsman to ensure that dispute resolution functions are matched with adequate powers to enforce decisions.

New Zealand's *Retirement Villages Act 2003* includes the appointment of a Retirement Commissioner to monitor the effects of the legislation and increase education on retirement village issues⁷. The Commissioner also has powers to select and maintain a list of persons who are approved for appointment to a disputes panel⁸.

⁵ *Retirement Villages Act 1999*, Part 7: Residents participation, s. 129A.

<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/R/RetireVillagA99.pdf>

⁶ Price Waterhouse Cooper (2015), PwC/Property Council Retirement Census.

⁷ *Retirement Villages Act 2003*, Part 3: Retirement Commissioner and Statutory Supervisors, s. 36.

<http://www.legislation.govt.nz/act/public/2003/0112/latest/DLM220880.html>

⁸ *Retirement Villages Act 2003*, Part 4: Dispute resolution, enforcement, and penalties, s. 58.

<http://www.legislation.govt.nz/act/public/2003/0112/latest/whole.html#DLM220913>

Western Australia's *Retirement Villages Act 1992* provides for the appointment of a Commissioner and prescribes functions of the Commission⁹. This includes investigating matters relating to or affecting retirement villages, disseminating information and publishing reports and providing advice to consumers on the provisions of the Act. It is expected that the Commissioner investigates and attempts to resolve complaints by residents and administering bodies.

Both in New Zealand and Western Australia, the Commissioner is required to make reports to the respective Minister on matters investigated by the Commissioner.

In the case of Victoria, a Commissioner could report on issues relating to or affecting retirement villages, investigate and mediate disputes between residents and operators and advise consumers about the relevant Act. This would provide increased awareness of the rights and responsibilities of residents, greater understanding of contracts and centralised oversight of disputes.

A Commissioner would have the significant powers required to assist consumers who may have been affected by circumstances out of their control, such as buying off the plan and the retirement village going bust. A Commissioner could also be responsible for annual reporting of retirement village fees to provide greater transparency and price comparison for prospective residents.

Topic 3: Broader Housing Issues

National Seniors suggests that as part of this Inquiry into Retirement Housing, the Committee consider broader housing affordability issues and initiatives to better support ageing in place. There is a lack of affordable, age appropriate housing in well serviced areas in Victoria. Given the prospect of remaining in costly and unsuitable private rental accommodation, many older people are lured into retirement villages that may not be in their long-term best interests. For some it means leaving their local area when they would prefer to stay connected to pre-existing networks of friends and family as well as health care providers, social clubs and transportation links.

Develop an affordable housing strategy

National Seniors recommends:

- 14. The Committee explore options to meet the increasing demand for low rent accommodation that satisfies the basic rights of older Victorians to housing that is safe, stable, secure and provides an environment in which they can be socially connected and maintain their health and wellbeing.**

National Seniors welcomes the current review of the *Residential Tenancies Act 1997* through the Fair, Safer Housing program and the consideration of concerns for older tenants. Initial findings highlight that between 1996 and 2011 the private rental sector experienced growth of 130% for people aged 55 to 64, whilst those 65 and over experienced growth of 88%.¹⁰ Of the 135,204 people living in social housing, 27.7% were aged over 55 with 8.1% aged 75 plus.¹¹

⁹ *Retirement Villages Act 1992*, Part 2: Administration, s. 7A.

[http://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:25733P/\\$FILE/Retirement%20Villages%20Act%201992%20-%20\[04-b0-02\].pdf?OpenElement](http://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:25733P/$FILE/Retirement%20Villages%20Act%201992%20-%20[04-b0-02].pdf?OpenElement)

¹⁰ Victorian Government (2015), *Residential Tenancies Act Review: Fairer Safer Housing – Laying the Groundwork Consultation Paper*.

¹¹ Ibid.

Retirees who are non-home owners and on low incomes are restricted in their choices of accommodation and will generally have to make compromises in terms of location, security of tenure, amenity or safety.¹² Housing stress is felt disproportionately by single, older women who have lower retirement incomes and are at particular risk of homelessness. The largest proportion of older women considered at risk of homelessness have led 'conventional' lives, and rented whilst working and raising a family.¹³

Table 1 highlights the lack of affordable and appropriate rental housing options for retirees on low to middle incomes in Victoria.

Table 1 Rental Affordability in Victoria

Household Type	Payment Type	Number Affordable and Appropriate	Percentage
Metropolitan Melbourne: 17,330 properties reviewed			
Couple no children	Age Pension	95	1%
Single	Age Pension	764	4%*
Regional and Coastal LGAs: 4,148 properties reviewed			
Couple no children	Age Pension	426	10%
Single	Age Pension	261	6%*

Source: Adapted from Anglicare Rental Affordability Snapshot, 2016

**Notes: The number and percentage of properties affordable and available were impacted by including shared house accommodation properties available via Gumtree. These would not normally be considered suitable for older pensioners. If the shared house accommodation is removed close to 0% were suitable for single age pensioners in Melbourne. The 'affordable' measure is based on households paying less than 30% of their income on rent. Share houses and bedsits are considered 'appropriate' for couples on the Age Pension.*

National Seniors believes that all older Victorians have the right to receive accommodation that will support their changing needs as they age and that access to this accommodation remains affordable. Much more needs to be done collectively by all levels of government to greatly expand supply of purpose designed, low rent retirement accommodation for older Victorians.

Funding mechanism for low rent housing precincts

National Seniors recommends:

15. The Committee consider the NSW Social and Affordable Housing Scheme as a potential mechanism to fund the development of low rent housing precincts for older people in Victoria.

The NSW Government has contributed initial seed capital of \$1.1 billion to establish the Social and Affordable Housing Fund (SAHF). The first phase of the SAHF aims to deliver 3,000 additional social and affordable homes in metropolitan and regional NSW.¹⁴

¹² Kupke, V (2000), *Relocating for retirement or what makes for a happy retirement*, School of International Business, University of South Australia.

¹³ Petersen, M and Parsell, C (2014), *Older Women's Pathways out of Homelessness in Australia*, Institute for Social Science Research, University of Queensland.

¹⁴ <http://www.facs.nsw.gov.au/reforms/social-housing/SAHF/sahf-media-releases>

National Seniors believes a similar funding mechanism should be developed in Victoria to increase the supply of social and affordable housing that meet the needs of low income singles and families, including purpose designed dwellings for older Victorians with limited means.

Planning legislation to support ageing in place

National Seniors recommends:

- 16. Land-use planning legislation and strategies provide a range of accommodation options that are affordable and allow older people to stay in their community as their needs change.**

National Seniors believes that the needs of older Victorians must be better integrated into land-use planning schemes as well as development assessment processes for new housing precincts and refurbishment of existing precincts. We suggest the master planned approach in initiatives such as the Precinct Structure Plans (PSPs)¹⁵ include a specific goal of providing a range of accommodation options that are affordable and age-friendly, with corresponding criteria for this type of housing and preferred minimum quotas where relevant. This would encourage developers to allocate a proportion of dwellings within the precinct that specifically caters to the needs of older people, including independent living units that can facilitate in home aged care.

Embedding a specific goal of affordable and age-friendly accommodation in the planning framework would also ensure the development approval processes considers the needs of older Victorians with limited assets and on low incomes. National Seniors urges the State Government, through the Metropolitan Planning Authority, to work collaboratively with local government to better match the accommodation needs of older Victorians with appropriate dwelling solutions.

¹⁵ <http://www.mpa.vic.gov.au/planning-activities/greenfields-planning/precinct-structure-plans/>