

17/556 - Retirement Villages Legislation Amendment Bill 2018 – Policy Approval

(refers to 18/398 Retirement Villages Legislation Amendment Bill 2018)

Summary of Impacts

- The ACT Government has been progressing the second tranche recommendations from the 2016 review of the Retirement Villages Act 2012 (RVA).
- The Retirement Villages Legislation Amendment Bill 2018 proposes the following amendments to the RVA, Unit Titles (Management) Act 2011 (UTMA), Human Rights Commission Act 2005 (HRC Act) and Civil Law (Sale of Residential Property) Act 2003:
 - change the voting arrangement in retirement villages from one vote per person to one vote per residence. Residents may agree to change this back to one vote per person by special resolution, but not for financial matters;
 - clarify the capital maintenance and replacement provisions in the RVA;
 - provide an enforceable conciliation process for resident complaints against operators, similar to the existing process for discrimination complaints under the HRC Act, where a lodged conciliation agreement is enforceable as an order of the ACT Civil and Administrative Tribunal (ACAT);
 - reduce administrative duplication between the RVA and UTMA and streamline the budget process for unit titled retirement villages; and
 - reduce costs for preparing the contract of sale for residential property in unit titled retirement villages by removing the requirement to prepare a ‘marketing contract’ and requiring the ‘required documents’ such as building and pest reports to be prepared only when a buyer is identified.

Key to impacts: Red – negative, Blue - neutral and Green - positive.

Social

Justice and rights

- The proposed enforceable conciliation process for retirement villages will provide a low-cost option for the resolution of disputes between residents and operators. This would expand on the existing role of the Disability and Community Services Commissioner in the resolution of complaints relating to services for older people, and mean that a conciliation agreement would be enforceable as an order of ACAT. While the process would initially apply only to retirement village disputes, JACS will monitor the operation of the enhanced conciliation process and undertake further policy work on extending the process to cover all complaints about services for older people within the complaints handling jurisdiction of the Human Rights Commission.
- During the review of the RVA, many submissions from village residents expressed the view that the voting arrangement of one vote per resident put single residents at a disadvantage, and argued that this should be amended to provide for one vote per residential premises. This was the voting arrangement under the former Retirement Villages Industry Code of Practice 1999, which was replaced by the RVA. Other submissions suggested that the voting arrangement of one vote per resident be retained. The proposed changes to voting arrangements would respond to resident stakeholder concerns that couples in retirement villages were outvoting single residents who paid more in recurrent charges. This may engage the right to recognition and equality before the law under s 8 of the *Human Rights Act 2004*, as it would limit the number of residents who may vote on retirement village matters. However, it is a proportionate limitation as the amendment is based on financial contribution and has been proposed to achieve equality between single residents and couples. The proposal includes an option for individual villages to use a special resolution to restore the arrangement of one vote per person for non-financial matters. This proposal strikes an appropriate balance between the two positions expressed in submissions on the review, and retains the ability of residents to participate in the running of the retirement village. These issues will be discussed in the Explanatory Statement for the Bill.
- The proposal to clarify the capital maintenance and replacement provisions may help reduce disputes between village residents and operators over village budget spending.

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| Disadvantaged and vulnerable | <ul style="list-style-type: none"> • The proposed enforceable conciliation process will provide a low-cost alternative for residents who do not wish to take formal legal action against an operator in ACAT. • The proposed enforceable conciliation process will complement the existing dispute resolution processes in the RVA i.e. the internal disputes committee and formal ACAT dispute resolution. |
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Economic

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| ACT Government Budget | <ul style="list-style-type: none"> • The proposed amendments have no financial implications for Government. The proposed enforceable compliance process would use existing Human Rights Commission resources. |
| Productivity | <ul style="list-style-type: none"> • The proposal to remove duplicate requirements in the RVA and UTMA will limit confusion and reduce administrative costs by streamlining management and budget procedures in unit titled villages. • The proposed amendments to clarify the meaning of capital maintenance and replacement will clarify what can be funded by recurrent charges in the village budget and reduce avenues of dispute between residents and operators, which will make the budget process run more smoothly in retirement villages. • The proposal to remove the 'marketing contract' requirement for sale of residential property in unit titled retirement villages and require the 'required documents' such as building and pest reports to be arranged only when a buyer is identified would reduce costs for village residents selling their properties. Stakeholders have reported delays in selling units in retirement villages, and a need to order multiple building and pest reports as these must not be more than six months old. Removing the marketing contract requirement would remove the expense of arranging multiple reports if there is a delay in selling the property. |
| Competition | <ul style="list-style-type: none"> • The proposed removal of administrative duplication between the RVA and UTMA for unit titled villages and a streamlined budget process would align unit titled villages with their non-unit titled counterparts and may make unit titled villages a more attractive option in the market. |

Environmental

Nil impact