

Resolving disputes

In most situations, issues that arise between operators and residents can be resolved quickly and effectively if clear communication lines are established. The best way to avoid a dispute is to deal with the problem at an early stage before it escalates into a major issue.

Dispute resolution policy

Pursuant to section 45 of the Retirement Villages Act 2016 (SA) (the Act) and Regulation 18 of the Retirement Villages Regulations 2017 (SA) (the Regulations) you are required to develop a written dispute resolution policy for a retirement village.

A document setting out the policies and procedures that are applied by you in the event of a dispute must be provided to a resident on request within five business days (section 45(3)).

It should also be noted that an internal dispute resolution process does not diminish a resident's right to subsequently lodge a complaint with the Office for Ageing Well, or the South Australian Civil and Administrative Tribunal. Under section 46 of the Act, an application should not be made to the Tribunal unless the parties have made reasonable attempts to resolve the dispute in accordance with the village dispute resolution policy and such attempts have failed to resolve the dispute.

What should your dispute resolution policy include?

By law, all South Australian retirement villages must have a dispute resolution policy and it must be provided with a residence contract (regulation 5(2)(j)).

Regulation 18 requires that for the purposes of section 45(2) of the Act, a dispute resolution policy must include or address at least the following matters:

- > the name of the person representing the operator of the retirement village that a resident may contact in the event of a dispute
- > the manner in which a complaint may be made by a resident
- > how a dispute will be handled once a resident makes a complaint, including that an operator will respond within a time that must be specified in the dispute resolution policy
- > the manner in which a resident may resolve a dispute with another resident
- > the persons or bodies from whom a resident may seek advice in the event of a dispute
- > that a resident may apply to the Tribunal if a resident is not satisfied with a response to a complaint
- > a requirement that the operator keep a written record of—
 - the complaint made by the resident; and
 - any response to the complaint provided by the operator; and
 - any resolution of the dispute agreed by the operator and the resident; and
 - any other correspondence received or sent by the operator relating to the dispute;

- > the manner in which the operator will communicate with a resident in response to a complaint
- > that the resident has the right to be accompanied by a person chosen by the resident at any meeting held to resolve the dispute
- > procedures for variation of the dispute resolution policy which provide that variation will only occur with the agreement of a majority of the residents in the retirement village.

Office for Ageing Well mediation service

Office for Ageing Well can provide a mediation service, where assistance from an independent third party may help in resolving a dispute. The mediator can provide advice to the parties concerning their rights and obligations under the Act and Regulations.

The mediation process can assist disputing parties reach agreement by mutual consent. Resolution is preferable because it is not a forced compromise; therefore parties are more likely to be satisfied with the result and to fulfil any agreed outcomes of mediation.

South Australian Civil and Administrative Tribunal (the Tribunal)

If a dispute arises between you and a resident of the retirement village, either party is entitled to apply to the Tribunal for resolution of the matter. However, you must have sufficient evidence to support your allegation. This legal avenue is more formal than the voluntary dispute resolution processes described above. The Tribunal is limited by section 46 of the Act as to what determinations it can make and it is worthwhile considering what you are seeking from the Tribunal before an application is made.

Visit www.sacat.sa.gov.au for details about how to make an application to the Tribunal including information about costs.

Role of the Tribunal

The Act and Regulations enable disputes between operators and residents to be resolved by the Tribunal. The Tribunal is a separate and independent body providing a prompt and low cost way of resolving disputes. The Tribunal has the authority to make orders that are legally binding and enforceable.

The Tribunal can hear disputes concerning (but not limited to):

- > breaches of the residence contract
- > breaches of the Act
- > harsh or unconscionable conduct by the operator
- > full or part payment of an exit entitlement

The Tribunal cannot hear disputes between residents, or any dispute which is not related to the Act and Regulations or the residence contract.

The Tribunal may also decline an application if it considers it appropriate to do so. Reasons for this may be:

- the matter could be more adequately dealt with under the village's dispute resolution policy
- the matter is more appropriately dealt with by another court or other tribunal
- the matter is frivolous or involves a trivial issue or amount
- or for some other reason, it is not appropriate to proceed with the matter.

Legal representation

If you want a lawyer to represent you, you must seek leave from the Tribunal. Lawyer involvement is only allowed under certain circumstances (see the Act, Schedule 1, clause 3(3)). If one party to the dispute is granted approval for legal representation, the other is automatically granted the same opportunity. A resident is able to have a person of their choosing to accompany them to any meeting held to resolve the dispute.

The Aged Rights Advocacy Service (ARAS) provides an advocate for retirement village residents who may assist the resident at any stage of the dispute resolution process.

Tribunal hearings

Hearings are usually held at Level 4, 100 Pirie Street, Adelaide.

A Tribunal Member will conduct the hearing in a reasonably informal atmosphere. Hearings are open to the public and are electronically recorded.

At the preliminary hearing the Tribunal Member will:

- decide whether there is a case to answer
- determine whether leave for legal representation is applicable
- ascertain if further information is required from either party.

If the matter is to proceed, a full hearing date will be set. Witnesses will be required to attend the full hearing and the Tribunal will send out further notices advising all parties involved of that date and time. If a witness is reluctant to attend, the Tribunal may issue a summons if necessary.

The Tribunal is not bound by the rules of evidence, but still needs to assess the reliability of the evidence. The Tribunal will consider relevant written statements from witnesses. However, it is useful to be aware that evidence may be more persuasive if given in person on oath or affirmation, and subjected to questioning by the other party and the Tribunal.

In most hearings the Tribunal Member questions both parties to clarify the issue and what each party has to say about the matter. Any supporting evidence will be considered on merit. The parties are entitled to question each other and any witnesses giving evidence.

Once all evidence has been presented, the Tribunal makes a determination and may issue an order which is binding and enforceable. In most retirement village matters, this determination is reserved to a later date. This allows the Tribunal Member time to consider all the evidence in detail.

A written copy of the order is forwarded to the parties.

If a party to the proceedings fails to attend the hearing and the Tribunal is confident that notice of the hearing has been sent to the correct address, then the matter may proceed in the absence of that party. If for some good reason a party is unable to attend at the appointed time, the Tribunal Registry should be notified immediately. It may be possible to arrange another hearing date.

Interpreter

If needed the Tribunal Registry will arrange for an independent interpreter to attend the hearing. It takes time to do this, so if you are aware that any party to the proceedings needs an interpreter, you should inform the Tribunal Registry at the time the application is lodged.

Withdrawal of Application

If the hearing listed is no longer required, the Tribunal Registry must be notified as soon as possible, so that all parties can be notified and the scheduled time can be reallocated to another case.

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.

For more information:

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