National Seniors
AUSTRALIA

13 September 2023

Department of Justice
Office of the Secretary
GPO Box 825
Hobart TAS 7001

Dear Department of Justice

**Retirement Villages Amendment Bill 2023**

National Seniors Australia (NSA) welcomes the opportunity to make a submission to the proposed Retirement Villages Amendment Bill 2023.

This submission has been developed with the assistance of our Tasmanian Policy Advisory Group (TasPAG) to ensure it reflects the views of older Tasmanians and is based on our existing advocacy on retirement village legislation in other states and territories.

Given Tasmania has a significant older population, there is a strong need for affordable accommodation options for seniors. Retirement Villages have the potential to provide an important part of the housing mix but only if they ensure that current and future residents' rights are protected.

NSA promotes a buyer beware approach to retirement villages given the large amount of negative feedback we receive from members and the wider community.

It is vital any amendments to improve retirement village legislation achieve the following outcomes:

- Older people feel confident retirement villages provide a suitable option.
- Potential residents are provided with clear and consistent information to enable decision making.
- Older people are protected from unethical or predatory behaviour.

While we support the changes proposed by the Tasmanian Government, there is an opportunity to go further to protect current and future residents, and to ensure retirement villages are an attractive option.

Ideally, the Tasmanian Government should negotiate with the Commonwealth, state, and territory governments to create nationally consistent and strengthened retirement village legislation.

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

In the absence of nationally consistent legislation, the Tasmanian government should implement the following changes to its own legislation so that it sets the benchmark for best practice:

- Create an independent retirement villages ombudsman to educate consumers, monitor the sector and handle complaints.

- Ensure fees and charges are clearly and consistently outlined in plain English in all contracts. If a contract does not specify a fee or charge and includes only the method of calculation, then an example must be provided to demonstrate what the fee might be, based on reasonable assumptions.

- Allow RV owners to continue to charge maintenance and service fees provided these are reasonable and clearly outlined in plain English with examples.

- RV owners should not be allowed to charge Deferred Management Fees. These should be illegal for any new retirement village contract under revised legislation.

- RV owners should only be able to charge refurbishment fees after a resident has resided in a property for period of more than 10 years - unless they can provide evidence to the ombudsman there is a need for refurbishment with items clearly itemised. Refurbishment fees should be capped as a proportion of the entry fee and clearly communicated in plain English with examples in the contract.

- It should be a requirement that the value of any exit fee be clearly stated in the contract as either a dollar value or as a proportion of the sale value – a table outlining exit fees over time should be provided in the contract, so the buyer understands future financial implications. It is critical older people know how much they have available from the refund of entry fees to plan for aged care.

- Where a resident dies or vacates their premises, the operator must refund an entry fee within 6 months (as already is the case in Tasmania). 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 or the operator should be required to meet the Daily Accommodation Payment (DAP) until the property is sold or when the 6-month limit is reached (whichever comes first). The DAP cost will be deducted from the exit entitlement, and this provision should be clearly communicated in contracts.

- All advertising of accommodation should be spelled out, in plain English. What is for sale? Are you buying property? Are you purchasing a right to reside? Are you entering a leasehold arrangement? It must clear exactly what the contract involves. These terms should be outlined in plain English in a one to two-page attachment.

- It should be made clear if a resident will not be eligible for the Home Equity Access Scheme (unless the rules governing this scheme change).

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

**Why further reform is required?**

There are several issues undermining consumer confidence in the RV market which are related to the lack of protections and clarity 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 that RVs, whether for-profit or not-for-profit, operate on a buyer beware model, placing significant pressure on the purchaser to do their own 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 provides a false sense of security about the nature of retirement village contractual and financial arrangements. It may 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 important characteristics regarding the consumer cohort which must be considered.

While the minimum entry age for a Retirement Village is 55, the average 'real life' resident's age is much older. The average entry age is 74-75. The average age of residents is 81. The average residency is 8 - 9 years. Nationally, the percentage of single females is increasing. It is important to acknowledge that, like age care services, retirement villages 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 this matter? Part of the problem with the current legislation is it is overly complex. It is not unreasonable to assume potential buyers in any age group – let alone those over 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. It's so complex it requires a legal or financial adviser (or both) to comment.

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 they do not understand the implications of the contractual arrangements.

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

***Costs of informed advice***

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

***Marketing bias***

National Seniors AUSTRALIA

Advertising invariably highlights the positives. This means 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 which is attractive and cheaper than buying a stand-alone house, a consumer could purchase without the full picture.

***Management fees***

Residents make monthly payments to cover maintenance and services. These can be reduced through deferrals or paying a lump sum when they move 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 10 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.

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

Kind Regards

Ian Henschke
**Chief Advocate**

Level 18, 215 Adelaide St Brisbane QLD 4000
GPO Box 1450 Brisbane QLD 4001
P 1300 76 50 50 F 07 3211 9339
E general@nationalseniors.com.au
nationalseniors.com.au
National Seniors Australia Limited ABN 89 050 523 003