

# **Review of the *Retirement Villages Act 2016 (SA)* *Discussion Paper***

**LGA Submission**

**April 2021**

## Table of contents

<b>Introduction .....</b>	<b>3</b>
<b>LGA Recommendations.....</b>	<b>3</b>
<b>Background .....</b>	<b>5</b>
<b>Consultation questions considered.....</b>	<b>7</b>
<b>Conclusion .....</b>	<b>8</b>

# Introduction

## About the Local Government Association of South Australia

The Local Government Association of South Australia (LGA) is the voice of local government in South Australia, representing all 68 councils across the state and the Anangu Pitjantjatjara Yankunytjatjara.

The South Australian *Local Government Act 1999* recognises the LGA as a public authority for the purpose of promoting and advancing the interests of local government. The LGA is also recognised in and has prescribed functions in 29 other South Australian Acts of Parliament. The LGA provides leadership, support, representation, and advocacy relevant to the needs of our member councils.

The LGA is a strong advocate for policies that achieve better outcomes for councils and the communities they represent. Councils are a partner in government and part of the solution. Working together we can make positive contributions to the health and wellbeing of our communities.

## LGA submission

The LGA welcomes the opportunity to provide feedback to the review of the *Retirement Villages Act 2016* (the RV Act).

The Terms of Reference outlined in the *Review of the Retirement Villages Act 2016 (SA) Discussion Paper* (the Discussion Paper) notes in particular:

“e) Consider the implications of retirement village operators or other organisations providing Commonwealth or privately funded home care services to residents of retirement villages.”

The LGA acknowledges that there is an ageing population in South Australia that will require governments to allocate more resources to ensure better outcomes for our communities as they age.

This submission has been informed by consultation with LGA member councils, the LGA’s existing policy positions and evidence-based research.

## LGA Recommendations

*Recommendation 1:*

*The LGA recommends:*

- *That the issue of private home care services is more thoroughly defined and reviewed by the Office for Ageing Well (OFAW), in consultation with the LGA, the Department for Human Services (DHS) and key stakeholders;*
- *That the OFAW takes steps to remove the uncertainty of premises requiring to be dual licensed in consultation with the DHS and the LGA; and*
- *That the OFAW support and advocate to the DHS to review the Supported Residential Facilities Act 1992 (the SRF Act) and Regulations and seek to have the Retirement Villages Act and Regulations aligned with the SRF Act and Regulations.*

*Recommendation 2:*

*The LGA recommends that where there is no Commonwealth oversight, the OFAW’s Adult Safeguarding Unit be responsible for the investigation and enforcement of breaches to ensure that protections are in place for frail and vulnerable residents.*

## LGA policy

The LGA's existing policy is as follows:

### *Policy Statement*

#### *3.4 – Community Services*

*Local government acknowledges that providing tailored support services for community groups with specific needs is key to creating equitable, cohesive communities, and that reinstatement, maintenance and increases in funding for these activities from federal and state government is vital to councils providing on-going services.*

##### *3.4.1 – Ageing*

*Local government recognises that there is an ageing population in South Australia that will require governments to allocate more resources to ensure better outcomes for our communities as they age. Notwithstanding the significant obligations of federal/ state governments, councils should equitably contribute to meeting the needs of an ageing population.*

# Background

## The role of local government in retirement villages

Local government does not traditionally play a role in the operation and management of retirement villages, however, due to historical reasons or due to particular requirements of their communities, there are currently five councils in South Australia that either own a residence within a retirement village or operate and manage a retirement village.

Councils may also support residents living in retirement villages through community transport services or activities at local community centres.

## ***The link between Supported Residential Facilities and Retirement Villages in South Australia***

Relevant to this legislation and noted in the Discussion Paper, is the relationship of retirement villages licensed under the RV Act and supported residential facilities (SRFs) licensed under the *Supported Residential Facilities Act 1992* (SRF Act).

SRFs provide accommodation and care services to people with disabilities, mental illness and older people in a group setting and are regulated by the SRF Act and Regulations.

In South Australia, SRFs are regulated through local government, which is inconsistent with the rest of the country, whereby SRFs are primarily regulated by state governments through health, residential or community services legislation. SRFs are privately operated businesses.

An SRF is defined as

“a premises at which, for monetary or other consideration (but whether or not for profit), residential accommodation is provided or offered together with personal care services (other than for members of the immediate family of the proprietor of the facility).”

### ***Personal care***

The provision of ‘personal care’ is a key distinguishing feature from other similar forms of accommodation such as independent living units within residential villages, boarding houses or lodging houses. These additional services may include assistance with daily living such as bathing, dressing, personal hygiene, medication, eating and the provision of food. Assistance with management of personal finances may also be offered.

Currently under the SRF Act there are 36 registered SRFs located in metropolitan Adelaide, one in outer Adelaide (Victor Harbor) and one in a regional area (Mt Gambier), and approximately 850 people living within them. Of these 11 are dual-licensed under both the SRF and retirement villages legislation<sup>1</sup>.

When the SRF legislation was enacted, the intention was to protect vulnerable persons living in pension facilities, however the ‘personal care’ provisions in the legislation have captured some retirement village accommodation, resulting in some businesses being dual-licensed.

---

<sup>1</sup> It is noted that the Discussion paper states there are 12 Dual-licensed premises, however LGA data suggest there are 11.

### *Financial implications*

There are significant financial implications to councils in administering the SRF Act. The licensing fees do not adequately cover the costs to councils that occur in relation to the administrative burdens, inspections and in the event of a non-compliance. The cost to council in appointing administrators in the case of insolvency can also be substantial. The appointment of an administrator has previously occurred in South Australia and the cost of appointing an administrator can be in excess of \$100,000.

Additionally, an unintended consequence has seen many retirement village businesses requesting to be licensed under the SRF Act due to a perceived tax benefit from a significant annual land tax reduction. This is not considered to be in the spirit of the legislation but results in additional burdens to councils.

## Consultation questions considered

The Discussion Paper raises several issues, only some of which apply to the local government sector. These are addressed below.

### 2.36 Home care services in retirement villages

#### ***Do you have any feedback about the provision of private home care services in retirement villages?***

According to the Discussion Paper, there are currently 534 registered retirement villages in South Australia and approximately 26,400 people living in retirement villages.

The Discussion Paper also notes that retirement villages can be governed under multiple Acts and states that there are currently 12 villages in South Australia that provide services that capture them under both the RVA and the SRF Act. This is not ideal and only serves to create confusion and duplication within the system, particularly regarding the investigation of complaints and the enforcement of potential breaches of either of the Acts.

Interestingly, a similar issue arose in Victoria, where several SRFs were registered jointly as a retirement village and an SRF. These properties were allowed two years to decide which legislative scheme best suited their business arrangements to avoid the duplication.<sup>2</sup> It is suggested that a similar course of action be undertaken in South Australia.

#### ***Commonwealth's policies associated with ageing***

The LGA has considered the Commonwealth Government's increased focus on allowing a person to receive care in their own home for as long as possible will likely increase the number of premises that will be captured under the current definition of an SRF. In fact, the Royal Commission into Aged Care and Quality's Interim Report noted that the most "in-demand" aged care service is the lowest level of support and is delivered to people in their homes.

The LGA suggests that should the number of people living in retirement villages receiving personal care increase, then so would the numbers of properties captured under the SRF Act. This would result in further administrative burdens and financial imposts to the LGA's member councils, who are already advocating for change in this area.

#### ***Recommendation***

*The LGA recommends:*

- *That the issue of private home care services is more thoroughly defined and reviewed by the Office for Ageing Well (OFAW), in consultation with the LGA, the Department for Human Services (DHS) and key stakeholders.*
- *That the OFAW takes steps to remove the uncertainty of premises requiring to be dual licensed in consultation with the DHS and the LGA.*
- *That the OFAW support and advocate to the DHS to review the SRF Act and Regulations and seek to have the Retirement Villages Act and Regulations aligned with the SRF Act and Regulations.*

---

<sup>2</sup> Victorian Government - Regulatory Impact Statement for the proposed Supported Residential Services (Private proprietors) Regulations 2011, Public Consultation December 2011

## How can residents accessing private home care services be protected?

The LGA considers that the ability to offer personal care services would also increase the exposure to potentially frail and vulnerable people.

The LGA suggests that there needs to be clear processes for the management and investigation of complaints and oversight in this area.

The role of the Adult Safeguarding Unit (ASU), within the OFAW, as a mechanism to receive complaints could be investigated; and would be a logical alignment. The functions of the ASU, as noted on the SA Health website include:

- raising community awareness of strategies to safeguard the rights of adults who may be at risk of abuse;
- responding to reports of suspected or actual abuse of adults who may be vulnerable to abuse; and
- providing support to safeguard the rights of adults experiencing abuse, tailored to their needs, wishes and circumstances.<sup>3</sup>

### **Recommendation**

*The LGA recommends that where there is no Commonwealth oversight, the OFAW's Adult Safeguarding Unit be responsible for the investigation and enforcement of breaches to ensure that protections are in place for frail and vulnerable residents.*

## Conclusion

As the level of government closest to communities, councils play a significant role in creating safe public environments, developing community facilities, and providing health and community services.

The LGA commends the OFAW's review of the RV Act to support the objects of the Act and the development of best practice.

However, as a sector, local government's current mandated role in licensing SRFs could be significantly and negatively impacted should Commonwealth or privately funded providers of home care services be expanded within retirement villages.

Government works best when it works together and the LGA and its member councils seek to ensure that more detailed consultation be undertaken with DHS and the OFAW to ensure that any changes do not result in further administrative and financial burdens to local government.

---

<sup>3</sup><https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/about+us/department+for+health+and+wellbeing/office+for+ageing+well+adult+safeguarding+unit/adult+safeguarding+unit>





**Local Government Association**  
of South Australia

The voice of local government.

148 Frome St  
Adelaide SA 5000

GPO Box 2693  
Adelaide SA 5001

T (08) 8224 2000

E [lgasa@lga.sa.gov.au](mailto:lgasa@lga.sa.gov.au)

**[www.lga.sa.gov.au](http://www.lga.sa.gov.au)**