

# **Review of the Retirement Villages Act 1986**

## **Submission by Les Scobie, retirement village resident since 2007**

Before moving to examine the Victorian Retirement Villages Act 1986 it is important that all parties are aware of the following primary facts when it comes to Retirement Villages.

- 1. 72% of retirement villages are owned by 'for-profit' operators. The days of the 'benevolent' operator discounting the entry cost by the amount of the 'deferred fee' are well past.**
- 2. 74% of retirement village residents do not occupy their units on a freehold basis, merely granted a lease or licence to occupy.**
- 3. Retirees often pay a price commensurate with an outright purchase price for a similar unit within the general community without ever gaining ownership.**
- 4. Contractually residents have all the financial responsibilities of 'property ownership' like maintenance costs, renovation costs, selling costs, administration costs.**
- 5. Contractually in the order of only 1 in 2 residents have the financial rewards of 'property ownership' such as capital gain. Where granted however the retiree may not be entitled to 100% of any capital gain, it may be shared with the operator. The retiree also becomes proportionally responsible for any capital loss.**
- 6. Contractually residents can lose up to 45% of their in-going payment in a so named 'deferred fee' without ever gaining ownership.**

The following statement by [REDACTED] [REDACTED] [REDACTED] sums up the retirement village industry succinctly. It amplifies the financial impact on the capital base of both the occupants and subsequently their families.

***“Families need to be aware that what we are talking about here is the transfer of inter-generational wealth, not to families, but into the pockets of large multinationals. Shame about elderly people not having enough money for aged care”***

The Federal government is yet to fully realise the enormous negative financial impact this industry has on the capacity of retirement village residents to fund their own in-home care or residential aged care.

One is also reminded at this point of the words of Barack Obama -

***“If the people cannot trust their government to do the job for which it exists – to protect them and to promote their common welfare – all else is lost”***

It is difficult to understand the obsession of both this and previous governments that the retirement village industry must be granted by statute an environment to 'facilitate growth and innovation'. It is a role of government to provide an environment for commerce to operate, but is it the role of government to protect industries as in this case a 72% 'for profit' industry? To single out the predominantly commercial retirement village industry for legislative support as prescribed by the current Minister for Consumer Affairs Marlene Kairouz must be questioned. This support via statute comes at the direct financial and social cost of Victorian retirees.

My submission to the reinstatement and refurbishment of retirement village units aspect of the Retirement Villages Act - Les Scobie.

**Review of the Retirement Villages Act 1986**  
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**The regulatory and policy framework (Part 2)**  
**Application and scope of the Retirement Villages Act 1986**

**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 - 74% of retirement village residents do not occupy their units on a freehold basis, they are merely granted a lease or licence to occupy. One of the main areas of dispute here is who pays and the lack of clarity as to the different literal meanings of the words reinstatement, renovation, refurbishment.

In a strong reform for retirees Queensland has mandated that where a resident is made contractually responsible for unit refurbishment on departure the refurbishment cost be shared with the operator at the same ratio as any capital gain.

**59A - Renovation work by scheme operator**

**(5)The cost of the renovation work must be paid by—**

**(a) if the residence contract provides that the former resident and the scheme operator are to share any capital gain on the sale of the former resident's interest in the unit—the former resident and the scheme operator in the same proportion the capital gain is to be shared; or**

**(b)otherwise—the operator.**

NSW has mandated that refurbishment is the responsibility of a defined property 'owner' not the 'occupier'.

South Australia has mandated a unit condition report to further help clarify the situation.

The word 'refurbishment' was given some prominence on Page 55 of the 2017 Victorian LSIC inquiry report -

[https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Retirement\\_Housing/Report/LSIC\\_58-06\\_Text\\_WEB.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Retirement_Housing/Report/LSIC_58-06_Text_WEB.pdf)

Reinstatement / Renovation / Refurbishment

“An ongoing source of contention between retirement village residents and operators is the difference between the terms ‘reinstatement’ and ‘refurbishment’.

'Reinstatement' refers to the repairs necessary to bring a unit to the same condition as when the resident moved in; 'refurbishment' refers to works that improve the unit beyond that level. Although retirement village contracts stipulate what residents must do on departure, evidence received by the Committee suggests that many residents do not fully understand this part of their contract. A view also exists that when residents pay for refurbishment village owners benefit through receiving a percentage of an increased sale price.

████████ explained that different expectations when departing a village can have large financial repercussions. ██████████ said:

There tend to be two words that the industry use which sound very similar but have very different connotations. The industry use 'reinstatement' and 'refurbishment'. Reinstatement is what most people think refurbishment is, which is basically put it back the way you found it — so a lick of paint, any damage that you have done repaired and steam cleaning carpets. Refurbishment means bring it up to today's standard, whatever that standard is. People do not understand that those two words have very, very different connotations ...

... for a prospective resident you are talking about a difference in reinstatement of \$1500 or \$2,000, something like that, versus refurbishment, which can easily be \$60,000 by the time you pull out all the carpet and put in a new kitchen and a new bathroom. So it is very different."

The Victorian fact sheet does not contain the word '**refurbishment**' although contracts do.

## Factsheet for loan-licence or loan-lease retirement village

### 13. Reinstatement or renovation of the unit

Is the resident responsible for <u>reinstatement</u> or <u>renovation</u> of the unit on permanent departure?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>[Note: Delete if this does not apply]</i> If yes, the resident must pay for:	<i>[Note: List the relevant items, one per line]</i>

Both the fact sheet and the legislation should include the word 'refurbishment' and clarify the material difference between the words reinstatement, renovation and refurbishment.

This from a previous government inquiry, just as relevant today as it was then -

"Many of the legal and fee arrangements they must consider are unfamiliar to them and information and advice to help them make an informed decision appears to be limited."

'Buyer beware' is not a satisfactory outcome, legislators and governments have a greater responsibility to vulnerable citizens.

## **ACTION REQUIRED - LEGISLATIVE AMENDMENTS -**

**1. The fact sheet should include the word refurbishment and together with the legislation clarify the material difference between the terms reinstatement, renovation and refurbishment.**

**For example –**

RENOVATION - to restore to good condition; make new or as if new again; repair.

<https://www.dictionary.com/browse/renovation?s=t>

REFURBISHMENT - The **refurbishment** of something is the act or process of cleaning it, decorating it, and providing it with new equipment or facilities.

<https://www.collinsdictionary.com/dictionary/english/refurbishment>

REINSTATEMENT - to put back or establish again, as in a former position or state:

<https://www.dictionary.com/browse/reinstatement>

*New South Wales have given some clarification within the legislation.*

*Section 162 Definition*

*In this Division,*

*"refurbishment" of residential premises the subject of a residence contract means any improvement of the premises in excess of that required to reinstate the premises to the condition they were in (fair wear and tear excepted) at the commencement of their occupation by the resident under the contract.*

**2. Legislation be amended to mandate the responsibility for the cost of unit 'refurbishment' rest with the property 'owner' not the occupant (lessee/licencee)**

New South Wales has legislated 'refurbishment' to be the responsibility of a defined 'owner' not the 'occupier' of the property.

*NSW - Retirement Villages Act 1999 No 81*

*164 No refurbishment required under contracts entered into after commencement of section*

*A former occupant of residential premises in a retirement village who entered into his or her residence contract in respect of those premises on or after the commencement of this section is not liable to refurbish (or pay for the cost of the refurbishment of) the premises.*

**3. Legislation should also include a mandated condition report on both entry and departure along the lines of South Australia to assist with clarifying any requirements under 'reinstatement'.**

*SA - Section 23—Premises condition report (1) A premises condition report must be in writing and comply with this section and the requirements (if any) prescribed by the regulation.*

Submission by -

Les Scobie,

[REDACTED]

[REDACTED]