

Exemptions

Retirement village operators must comply with the *Retirement Villages Act 2016* (the Act) and the *Retirement Village Regulations 2017* (the Regulations). However, it is possible under section 5 of the Act to apply for an exemption from a specific provision in the Act. This means that the operator does not need to comply with that section, subject to any conditions placed on the exemption.

The Minister may confer an exemption on a particular village or charitable organisation, or on villages or charitable organisations of a specified class. An exemption may be conditional, in which case it is an offence to fail to comply with the condition.

The Act specifically mentions that an operator may apply for an exemption from the obligation under section 26 to hold an incoming contribution in trust until the resident moves in. However, it is possible to apply for exemption from any part of the Act.

TIP: If you are wondering whether to apply for an exemption, think about how it would work in relation to the obligation imposed by the Act, and whether non-compliance with that obligation would adversely affect the residents.

Exemptions granted under the Retirement Villages Act 1987 continue to apply. However, due to the changes made to the legislation, it may be appropriate to apply for a new exemption more suitable to the requirements of the current Act.

Applying for an exemption

An application for an exemption must be made to the Minister in writing, accompanied by the prescribed fee. Any relevant documentation should be attached. Additional information or evidence may be requested from the applicant before a decision is made.

TIP: Be clear about exactly what section you are seeking exemption from and give an explanation as to why you should be exempt. Consider whether you have applied for exemption from all relevant sections of the Act. For example, if you are seeking to be able to consolidate financial reports, you may also need to seek an exemption to consolidate interim financial reports.

Exemptions are not granted without good reason, and various factors may be considered, such as the operator's history and the situation in the specific village. Any possible effect of the exemption on the residents of the village will be taken into account.

TIP: Contact Office for Ageing Well before you lodge your application and get some guidance about what information should be included.

After an exemption is approved

If the application is approved, the exemption will be published in the SA Government Gazette and will be added to the relevant entries in the retirement village register. Information about any exemptions granted must be included in the residence contracts.

Exemptions may have conditions on them, such as a time limit. The wording in the exemption is important in determining exactly how it applies.

Examples of exemptions

Examples of exemptions that have been granted are:

- > An exemption from the requirement that land in a village may only be leased to an eligible person under the Act. This allowed a commercial entity to lease land for a coffee shop.
- > Exemptions from the requirement to hold annual meetings for all villages and to keep village funds separate, which allows an operator to combine finances for all villages and hold a combined meeting for all residents. This also can be a way to effectively merge villages which are adjacent since it is not possible to merge registered villages.
- > An exemption to allow persons under 55 years of age to lease a residence. In this case, a condition was included which limited the number of younger renters allowed.

Disclaimer: In developing this information sheet, every effort has been made to ensure that the information reflects the intent of the legislation and/or represents examples of best known practice. The information contained in these resources does not constitute legal advice. Office for Ageing Well recommends that you seek your own legal advice should you require interpretation of the legislation.

Inadvertent non-compliance

It is also possible to apply to the SA Civil and Administrative Tribunal to be excused from the consequences of inadvertent non-compliance with a provision of the Act. This is different from an exemption as it is a retrospective application in relation to a one-off accidental breach of the Act. This may be a suitable application where an operator has recently acquired a village and has been unable to obtain audited financial statements within 4 months of the end of the financial year. The operator should also take steps to rectify the breach as soon as possible.

For more information:

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