



Enforcement Framework

Retirement Villages Unit

Office for Ageing Well

Retirement Villages Act 2016

Retirement Villages Regulations 2017



Government
of South Australia

SA Health

Disclaimer

The purpose of this document is to provide a framework for consistent application and interpretation in the administration of legislation by the Office for Ageing Well's Retirement Villages Unit. The framework may be applied flexibly where individual circumstances require an alternative application. Where this framework, or part of this framework, is inconsistent with relevant legislation, the legislation will prevail to the extent of the inconsistency. While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The South Australian Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the South Australian Government should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

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Overview and context

The Office for Ageing Well's Retirement Villages Unit (RVU) within SA Health administers the *Retirement Villages Act 2016* (the Retirement Villages Act) and the *Retirement Villages Regulations 2017* (the Retirement Villages Regulations).

The Retirement Villages Act and the Retirement Villages Regulations provide for regulation of retirement villages to ensure they are managed responsibly and in accordance with the consumer protection rights of the residents of those retirement villages.

The Retirement Villages Act is the South Australian statute that regulates the operation of retirement villages and the rights of residents. The objects of the Retirement Villages Act are:

- > to provide a regulatory framework for the operation of retirement villages in South Australia under which a balance is achieved between the rights and responsibilities of –
 - > residents of retirement villages, and
 - > operators of retirement villages;
- > to encourage best practice management standards among the operators of retirement villages;
- > to ensure that there is proper disclosure of information to prospective residents of retirement villages;
- > regulate the making, content, operation and termination of residence contracts;
- > to ensure that residents are properly consulted about matters affecting their residence in the retirement village; and
- > to provide for dispute resolution processes.

This enforcement policy outlines the RVU's role and response in promoting and enforcing compliance with the Retirement Villages Act and the Retirement Villages Regulations. These activities begin with a focus on cooperation, engagement and education but increase in formality and impact based on the behaviour of the operators or individuals involved and the effect of the non-compliance.

This enforcement policy is applicable across all areas of the RVU. It gives operators, senior managers and village managers of retirement villages, the residents of those retirement villages and the wider community, a guide to what response options may be used by the RVU and the circumstances in which they will be applied.

The RVU's overall framework for compliance and compliance enforcement provides a consistent, fair and effective regime applying to the operation of retirement villages in South Australia.

Purpose

Operators of retirement villages and individuals are in compliance when they conduct activities in accordance with the requirements of the Retirement Villages Act and the Retirement Villages Regulations. The purpose of this enforcement framework is to provide guidance and set out the principles to be followed when taking enforcement actions in regards to the Retirement Villages Act and the Retirement Villages Regulations.

This enforcement framework is written to:

- > provide guidance and clarity to operators of retirement villages, residents of those retirement villages, the community, and the RVU with respect to enforcement
- > promote the purpose and objectives of the Retirement Villages Act
- > enhance the RVU's efficiency of managing non-compliance
- > enable the RVU to develop and implement policies, procedures, projects, programs and services and
- > communicate the RVU's commitment to, and principles of stakeholder engagement to its stakeholders.

The information provided in this enforcement framework **does not limit the exercising of discretion** nor does it override legislative requirements. The enforcement framework reflects current practices within the RVU, which may change from time to time. All changes will be published through a revised version of this framework.

The enforcement framework details how potential non-compliance with legislation will be dealt with. The RVU also provides assistance to residents to resolve disputes with operators. Any compliance issues will be dealt with separately to the dispute resolution process. For more information on dispute resolution see the 'What if I have a dispute with a Retirement Village?' information sheet which is available at www.sa.gov.au/seniors/retirementvillages.

Legislation

This enforcement framework has been developed to relate to enforcement actions in regards to the Retirement Villages Act and the Retirement Villages Regulations administered by the RVU. However, enforcement actions should always be made with consideration of other referenced legislation throughout the Retirement Villages Act and the Retirement Villages Regulations. Acts associated with the Retirement Villages Act and the Retirement Villages Regulations are:

South Australian Civil and Administrative Tribunal Act 2013

Aged Care Act 1997 (Cth)

Residential Tenancies Act 1995

Community Titles Act 1996

Strata Titles Act 1988

Corporations Act 2001 (Cth)

The Office for Ageing Well also administers the *Ageing and Adult Safeguarding Act 1995*.

These Acts are available online from the South Australian legislation website at www.legislation.sa.gov.au.

Enforcement principles and behaviours

The RVU recognises effective regulation of the retirement village industry requires a cooperative approach between all parties and the RVU.

The RVU is committed to cooperative working relations with representative industry organisations and individual operators. Good working relations assist operators to understand their obligations under the Retirement Villages Act and the Retirement Villages Regulations and also encourage effective management and consistency across the retirement village industry.

The RVU will advise, educate and consult collaboratively to ensure the retirement village industry can comply with the law and where necessary, will use the full suite of tools available to achieve compliance.

In the spirit of this cooperation, each party needs to adopt certain behaviours. These are listed in the table below.

Operators and Individuals	Retirement Villages Unit (RVU)
Actively maintain awareness of and comply with legal obligations for their industry.	Provide information and support to the community, industry and individuals about their responsibilities to achieve compliance.
Work to achieve compliance.	Make existing regulation more effective, easier to access and understand, and to reduce regulatory burden.
Establish work standards/processes to maintain efficient compliance.	Undertake research, analysis and consultation to develop compliance materials and activities.
Undertake assessments to verify compliance.	Consider community expectations regarding industry compliance.
Consider community expectations regarding compliance.	Undertake activities in a professional, ethical and transparent manner.
Remedy non-compliance in a timely, efficient manner and maintain open channels of communications with the RVU until resolution.	Maintain the effectiveness and integrity of enforcement delivery by providing authorised officers with appropriate training and tools.
If there is a dispute about non-compliance, explore resolutions with the RVU.	

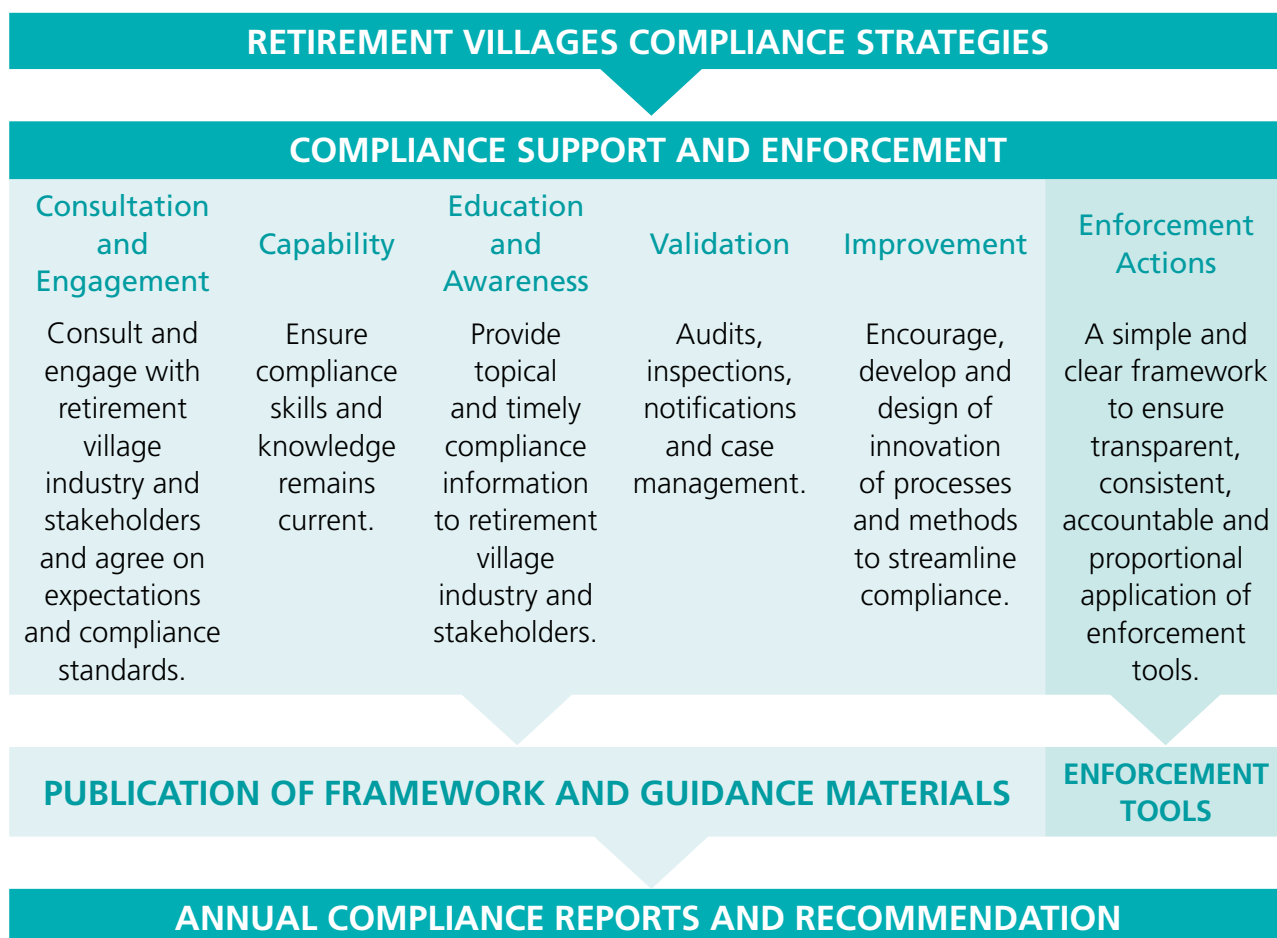
The RVU is also guided by the following principles, which underpin enforcement procedures and how the RVU will respond to alleged contraventions of the legislation:

- > **Consistency:** To provide greater certainty to operators and individuals, the RVU will generally have a consistent approach with respect to how it responds to incidents of non-compliance. Consistency of approach does not mean all decisions will be exactly the same; it means the RVU takes a similar approach in similar circumstances to achieve similar ends.
- > **Transparency:** To deal with non-compliance in an open and transparent manner, and have regard to legal constraints and requirements. Businesses and individuals will be made aware of what the RVU expects of them and how the RVU will behave as a regulator.
- > **Accountability:** The RVU will be able to explain compliance enforcement decisions.
- > **Proportionality:** Enforcement activities will generally be proportionate to the level of risk and the seriousness of the non-compliance.
- > **Procedural fairness:** The RVU will be able to demonstrate impartiality, balance and integrity at all times. Established principles of natural justice when making enforcement decisions will be applied.
- > **Public Interest:** To consider the effect of decisions on the good order and functioning of the community and government affairs, and for the well-being of the community.

Overarching Enforcement Framework

The overarching enforcement framework is a structured set of actions that demonstrates how the RVU will carry out its enforcement function. This framework is demonstrated in the diagram below.

The framework's key components include the RVU's enforcement support actions. These actions ensure that the RVU will undertake enforcement engagement in a proactive, ongoing and positive manner, and that enforcement actions taken are the appropriate response to **evidence-based** contraventions of the legislation.



Enforcement support

The enforcement support component of the framework is comprised of five actions:

Consultation and engagement

The RVU will foster cooperative and consultative relationships between operators and individuals. The RVU will aim to disseminate information, agree on key issues and formulate outcomes. Through consultation, engagement meetings, forums and working groups, the RVU will provide information to ensure that operators and individuals have a better understanding of issues and obligations relating to the effective management and consistency across the retirement village industry.

Capability

The RVU has a number of suitably qualified and experienced officers who are authorised under the Retirement Villages Act to regulate compliance. Authorised officers have specific powers to enable them to investigate a suspected offence against the Retirement Villages Act or the Retirement Villages Regulations and respond appropriately as per this framework.

These powers include but are not limited to:

- > Enter and inspect premises, places or vehicles connected to the management of or carrying on of the business of a retirement village.
- > Require a person to produce documents or records for inspection or seizure.
- > Inspect, take copies of or extracts from, or make notes from, any documents or records produced and, for that purpose, take temporary possession of any such documents or records.
- > Take such photographs, films and audio, video and other recordings as the authorised officer considers necessary.
- > Require persons to answer questions or otherwise furnish information in relation to the carrying on of the business of a retirement village.
- > Issue written notices requiring information connected to the management of or carrying on of the business of a retirement village or a breach of the Act or the Regulations.

Authorised officers are expected to maintain the necessary skills, knowledge and capacity to conduct departmental business in line with this policy and the relevant legislative provisions. The RVU will assist officers to achieve this through compliance training and ongoing mentoring. A key component of compliance training is the regulatory skills training of authorised officers under the Retirement Villages Act and the Retirement Villages Regulations.

Education and awareness

Increasing retirement village industry and stakeholder awareness of compliance obligations is fundamental to facilitating voluntary compliance with legislation. The RVU will provide compliance support through practical and constructive advice, information, and education about obligations and responsibilities.

The RVU will encourage compliance by:

- > removing barriers to compliance (e.g. lack of knowledge regarding legislative requirements and how to comply with them) and promoting the principles of the Retirement Villages Act and the Retirement Villages Regulations
- > overcoming factors that encourage non-compliance (e.g. lack of public support for, or the misunderstanding of the Retirement Villages Act's objectives), and
- > raising awareness of the benefits of complying with the legislation and the potential consequences of not complying.

The RVU provides information and delivers educational programs and materials to retirement village residents, operators and the industry. It is important that residents know about their rights and how to exercise them. Similarly, operators should be aware of their rights and obligations under the Retirement Villages Act, and in dealings with residents. This support will have regards to the nature and outcome of the RVU's compliance and enforcement activities.

Validation

Effective compliance with the Retirement Villages Act and the Retirement Villages Regulations cannot be gauged by relying only on reports of alleged contraventions. Many residents are not aware of the requirements under the Retirement Villages Act or the Retirement Villages Regulations, and are therefore unable to report them.

The RVU will undertake risk-based monitoring activities of the retirement village industry, operators and individuals. This may include inspections, audits and other verification activities with the aim of enhancing management practices of operators or individuals and achieving sustainable compliance with legislation.

The RVU will initiate proactive checks on random requirements under the Retirement Villages Act (e.g. provision of documents within the required timeframes for the annual meeting; notification of information required for the Register).

The RVU encourages, and in some cases requires, a business or individual to audit and monitor their operations. The RVU is committed to co-operative working relations with representative industry organisations and individual operators aimed at improving industry standards and overall compliance.

The RVU encourages compliance programs, which are an important part of self-regulation. The RVU will work with industry to develop and deliver such programs and forums to make best practice principles that establish high standards.

The RVU will pursue joint programs with other agencies, or coordinated action building on the strengths of different agencies.

The RVU will record risk-based monitoring activities (e.g. inspections, audits and other verification activities) and investigations into breaches of the Retirement Villages Act or the Retirement Villages Regulations in a Case Management System that allows the RVU to acquire measurable business intelligence to support validation or improvement of its regulatory activities.

Improvement

The RVU will:

- > work in partnership with the retirement village industry, operators and individuals to develop new and innovative mechanisms to enhance compliance and productivity without compromising standards
- > continue to explore ways to improve how the RVU engages with the retirement village industry and its stakeholders
- > review legislation and policies and identify areas where improved regulation will help achieve desired compliance outcomes and
- > set compliance objectives and targets and measure performance.

Enforcement

The RVU responds to reports from residents, consumers, industry associations and other agencies about alleged breaches of the Retirement Villages Act and the Retirement Villages Regulations.

The RVU has developed a compliance enforcement flowchart to help ensure that compliance decisions are consistent, accountable, transparent, proportionate and aligned with the relevant legislation, principles of natural justice and the public interest.

The compliance enforcement flowchart shows how the RVU will respond to incidences of non-compliance in a way that is proportionate to the intention and impact of incidences of non-compliance. While it is not practical to provide specific examples, the framework does illustrate how the RVU will respond under different scenarios.

While the RVU treats all complaints and issues seriously, it cannot pursue all complaints received or issues that come to its attention. The choice of response remains at the RVU's discretion to enable the RVU to apply its resources to maximum effect.

The RVU will take a number of factors into consideration including consequences, circumstances and legislative objectives when it assesses non-compliance. From this assessment, a number of enforcement actions can be considered and used by the RVU to achieve effective compliance outcomes. The degree and type of compliance action taken should be commensurate with the nature and severity of non-compliance or the prevalence of the non-compliance across the State over time.

The goal of the RVU is for the retirement village industry, operators and individuals to proactively comply with the requirements of relevant legislation. The framework shows a proportionate and progressive escalation of actions to reach that goal. These actions include educating, advising, directing and ultimately penalising.

The compliance enforcement flowchart is on the next page.

1. DETECTED INCIDENCE OF NON-COMPLIANCE

2(a). DETERMINE IMPACT/CONSEQUENCE: Consideration of actual or potential risk, outcome or harm.
Taking into account immediate or not immediate.

2(b). CONSIDER THE CIRCUMSTANCES

Co-Compliance	Unintentional Non-Compliance	Ineffective Compliance	Continual Non-Compliance	Intentional/ Opportunistic Non-Compliance
<ul style="list-style-type: none"> > Self/Co regulation > SelfAudit /Inspection/ Assessment > Third Party Audits > Compliance aware and oriented > Meeting legislative obligations 	<ul style="list-style-type: none"> > Generally compliant > Isolated incident > Not fully developed systems and procedures > Experience of operator 	<ul style="list-style-type: none"> > Ineffective implementation of compliance systems or procedures > Limited/poor systems > Resistance/ disregard to compliance > Ineffective appl. of previous advice 	<ul style="list-style-type: none"> > Continued non-compliance > Disregard or failure to implement change in conduct 	<ul style="list-style-type: none"> > Criminal behaviour, fraud, illegal activity > Deliberate or wilful non-compliance > Failure to follow statutory notice

2(c). CONSIDER THE LEGISLATION: Consideration of the objective/intent of the *Retirement Villages Act 2016*

3. ASSESSMENT OF 2(a), 2(b) and 2(c) WHEN CHOOSING RESPONSE ACTION

4. RESPONSE ACTIONS

<p>RVU will support operators by:</p> <ul style="list-style-type: none"> > making it easy for them to do the right thing > providing accessible information > education and support > verbal advice <p>No action will be taken in some instances</p>	<p>Through targeted information, the RVU will explain the issues identified, giving reasonable opportunity to respond and rectify non-compliance.</p>	<p>The actual or potential risk event has prompted action.</p> <p>The RVU may issue a warning letter and seek assurances and undertakings from the operator to perform certain tasks or refrain from certain activities.</p>	<p>The change of conduct has not occurred and undertakings or assurances have not been complied with prompting serious action.</p> <p>The RVU may choose to issue an expiation notice.</p>	<p>The seriousness of the non-compliance warrants full force of the law.</p> <p>Prosecution will be used where the seriousness of the incident or non-compliance warrants such approach and it's in the public interest.</p>
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5. ENFORCEMENT OUTCOMES

Reinforce conduct	Outline the desired conduct	Change Conduct	Stop Conduct – Rectification	Prosecution - rectification
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Monitoring and detection of non-compliance

Monitoring compliance with legislation is an essential part of the RVU's regulatory role. This is the essential bridge between compliance support and enforcement. The RVU's monitoring activities include, but are not limited to:

- > registration of retirement village schemes and associated operators
- > complaints
- > audit or review of reporting requirements
- > desktop review of data, and
- > other assessment processes.

Monitoring assists the RVU to:

- > detect possible breaches and identify where action may be required to avoid or mitigate harm
- > identify whether, and what type of, education campaigns or enforcement action may be required, and
- > assess the effectiveness of its operations and programs and also to identify opportunities for improvement.

If alleged non-compliance is detected, the RVU will conduct an initial assessment.

The compliance enforcement response will vary depending on the factors which are explored when making the initial assessment of the alleged non-compliance. The initial assessment will determine whether there actually is non-compliance and how it needs to be progressed. For example, the initial assessment will determine whether or not the non-compliance needs to be prioritised and if an authorised officer will need to conduct a full investigation of the matter.

If it is established that non-compliance has occurred, the RVU may take further action as demonstrated in the compliance enforcement model.

Please note that after conducting an initial assessment the RVU may determine that there was not non-compliance with the legislation and take no further action.

Information gathering

The gathering of relevant information is a crucial factor in good decision-making. There are well-established processes to ensure lawful gathering of information and effective initial investigative activities.

The legislation gives an authorised officer express powers to gather information for a specified purpose, such as for an investigation. This can include (but is not limited to):

- > Enter and inspect premises, places or vehicles connected to the management of or carrying on of the business of a retirement village.
- > Require a person to produce documents or records for inspection or seizure.
- > Inspect, take copies of or extracts from, or make notes from, any documents or records produced and, for that purpose, take temporary possession of any such documents or records.
- > Take photographs, films and audio, video and other recordings.
- > Require persons to answer questions or otherwise furnish information in relation to the carrying on of the business of a retirement village.
- > Issue written notices requiring information connected to the management of or carrying on of the business of a retirement village or a breach of the Act or Regulations.

Not every instance may require a formal investigation. Information gathering may range from an examination of available information, for example a desktop review, to a full investigation under respective legislative powers given to authorised officers.

Assessment of findings

After the information-gathering stage an evaluation is conducted to determine if there is sufficient information to support or not support non-compliance having occurred. If it is alleged that non-compliance has occurred, the characteristics of the non-compliance will be objectively assessed in order to determine the appropriate response action. This will include an assessment of the consequences/impact, circumstances and legislation.

Determine consequences/impact (actual or potential)

The greater the consequence or impact the non-compliance has, the more serious the response action will be. Therefore consideration may be given to:

- > the seriousness of the actual or potential harm to the rights of the affected parties (e.g. resident) caused by the alleged violation
- > whether the non-compliance has a significant impact on residents' financial affairs, the amenity of the retirement village or residents' way of life
- > the benefit the alleged offender stands to gain from non-compliance
- > whether the harm is damaging to the community or retirement village industry
- > whether the impact is difficult to remedy and/or will require a significant amount of resources to rectify and
- > whether the non-compliance placed the safety of residents or persons in the village at risk of harm.

Consider the circumstances

Circumstances surrounding non-compliance will vary. This includes various behaviours that may influence the actions taken. These behaviours include:

Co-Regulation

Co-regulation refers to situations where industry develops and administers its own arrangements, but the government provides legislative backing to enable the arrangements to be enforced. The RVU monitors co-regulated operators to ensure that a village's policies, quality management systems, standards and codes are still effectively regulating and consistent with the Retirement Villages Act. However co-regulated operators and individuals generally have systems present (e.g. village dispute resolution process, internal audits of disclosure statements, residence contracts and related documents) and implemented that adequately deal with and rectify non-compliance pro-actively.

The RVU may not be required to address non-compliance unless it is clearly established that there is need for measures additional to what the businesses and individuals already have in place.

Unintentional non-compliance

Unintentional non-compliance is generally where the contravention is a mistake or accident because of lack of understanding of the obligation or how to meet the obligation. It may also occur where a party is not able to access the required information.

Ineffective compliance

Ineffective compliance is generally where the systems are ineffective to deal with or prevent non-compliance or where compliance has not been fully achieved and where opportunities for improvement exist. This may include:

- > poor communication between staff or third parties
- > financial/economic issues
- > faulty or missing procedures
- > failure to provide training or training is deficient.

Continual non-compliance

Continual non-compliance is generally where the business or individual will continually disregard their obligations or fail to implement adequate compliance measures.

Intentional or opportunistic non-compliance

Intentional non-compliance is where a business or individual has knowingly been non-compliant. Similar to intentional non-compliance, an opportunistic non-compliance will typically involve being non-compliant because there is belief that there is a low chance of being detected and/or not penalised for the non-compliant action.

These circumstances are also generally considered to be reckless and/or negligent, as the responsible party understands and appreciates the inherent risk, but engaged in the behaviour regardless of the risk.

These circumstances may include, but are not limited to, criminal intent, wilful non-compliance or failure to follow statutory notices and directions. This may also include whether an alleged offender tried to conceal the offence.

Consider the legislation

Consideration is given to the objects and purpose prescribed in the Retirement Villages Act. Additional consideration may also be given to the information that is relevant to the subject matter, scope and purpose of the section that has been contravened. This will determine if the non-compliance prevents, degrades or delays the objects of the Retirement Villages Act.

In addition, the following factors may also be considered to guide the selection of an appropriate response action to an alleged non-compliance:

- > the likely effectiveness of a response action achieving the appropriate enforcement outcome
- > if there is an alternative compliance response that would better address or rectify the matter
- > whether there is a need to deter the offence
- > whether the compliance response is in the public interest to pursue, for example, whether there is public concern about the non-compliance, and
- > whether the non-compliance can be easily remedied.

Compliance guidance material may also assist authorised officers in determining appropriate compliance enforcement actions.

Decision making and escalation processes

When authorised officers need to make a decision related to non-compliance, they have the power to exercise discretion and make a choice about what action to take. However, in some circumstances such as where serious consequences or harm results from non-compliance, discretion may not be appropriate and certain enforcement actions will be used.

These choices will be guided by the principles, behaviours and processes stated in this framework. Furthermore, when making a decision the authorised officers will ensure:

- > they have the power to act and exercise discretion with respect to the legislation and decision
- > they follow the statutory and administrative procedures
- > they have detailed and proper reasons for making the decision
- > they will exercise procedural fairness where applicable
- > they will keep proper records of the decision.

If an investigation identifies that a high level sanction or prosecution is a highly probable outcome, the matter will need to be escalated to the appropriate level.

The escalation process involves escalation to the appropriate supervisor for consideration of all relevant information and the provision of a written recommendation for higher levels of action in response to any serious non-compliance.

The following factors will not influence the choice of enforcement strategy:

- > any element of discrimination or bias against the person on the basis of ethnicity, nationality, political association, religion, sexuality or beliefs
- > possible political advantage or disadvantage to a government, person holding (or a candidate for) public office, or any political group or party.

Where a personal association or relationship with the alleged offender or any other person involved exists, an alternative person will make decisions where possible. The facts about any conflict or relationship will also be recorded in accordance with records management protocol.

Written documentation will:

- > be kept of all actions taken relevant to the breach to ensure decision making is auditable and withstands scrutiny
- > include all information necessary to make clear what needs to be done to comply with legal requirements, the reasons for these actions and the required timeframe
- > state the legislation contravened, measures necessary to ensure compliance and the consequences of non-compliance, such as the potential penalties for failing to comply
- > clearly differentiate between legal requirements and recommendations of good practice.

Response actions

The information below describes the general levels of enforcement response.

Please note that these responses do not limit the discretionary powers of authorised officers and decision makers within respective escalation processes.

No action

No action will be taken when no breaches of the legislation are discovered or there is a determination that the person was actually in compliance.

It may also be appropriate to take no action when the complaint is frivolous or vexatious or there is insufficient evidence.

No action may also be taken when the alleged offence is outside the RVU's area of authority. Where a decision is made to not take action the decision and reasons will be recorded.

Guidance

The RVU prefers to concentrate its efforts on cooperative methods to ensure compliance. Guidance involves a cooperative, practical and open approach through education, support, advice, and reviews to encourage best practice.

Guidance aims to build and strengthen relationships between the RVU and operators or individuals. Examples may include information bulletins, publications, or pro-active discussions between authorised officers and operators or individuals including, for example, retirement village forums and information sessions.

Administrative actions

Administrative tools may be used for circumstances where the non-compliance is minor administrative or technical in nature. The RVU aims to assist the non-compliant business or individual by focusing on factors such as knowledge and understanding. The purpose is to increase awareness and understanding of obligations and the consequences of failing to comply.

For example this may include an oral warning, a letter of concern, warning or reminder of obligations; or a non-statutory request to fix the non-compliance.

Depending on the severity of the breach, the RVU may choose to issue an oral warning and attempt to engage the operator in acknowledgement of non-compliance with the Retirement Villages Act.

The RVU may choose to issue a written warning to an operator in relation to a breach of the Act. The RVU will seek assurances and undertakings from the operator to perform certain tasks or refrain from certain activities.

If the RVU accepts the assurance, then the RVU will not proceed against the operator for the matter to which the assurance relates. Where an operator fails to comply with an assurance given, the RVU will ensure that it only takes the action necessary to achieve compliance.

Circumstances where assurances and warnings may be appropriate include where:

- > the act or omission is not serious enough to warrant more severe action
- > the past history of the individual or business reasonably suggests that informal action will secure compliance
- > confidence in the individual or entity is high
- > the consequences of non-compliance will not pose a significant risk
- > where advice and warnings may prove more effective than a severe approach.

Expiation

The RVU may issue an expiation notice in accordance with the *Expiation of Offences Act 1996* as an alternative to prosecution. Specific breaches of legislation are expiable with a fee set at a much lower level than the maximum penalty that may be imposed by the court.

A person who receives an expiation notice may choose to pay the expiation fee or elect to be prosecuted in court. This means there must be substantial, reliable and admissible evidence that an identifiable person or organisation has committed the alleged offence. There must be sufficient evidence to enable a conclusion to be reached that there is a reasonable prospect of being able to prove an offence beyond reasonable doubt.

The following circumstances are likely to warrant an expiation notice:

- > failure to correct an identified problem after having been given reasonable notice to do so by an authorised officer
- > failure to comply with an undertaking
- > confidence in the individual or entity is low
- > a written warning has previously been given to the individual or entity for a similar offence
- > a flagrant breach of the law such that the non-compliance placed the safety of residents or persons in the village at harm, albeit not necessarily to the extent to justify prosecution.

Prosecution

In line with the Director of Public Prosecutions (DPP) guidelines for prosecution of criminal offences, the RVU may only prosecute offences where there is sufficient evidence and the public interest test is satisfied. Prosecution aims to stop illegal conduct and through sentencing to act as a deterrent to further breaches of the law. Under the legislation administered by the RVU there are a number of courses of conduct that are considered offences. There may be financial penalties for breaching these.

In some cases, the application of these actions may not achieve the desired broader outcomes that legislation is seeking. The ability to negotiate alternative outcomes that advance the purposes may be available for consideration as an alternative enforcement option.

A prosecution will only proceed where there is reasonable prospect that an offence can be proven beyond reasonable doubt.

Prosecution is likely to be warranted when any of the following circumstances occur:

- > a flagrant breach of the law such that the non-compliance placed the safety of residents or person in the village at harm
- > the alleged breach is too serious or the risks too great to be dealt with by means of expiation
- > a failure to correct an identified serious problem after having been given reasonable opportunity to do so
- > a failure to comply with the requirements of an undertaking
- > an established and recorded history of similar offences
- > unwillingness, on the part of the individual or entity, to prevent recurrence of a problem.

Where circumstances warrant a prosecution all relevant evidence and information will be considered to enable a consistent, fair and objective decision to be made. Before prosecution is recommended there must be substantial, reliable and admissible evidence that an identifiable person or organisation has committed the offence.

A decision to prosecute must be in the public interest. In considering whether a prosecution is in the public interest, the following additional factors will be considered:

- > whether the offence was premeditated
- > the need to influence the offender's future behaviour
- > the effect on the offender's or witness' physical or mental health, balanced against the seriousness of the offence
- > the availability and efficacy of any alternatives to prosecution
- > the prevalence of the alleged offence and the need for deterrence, both personal and general
- > the likely length, expense and outcome of a trial.

Review and appeal processes

A person adversely affected by a decision should be notified of any statutory review or appeal process at the time they are notified of the decision, including: the time allowed to apply for the review/appeal and how to apply for the review/appeal.

Where an operator or individual does not agree with a decision made against them with respect to a non-compliance response action, they may be entitled to seek an internal review of the decision or seek an appeal of decision in the appropriate judicial jurisdiction.

For more information

Retirement Villages Unit

9.00am – 4.30pm Monday to Friday on business days.

Telephone: 08 8204 2420

Email: retirementvillages@sa.gov.au

www.sa.gov.au/seniors/retirementvillages

Public I2-A2



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