

[REDACTED] ILU RESIDENTS' COMMITTEE

[REDACTED]
(AS AT 3 DECEMBER)

TO: Retirement Villages Act Review

5 December 2019

Consumer Affairs Victoria

GPO Box 123 , Melbourne Vic 3001

SUBMISSION REGARDING REVIEW OF THE RETIREMENT VILLAGES ACT (1986)

Preamble:

This submission is made on behalf of the residents at [REDACTED] Independent Living Units (ILUs), This establishment at [REDACTED] is a Retirement Village (of apartment style) registered as such under the *Retirement Villages Act (Vic, 1986)*. It is in turn immediately adjacent to the [REDACTED] facility (Nursing Home) at [REDACTED]. The latter facility is registered under Commonwealth legislation.

Our building is four stories in height, with a residents' car park in the basement below and a Visitors; car park at ground level. None of the 52 apartments is at ground level, which contains a large communal kitchen, dining and lounge area, plus the Village Co-ordinator's office. The fourth floor also has no apartments, only a communal lounge and outdoor BBQ on a timber decking. There are about [REDACTED] residents, of which the great majority are women (including a number of retired religious sisters).

Our Operator is [REDACTED] which also operates the adjacent residential Aged Care facility..The Owner is [REDACTED]

The rules of this Residents' Committee, as endorsed in June 2013 by the Residents at a General Meeting, under the provisions of the *Retirement Villages Act*, give the ILU Residents' Committee power to liaise not only with the Management of this Retirement Village but also with other bodies, in the interests of residents.

Type of Village: Apartments, building of four storeys plus basement car park.

Commencement: October 2009.

Resident length of occupancy: Before 2014: Approx. 2/3 After 2014: Approx. 1/3

Basis of Resident Occupancy: 49-year lease (Pre-paid) Residents pay costs for their own utilities (electricity, water, telephone), plus council rates. Refuse collected by contractor (cost is part of maintenance charges).

Minimum age at entry : 65 years (cf 55yrs under the Act)

Exit charges apply: Refurbishment, plus "deferred management fee".

Property owner: [REDACTED]

Operator : [REDACTED]

RESPONSES TO QUESTIONS:

Having studied the Issues Paper, we note that most of the matters discussed there resonate with our residents, and have been subjects of discussion and some agitation over considerable time, with only marginal gains in outcomes. We also addressed many of them in our submission to the preceding Parliamentary Inquiry.

Our responses to the questions follow.

The Regulatory and Policy Framework (Part 2)

Application and scope of the Retirement Villages Act 1986

- 1. Should the payment of an ingoing contribution be the defining factor in determining whether the Retirement Villages Act 1986 (RV Act) applies to a Retirement Village? If not, what other considerations would be appropriate?**

Response: No, as financial arrangements differ, and as possibly new arrangements may emerge, it should not be a defining element of the definition. In the case of our retirement village, the term “refundable contribution” would be a mystery to most residents, and the term itself nowhere appears in our contracts. A more generic term is needed to reflect the variety of financial arrangements. The term “refundable contribution” may be incorrectly taken by many incoming residents to mean that whatever they pay to come in, and in whatever form they pay it, it will all be refundable on exit., when this is not so.

- 2. Is the definition of “retirement village” under the RV Act otherwise appropriate? If not, what changes would you recommend?**

Response: In other respects, the definition seems appropriate, except that “communal living” might be better replaced by something like “and who live in co-located accommodation allowing a form of communal living”.

The purposes of the Retirement Villages Act 1986

- 3. Is the current purpose of the RV Act still appropriate? If not, what do you think the legislative purpose of the RV Act should be?**

Response: The current stated purpose might be improved if it was expanded to read as follows: “to clarify and protect the rights of persons who live in, or wish to live in, retirement villages, including facilitating awareness of those rights both before entering and after entering a retirement village.”

The purpose and use of the current register of retirement villages

4. What improvement could be made to the register of retirement villages?

Response: The information currently required is far too basic to be useful to prospective entrants. It could be improved by adding the following:

- * What type of accommodation ? (single-storey units, apartments, multi-storey etc, and how many)
- * The type of contract offered (strata-title, lease-management etc, with a brief explanation)
- * Whether there is any form of entry and/ or exit charge and where details can be found.
- * Contact details and (if applicable) website where more detailed information re the above etc may be found.
- * Accreditation scheme to which the operator subscribes (including “nil” if none is subscribed to) and details of accreditation results for the last five years (see also re Questions 17 – 20).

5. What other information should operators be required to include in the register?

- Response:**
- * Price range of units / apartments (of different classes if applicable) over the past 12 months (plus mandatory updating each year)
 - * How inspections may be arranged.

Entering a retirement village (Part 3)

Consideration and cooling off periods

6. Are the current 21 day “consideration period” and the 3 day cooling off period under the RV Act effective in achieving their aims? If not, what other or additional measures would be effective and fair?

Response: No

This is the time of important decision making by prospective residents many of whom are considering selling their major asset, their family home, to enter a totally new way of life that they are unlikely to know too much about.

The aim of such “consideration and cooling off periods” is to give prospective residents the best opportunity to be well informed and then make decisions that they are happy with for this new period of their life. Appropriate legal advice is essential but not always readily available or adequately understood within such a time frame.

The NSW model referred to in the Review Issues Paper appears to give potential residents greater opportunity to make better informed decisions.

The model would likely be resisted by providers because of potential cost and logistical difficulties.

Disclosure Obligations

7. When advertising the “price” of a retirement village unit, should there be a requirement to include a reference to any deferred management fees and other departure fees and charges?

Response : Yes

Full disclosure of such factors provides important information and greater fairness for potential residents. At present many residents only gradually become aware of the future ramifications such important features of their contracts as deferred management fees and other departure requirements and costs

- 8. Has the provision of a Factsheet and Disclosure statement to prospective residents led to an improved understanding of the financial and contractual arrangements relevant to living in a retirement village enabling prospective residents to make an informed decision?**

Response: Yes

Introduction of the Fact Sheet and Disclosure statement have clearly assisted potential residents to better understand important aspects related to the decision making process in which they are now involved.

- 9. What, if any, further improvements could be made to improve prospective residents' understanding of the potential financial and contractual arrangements relevant to living in a retirement village?**

Response: It should be a requirement that Fact Sheets and Disclosure statements be continually reviewed and updated to take account of change that may occur from time to time. This would help to address any confusion and misunderstanding that could result from any such change.

- 10. Are the current timeframes for provision of a Factsheet and Disclosure Statement to prospective residents appropriate?**

Response: They should not be longer.

Contracts- form and complexity

- 11. Have the form and content requirements for retirement village contracts introduced in 2014 improved residents' understanding of the contractual arrangements they have entered into?**

Response: To some extent, yes.. However, it is a widely held view that contracts continue to be a significant cause for resident concern. Contracts are long, complex documents that residents, their families and even legal advisers find challenging. Few residents fully understand what is in their contract. Many (probably most) residents are of an age and background that has never had to deal with formal contracts or legal concepts, including basic ones like "lease-management agreement", "an entire contract" and the like. They just want to know how much it costs and whether a safe, secure home is likely to be theirs , with a management that will look out for their basic interests. Only afterwards do some questions arise that give them doubts as to whether they have made a good decision.

Expert legal advice is difficult to access for many residents- they do not know where to look.

Further issues arise when discrepancies between what is proffered as inducement at the time of sale and what is actually contained in the contract, progressively occur.

12. To what extent do retirement village contracts remain unnecessarily complex?

Response: A lay resident, when attempting to read their contract would observe that references to rights of the owner and the responsibilities of the resident far outweigh any reference to the rights of the resident.

13. What further improvements could be made to contractual requirements under the RV Act?

Response: Emphasis should be placed on the importance of the contract throughout the sales process.

Increased provision of appropriate and meaningful legal advice – perhaps a register of practitioners skilled and qualified in the retirement field.

Financial models and the deferred management fee

14. Should retirement village operators be required to disclose ingoing prices for entering a retirement village both with and without deferred management fees? If so, what form should this take?

Response: Yes

Such disclosure would provide additional relevant information for potential residents and draw attention to the departure/ exit conditions, requirements and costs associated with the decision that they are currently considering.

Probably not too popular with operator / sales person as such disclosure could have a negative influence on decision making

Deferred management fees continue to be poorly understood by residents.

What it costs a resident or their estate to depart/exit from a retirement village is an ongoing area of mystery and concern to many cases. Transparency and open communication throughout the process would help demystify.

15. Should deferred management fees be calculated on a pro-rata basis? If so, why? If not, why not?

Response: Yes – definitely.

This is the fair way to deal with this matter. Inequity for residents exist within the alternative approaches.

16. When should retirement village operators be required to provide a resident with an estimate of their departure fees and what are your reasons?

Response: Upon request – within 14 days.

A reasonable time frame for both resident and operator

Living in a retirement village (Part 4)

Accreditation of retirement villages

17. What do you consider to be the benefits and costs of introducing a form of mandatory accreditation for retirement villages?

Response: There is no evidence of any accreditation scheme in our village, either external or internal. Nor is there any evidence of any corporate adoption of any set of good practice guidelines (including those issued by Consumer Affairs and the Property Council-noting that the latter are, we understand, still in the “consultation phase” and yet to be formally confirmed and adopted).Nor have we seen any proposal or attempt to measure and monitor resident satisfaction.

The cases for and against mandatory accreditation schemes raised in the Issues Paper have been examined, and they seem to be fairly put. We also note the increase in numbers of retirement villages, and the turnover in staff of operators at various levels in our village, leading to lack of continuity in experience and in formulation of policy. Overall, while we see great benefit for both existing and prospective residents in terms of satisfaction with their village lifestyle in having a system of accreditation in place, we see no sign that a system run by the operator would be adequate, even if voluntary.

A mandatory accreditation scheme of any kind other than a merely perfunctory one would undoubtedly involve additional monetary costs to the operator due to setting up, recording and reporting activities. It may be unlikely to be accepted by operators unless costs could be included by definition of Maintenance Charges, fairly defrayed as part of mandatory corporate overhead costs. Properly and efficiently done, it should not impose a significant rise in maintenance charges.

On balance, therefore, we see that a mandatory externally run accreditation scheme would provide the greatest benefit to residents, especially if that was overseen by the Regulator using unannounced inspections and resident surveys.

18. What do you consider to be the necessary elements of any mandatory accreditation scheme?

Response: From the above response, we see the necessary elements of a mandatory accreditation scheme being as follows:

- * Carried out externally from the village operator.
- * Using unannounced / unscheduled inspections and (carefully formulated) resident satisfaction surveys wherein questions have regard to the specific village setup as well as questions of a more general nature common across the retirement village sector.

Plus: Publicly available results of accreditation checks (annually or at least every two years)
And mandatory reporting of results to residents as part of the mandatory AGM wherein financial reporting is required.

19. What do you consider to be the benefits and costs of voluntary accreditation schemes?

Response: Possibly less monetary cost to the operator, depending how thorough the system was and how frequent.

Unless the system is reliably good and diligent, and unless it is reported to the Regulator with publicly available results, its usefulness to prospective residents would be virtually none

20. By what alternative means could the standard and quality of services provided by retirement villages be improved?

Response: Perhaps by the Regulator conducting surveys of resident satisfaction across the sector, and publishing the results with scores for each retirement village (or, second best) for each operator. However, we see that as taking a long time to take hold and to be effective, and a poor substitute for an accreditation scheme, especially a mandatory one.

Qualifications and training of retirement village managers

21. Should there be any additional limitations or requirements on persons who can be involved in promoting or operating retirement villages?

Response: Yes. Currently the Act only prohibits the employment of persons whose prior misdemeanors relate to bankruptcy and other financial matters.

Limitations should be broadened to include other criminal convictions of a serious nature.

The requirements in the Act are ineffective. A major difficulty is that residents' experience of the quality of service is affected by performance by different levels of the Operator's chain of management: from the on-site village co-ordinator (by whatever title) to the head office functional managers (finance, IT, legal, billing, etc) to the regional manager and even the CEO.

As far as the village co-ordinator is concerned, such a person represents the daily contact person for residents and the most common avenue for requests, enquiries and communication. Such a person, to be effective, needs to be a good communicator, a good listener, and a pro-active initiator of rectification of any defects as far as practical. They should also be given sufficient authority to act quickly and locally on appropriate issues. They should be not appointed merely on the basis of general skills such as answering phones and passing on messages to others in the management chain. (This is not a criticism of our current village co-ordinator, but has been a persistent issue for us, particularly the lack of authority to act -and even to spend- in appropriate circumstances).

This is a difficult matter to incorporate in legislation or regulations, as it goes to the heart of the management style (as well as the management competence) of the Operator.

22. What do you consider to be the benefits and costs of mandating training and professional development requirements for retirement village managers and employees?

Response: Benefits would be enhanced knowledge of the retirement sector, ongoing development of appropriate skills and abilities hence better equipped to carry out the role.

Appointment of poorly qualified, inexperienced, unsuitable management clearly has a seriously detrimental effect on retirement village environment.

The Inquiry's recommendation for formal AQF qualification at a variety of levels is supported, with further comments below:

Costs to be borne by the operator. Any training and professional development program will cost additional money to the Operator, and it may not be regarded by residents as falling under the current definition of "maintenance charges". It is however, a corporate overhead cost, and could comprise a noticeable increase in such costs that worked its way into the maintenance charges under that category of expenditure.

On the other hand, if such a program is done well and explained to residents, it should be an evident ongoing benefit to them in terms of service delivery.

Retirement sector based professional development and training, in a variety of forms, either in house or externally sourced should be ongoing, encouraged and fully supported by the operator.

23. How should any requisite professional development requirements and training be determined?

Response: Retirement sector based professional development and training, in a variety of forms, either in house or externally sourced should be ongoing, encouraged and fully supported by the operator.

Professional developments could be built around the "Best Practice Protocols" published by Consumer Affairs,, and developed by experienced training firms who have demonstrated expertise regarding retirement villages (we suspect that such will be hard to find). Training should involve (a) a working knowledge of the Act, (b) a detailed knowledge of the Contracts that residents have with the Operator, and its legal significance, (c) acquaintance with the typical needs of residents that are peculiar to their stage of life and their living circumstances, (d) OH&S responsibilities, plus probably other matters .

Above all, they should be imbued with a pro-active approach, rather than a reactive or "compliance" one, and an approach based on meeting the real needs (not to be confused with the mere "wants") of residents, not a mere "compliance" approach to service. This of course will be difficult to do if the Operator's corporate culture is otherwise.

24. Are there other ways to ensure that retirement village managers and employees have the requisite skills and professionalism to undertake their responsibilities?

Response:

- (1) Create and publicly foster the development of training courses at appropriate levels at TAFE. Mandate minimum levels of certificate and diploma qualifications in this area. Such qualifications would be portable across the sector.

- (2) Include in an accreditation scheme declaration of the existence or otherwise of in-house PD programs for each operator, approved by the Regulator and subject to mandatory updating..

Resident Committees

25. Is the current role of the residents committee appropriate and are the powers adequate?

Response: In our opinion, the powers of the residents' committee under the Act are adequate. However we consider that certain provisions require revision **to clarify some important matters** and remove an anomaly :

- (i) Section 36(1) states that the residents may elect a residents' committee to represent the interests of the residents *where there is no owners' corporation* (emphasis added).
- (ii) Section 36(8) states where a village has an owners' corporation, the owners' corporation has the powers of a residents' committee under this section in addition to its other powers.
- (iii) The serious anomaly requiring rectification is this: In our case, where residents have a lease-management contract with the operator (who acts under that contract to accept and act upon all of the legal obligations of the owner), **the operator [REDACTED] [REDACTED] is the registered owners' corporation!**
- (iv) This creates a conflict of interest on the part of the operator with respect to this Section, and might be interpreted as not empowering residents to form a resident's committee. However, we have taken the view that it does not explicitly disempower residents from forming a residents' committee in this circumstance, and we have had one since 2013, with rules adopted by residents to allow it to act in residents' interests with respect to both the operator and other bodies (such as local council, bus company, and any other relevant body). Nevertheless, **we request that Section 36 of the Act be revised to make our type of situation clearer; otherwise an injustice could be perpetrated.**
- (v) Section 36(2) limits the period of office of a member of the residents' committee to one year, but such a member is eligible for re-appointment. This suggests that the period of membership might be indefinite, subject to residents voting them in annually. Our residents' committee has rules adopted by a meeting of residents that aim to prevent one or more persons becoming institutionalised as members. This includes a member standing down for at least one year after serving three years maximum.
We consider that the Act should be amended to give more discretion in this area, including provision for replacement of a member who leaves the village or becomes incapacitated, but heavy prescription of rules should be avoided because the situations vary among villages.

26. Should the residents' committee have a role in dispute resolution involving resident-to-resident disputes?

Response: Section 36 (7), (7A) deal with this issue. We think it would be better if the provisions could be amended to allow the residents' committee to deal with resident – to resident disputes (or disputes involving a group of residents) only (i) with the agreement of the disputing parties, and (ii) as a measure of first instance (i.e., in absence of resolution, the residents' committee lets go and the disputing parties then seek resolution among themselves or via an external mediator or the like).

27. Should residents committees have the power to approve above-CPI increases in maintenance charges? If not, why not?

Response: Yes, provided that the resident's committee has put before the residents (at a meeting of residents or otherwise) their argument(s) for doing so and has given the residents a reasonable opportunity to express their opinions (procedures and timeline to be nominated by the residents' committee having regard to the circumstances).

Note: as a second related issue, the operator should be obliged to explain to residents, well ahead of implementation, the formula used to calculate the propose rise even if it does not purport to be above CPI (there appear to be more than one such formula in use in the sector, e.g., as to which month is used as baseline for the CPI figures, and how the Average for the year is calculated, and without declaration, there is no way residents can be assured that the formula has not been changed or manipulated).

28. Should retirement village owners and managers involvement in meetings of the residents committee be prohibited unless invited by the committee?

Response: Emphatically, yes! From time to time, meetings of the residents' committee involve discussion of how to raise a matter with management, and/or how to express dissatisfaction with some aspect of management's decision or impending action. It is not appropriate for management to be present in such circumstances (which are fairly frequent).

From time to time, our residents' committee has invited one or more representatives from management to attend one of our meetings, in order to seek their comments on some issue or other, and in general this has worked well. At present , however, there is one manager at higher level who appears most anxious not to have much to do with either residents general meetings or meetings of the residents' committee.

Annual meetings and reporting

29. Is the level of detail about the financial activity involving the retirement village required to be included in the financial statements adequate for residents? If not, why not?

Response : It is understood and accepted that the current level and scope of financial reporting at this village by [REDACTED] complies with the Retirement Villages Act and recognized accounting standards.

Quarterly statements are issued and an audited report statement is circulated prior to and formally presented at Annual General Meeting.

However, it is observed that many residents have difficulty understanding terminology, accompanying explanatory notes and principles of accounting.

Residents tend to view reports and the financial area in more basic terms. Maintenance payments accrue a large amount of money and residents rightly question how this is spent on their behalf to provide the services that are expected.

The gap between the required reporting standards that are followed and resident understanding is most evident.

It is accepted that expenditure linked to administration is necessary. However, expenditure breakdown and the level of explanation of administrative/ management services provided is not readily understood by residents.

Such gaps in understanding should be bridged with clearer, more practical explanations, greater transparency of detail and genuine efforts to introduce more user friendly accounting terminology. Quarterly statements should also be accompanied by the opportunity to question and seek clarification of financial and administrative matters.

30. Should residents be provided with copies of the financial statements before the annual meeting? If so, what period is reasonable?

Response: Yes. Definitely. This is existing financial practice by [REDACTED].

A period of **three** weeks prior to the annual meeting would seem a reasonable time for residents to read, discuss and formulate questions and points of clarification.

31. Are there any other matters that should be addressed in the reporting requirements?

Response : In the case of a significant departure from normal expenditure related to a particular item or items a specific written explanatory statement should be provided.

Retirement villages with an owners Corporation

32. In mixed tenure retirement villages (i.e., retirement villages with both owner-residents and non-owner residents), should there be separate meetings for the village, according to the provisions of the RV Act, and for the owners corporation, according to the provisions of the Owners Corporation Act 2008 (OC Act)? If not, how should issues identified for mixed tenure retirement villages be addressed?

Response: Our Retirement village has no residents who are owners. Hence it might be argued that we are not equipped to answer this question. However, as noted in our Preamble above , and referring to our responses to Question 25 (iii) and (iv), note that the Operator in our case is also the registered Owners' Corporation.

In principle, to answer the question nevertheless, we think the two meetings should be separate, in order to avoid conflict of interest issues .

Maintenance and maintenance charges

33. To what extent should the RV Act further address issues of “responsibility” and “timeliness” for repairs and maintenance in retirement villages?

Response: Maintenance Fee is the term used to describe the monthly amount paid by residents and as such presents significant scope for misunderstanding and confusion.

Issues surrounding “maintenance” in our retirement village are among the least understood by residents.

In the strongest terms we submit that the Retirement Villages Act should seek to more clearly define, clarify and even regulate matters of responsibility and timeliness in regard to maintenance.

The Queensland model referred to in 4.2.1 of the Review Issues Paper provides what appears to be a relevant starting template.

34. What are the problems in more prescriptive requirements applying to all types of retirement villages and in all types of circumstances?

Response: A potential problem in becoming more prescriptive with maintenance requirements could be the extent and manner in which existing flexibility, goodwill and personal relationships could be influenced.

35. To what extent can or should the RV Act regulate what constitutes maintenance and capital items and to what extent should these issues be left to voluntary codes or guidelines?

Response: A potential problem in becoming more prescriptive with maintenance requirements could be the extent and manner in which existing flexibility, goodwill and personal relationships could be influenced.

Maintenance and capital replacement funds and plans

36. Should all retirement villages be required to have maintenance and/ or capital replacement plans and/or funds?

Response: Yes. Our village has broad maintenance plan and fund/s both of which are broadly reported on to residents. The matter of capital replacement plans/funds, although existing is not clearly communicated – it should be a mandatory requirement.

37. If so, what, if any, minimum requirements should apply to the establishment and operation of such plans and funds (for example, reporting obligations and restrictions on how monies are held)?

Response: Our Operator does identify in its annual report to residents the amount set aside for long term maintenance , and in principle the reason for doing so appears to be understood by residents, but only in the most general terms. Our Operator does not identify any specific plans to show either why it considers the sum set aside to be appropriate or to identify a program of prospective works tied to the amount set aside.

Having read the discussion in the Issues Paper on this matter, we consider that the five “dash-point” items identified therein as relating to amendments to the Owners’ Corporation Act for “a large development (i.e., comprising 51 or more occupiable lots) could be applied very usefully (in the interests of transparency and of forcing the Operator to plan) to our Retirement village , which has 52 occupiable lots, in effect.

In addition, for multi-storey developments (as ours is), specific attention in such a requirement should be drawn to long term maintenance of certain items peculiar to such developments (e.g., lifts, pumps). Basement car parks require drainage below the surrounding ground to be constantly and to have electrical cut-in to prevent flooding in heavy rainfall, and pumping is required to boost water pressures to an adequate level for the upper floor accommodation. We observe that multi-storey Retirement Villages are becoming more common.

Regulation of care services in retirement villages

38. If you are a current or former resident of a retirement village, what are your experiences with receiving privately funded care services through a retirement village?

Response: We have not had to canvass opinion of our residents adequately, hence we are not equipped to answer this question. It has not come up yet as a burning issue here.

39. Do you think retirement villages should provide privately funded care services?

Response: In principle, yes. However, it should do so only after consulting residents as to what the needs are , the costs and any conditions associated therewith.

40. Is the current regulatory framework for the delivery of privately funded care services sufficient to ensure that potentially vulnerable and frail residents receive safe and high quality standards of care?

Response: We are uncertain on this matter. Our Operator also is a provider of Aged Care Packages etc aimed at keeping retirees in their homes longer before entering residential Aged Care facilities (which it also operates). However, our experience in this area is too recent and too limited to make significant comment.

41. What role, if any, should retirement village operators have in ensuring the safety and welfare of their residents , taking into account a resident’s right to autonomy and privacy?

Response: As for Q40. Unfortunately in the time available we have not been able to canvass residents opinions on this matter, but it has not yet come up from residents as an issue of concern.

Leaving a retirement village (Part 5)

Selling/ re-leasing a retirement village unit

42. Does the RV Act strike the right balance between the interests of residents and operators in the sale or re-leasing of a retirement village unit, including the appropriateness of the process whereby the prescribed terms are inserted into non-owner contracts?

Response: The general view of residents would be that the balance favours the operator.

As in previous responses we note the difficulties that residents have in understand the complexities. There is a perception of unfairness.

A practical example of this is put forward. Residents sign a contract at a time of their life when the ability to understand complex matters may not be at its highest.

If a sales person **actually told** a prospective resident that they are required to provide an interest free loan of \$600,000 (ingoin contribution) to [REDACTED] and at their exit in ten years they or their estate will receive an estimated \$500,000 they could expect to get some negative feedback

Reinstatement and refurbishment of retirement village units

43. Does the RV Act strike the right balance between the interests of departing residents and operators? If not, what improvements could be made to ensure the right balance?

Response: No. The big difficulty is that the dollar cost of the works is unknown and uncontrolled. Under our type of contract, the Operator calls all the shots; it appoints the contractor and (apparently) leaves it up to the contractor to decide exactly what scope of works, types of materials (paint, carpet etc) is required and then pays the bill , recouped from the resident by subtracting from the amount of the sale (separate FROM THE Deferred Management Fee). The resident/ resident's family have no say.

44. In relation to the regulation of ongoing charges when a resident leaves a village, does the RV Act strike the right balance reconciling the interests and needs of departing residents, remaining residents and the retirement village operator? If not, what changes should be considered?

Response: All of the apartments in our village are post-2006. We understand the issue of continuing corporate overheads, and we also know that many , probably most, apartments may not sell within a few months. The limit of six months (or less if the unit is actually sold prior) applies to our contracts, and seems reasonable. The broader problem is that there is nothing to push the Operator to renovate/ refurbish quickly within that six month period (one would think there was an incentive, but it does not seem to work out that way). There is frequently a great delay after the resident has vacated.

45. Should the RV Act regulate the way in which any capital gains (and losses) are treated when a retirement village unit is sold or re-leased? If so, how should it be regulated?

Response: In our units, occupied under a lease-and-management contract, the issue of capital gains due to improvements by the resident does not arise, because such "improvements" are not permitted. Instead, the best the resident (or their estate or family) may gain is the difference between the sale price compared to that at entry, less the amount

of the Deferred management fee (both are some percentage of the buy-in price, the former unknown, the latter known and capped); potentially, depending on market conditions, the net figure can be a capital loss.

We are aware that the formulae adopted by different operators for Deferred Management fee vary considerably, as do the provisions for capping it, but as both the exit sale price and the Deferred management fee can be expressed as a percentage of the sale price (sometimes the initial buy-in price, sometimes the sale price at exit) there seems a case for regulations to address this, as the dollar figures can vary greatly as between different operators. Note that from the resident point of view, it is natural to build in all exit charges (as well as the market selling price) to assess the likely capital gain or loss, and that is why the Deferred management Fee is mentioned in this response.

Dispute resolution (Part 6)

Internal dispute resolution

46. What are your views on the reform proposals identified by the review of internal dispute resolution procedures outlined in this paper?

Response: Having examined the Issues Paper content on this matter, and drawing on our past experience, we make the following comments:

- (i) Including a definition of “complaint” into the Act and distinguishing it from a “request for action” would be an improvement. Even so, it may not solve all issues. In our experience, many residents are unused to the use of dispute-related terminology, and unfortunately we have experienced operator’s managers who are similarly uninformed, as well as being uninformed about the detail of the residents’ contracts. If the term “dispute resolution procedures” remains in force (and we think it should) then “dispute” also needs definition. A ‘request for action “ (e.g., fixing a leak in a pipe) results in no response in a reasonable time, or if the “fix” is ineffective, then it may become a “complaint”. Likewise if the management is asked for resolution of a complaint and the outcome is not satisfactory , this may give rise to a “dispute”.
- (ii) The suggestion that any external dispute resolution body take into account the extent to which **the good practice protocols** (i.e., those issued by Consumer Affairs) is enthusiastically endorsed. We have experience of the protocols being consistently flouted, and of management apparently unaware of their existence. Currently of course they have no legal force, and in that circumstance, residents are at the mercy of the operator’s corporate culture and that of the lower level managers as to whether the protocols are followed. We consider the protocols to be fair and sound, but we understand also that the Property Council has issued for consultation with its members its own version.
- (iii) Dealing with **complaints about village managers** definitely requires stronger teeth in the legislation/ regulations. Legislating to ensure ethical and fair behaviour, let alone with incompetence and inadequate experience or knowledge, or poor attitude, is of course fraught. Both corporate culture and the personality/ management style of the manager are factors to be brought into line. Acting to safeguard residents’ rights and reasonable

expectations, rather than automatic defence of the corporation at all times, or mere repeating the corporate policy, are issues to be reined in as far as it is possible to do so, but with appropriate penalties, at least in the form of negative scores in accreditation ranking, but preferably in more tangible form (e.g., considering licensing of management at certain levels).

- (iv) The **role of residents' committees in dispute resolution**: see response above to **Question 26**.

External dispute resolution

47. Should a party to a retirement village dispute seeking access to the Victorian Civil Administrative Tribunal (VCAT) or the Courts be first required to have followed / exhausted the internal dispute resolution procedures?

Response: Yes, but provisions should be made to include the case where no response from the internal procedure has been received within a reasonable time (say acknowledgement within seven days and response within a maximum of one month). Following non-response within a reasonable time, the disputing party/ parties should give notice of intention to refer to an external body promptly (say seven days), and they should then have sole right to choose the external body.

48. **Should mediation of a dispute through Dispute Resolution Centre of Victoria (DSCV) be a pre-condition of access to VCAT or the courts?**

Response: In practical terms, it probably should. But it does not follow that it should be mandated. It may be better to give *the resident* disputant(s) the option of doing so first or not, after ensuring that the differences between the two processes, costs, likely speed of resolution and likely chances of a satisfactory outcome are carefully explained by an independent person to both parties. We note that in almost all cases, there is likely to be a great imbalance of power (including monetary resources) between resident and operator in the case of a dispute with the operator/ management.

In particular, the resident (s) should be made aware that the various "alternative" (= non-court/ tribunal) processes are not certain to yield a "better" result than VCAT (or indeed any result at all). Mediation, for example, will not yield a result if either party goes into it with a fixed mind instead of a genuine preparedness to take on board the other party's arguments and a determined to listen as well as to put forward their own arguments.

49. **What do you think is the best means to achieve low-cost, timely and binding resolution of disputes in the retirement village sector?**

Response: Ideally, disputes would be promptly, cheaply and fairly resolved by direct discussion and negotiation with the Operator's manager. Past experience has shown this has not been forthcoming, and the issue has been exacerbated by turnover in management staff plus management restructuring several times, so that identifying the appropriate person to deal with has also been difficult. In general, on-site representatives of management have not been sufficiently skilled or knowledgeable in how to conduct dispute resolution, and have adopted a negative attitude that seeks to defend the Corporation first.

Accordingly, we are of the opinion that, failing resolution with management, reference to an independent external entity with demonstrated experience and expertise in such matters, *and with specific knowledge of the Retirement Village sector*, would yield the most satisfactory result. A specific rule regarding costs should be built in, namely if the result is entirely against the Operator, the Operator pays all costs, otherwise the costs are equally shared.

An experience we had a few years ago, when we referred a dispute to Consumer Affairs, showed us the inadequacy of the resourcing of that approach: we were told that, as the dispute did not involve a breach of a specific clause in the RV Act, Consumer Affairs could not help. Most issues in our experience do not involve breach of a specific clause of the RV Act, but rather unfair treatment by managers, failure to action requests, “stone-walling” of requests and other aspects of how residents were treated. **We would like to see Consumer Affairs empowered and resourced** to offer a good dispute resolution service itself. That way, some independent professional could be expected, knowledge of the sector and its legislation etc could be expected and some consistency of approach would be developed. Statistics on disputes could then be centrally collected, leading (we would hope) to further improvement of the services.

Enforcement (Part 7)

50. Are the enforcement provisions incorporated into the RV Act sufficient?

Response: No, they appear to be very limited. We note, for example that CA does not have power to issue “corrective advertising “ orders that otherwise could be available under the Australian Consumer Law / Fair Trading Act are not available here. Such orders, we expect, might involve misleading / deceptive advertising to prospective village entrants, and we have seen examples of that, including misleading by omission of certain data, retention of outdated information etc. on the relevant website and/ or on advertising billboards. We see no valid reason for inability to issue such orders under the RV Act.

51. Should the Director of Consumer Affairs Victoria be given additional powers and enforcement options available under the Australian Consumer Law and Fair Trading Act 2012 (ACLFTA)? If so, why? If not, why not?

Response: Yes – see response to Q50 above. We suspect that, with more time available to consider, we would make further suggestions. The fact that the Parliamentary Inquiry identified such a range of issues across the sector where residents felt they had no chance of redress is clear indication of the need for more “teeth” for the Regulator. Indeed, this is true for many other sectors in Australia and Victoria, such as residential aged care, banking, etc, as evidenced by the proliferation in recent times of Royal Commissions into various matters.

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Submitted by members of the [REDACTED] ILU Residents’ Committee (Keith West, Chairman, and Dennis Green) on behalf of residents with the knowledge of residents.

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