

Questions for consideration

Your views are sought on the application and scope of the RV Act.

1. Should the payment of an ingoing contribution be the defining factor in determining whether the RV Act applies to a retirement village? If not, what other considerations would be appropriate?

Payment of exit fees could also be included as the industry is looking into flexible ways for people to enter the vbillage.

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

Review the SA Act definition or NSW definition – excerpt from NSW Act

5 Meaning of "retirement village"

(1) For the purposes of this Act, a *retirement village* is a complex containing residential premises that are:

- (a) predominantly or exclusively occupied, or intended to be predominantly or exclusively occupied, by retired persons who have entered into village contracts with an operator of the complex, or
- (b) prescribed by the regulations for the purposes of this definition.

Questions for consideration

Your views are sought on the current purpose of the RV Act.

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?

Consider inclusion of the rights of Operators (Owner/Managers) of Retirement Villages - excerpt from SA Act 2016

3—Objects

The objects of this Act are—

- (a) 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—
 - (i) residents of retirement villages; and
 - (ii) operators of retirement villages;
- (b) to encourage best practice management standards among the operators of retirement villages;
- (c) to ensure that there is proper disclosure of information to prospective residents of retirement villages;
- (d) to regulate the making, content, operation and termination of residence contracts;
- (e) to ensure that residents are properly consulted about matters affecting their residence in the retirement village;
- (f) to provide for dispute resolution processes.

Questions for consideration

Your views are sought on the purpose and use of the current register of retirement villages. [Link https://www.consumer.vic.gov.au/housing/retirement-villages/choosing-a-retirement-village/public-register-of-retirement-villages](https://www.consumer.vic.gov.au/housing/retirement-villages/choosing-a-retirement-village/public-register-of-retirement-villages)

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

Links to Village/operator website, which will include additional information. No further legislative change required though

5. What other information should operators be required to include in the register? Operator name/address, size of village, developing or established

Questions for consideration

Your views are sought on the current consideration and cooling-off periods under the RV Act.

6. Is 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? \

21 days more than fair. Can limit Residents who want to move quicker, 14 days may be more appropriate. Could increase 'cooling off to match NWS/SA – add in settling in period of 90 days to match NSW/SA

	SA	NSW	VIC
Consideration	10 business days	14	21
Cooling off	10	7 business days	3
Settling in	90	90	Not specified

Questions for consideration

Your views are sought on whether there should be greater transparency in the advertising of retirement village units for sale or lease.

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?

Could encourage disclosure on all advertising material – ie Additional costs may be incurred at departure

Questions for consideration

Your views are sought on the current pre-contractual disclosure obligations under the RV Act.

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?

Yes

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?

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

Yes

Questions for consideration

Your views are sought on the form and content requirements for contracts under the RV Act.

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

Yes

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

Clarity around the exiting payments timeline – legislation is difficult to follow regarding mandatory buybacks for non-owner residents and is ambiguous.

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

Provide examples of plain English. The Act is very difficult to read. It should be written in Plain English itself.

Questions for consideration

Your views are sought on the Parliamentary Inquiry's recommendations to improve the understanding, transparency and operation of the DMF model.

14. Should retirement village operators be required to disclose ingoing prices for entering a retirement village with and without deferred management fees? If so, what form should this take? If not, why not?

No, current disclosure is adequate

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

Yes, is fairer to be based on actual length of occupancy. Is fair to all as only paying for the length of time of residency.

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

Upon request. Residents usually want to know for financial planning, pension/Centrelink, moving to Aged Care or change in circumstances. To offer it carte blanche annually could cause confusion and mean that the information given is only correct 'at that time'. EG, if they receive an estimate letter at the beginning of the year and are then asked by Centrelink to provide their financial information 10 months later, potentially there could be 10 months' worth of charges to be added to their DMF which could have a significant effect on their assessment. Costs for Operators to implement an annual update should be weighed.

Questions for consideration

Your views are sought on the Parliamentary Inquiry's recommendation that the Government consider developing a model for mandatory accreditation for all retirement housing providers in the context of retirement villages.

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

Benefits: Creates consistent, minimum standards. What standards would there be for a mandatory system in order to allow for all providers to join?

Costs: Not all Villages are the same so will a standardized system work? Registration costs, possible auditing costs, administrative costs in implementing and managing the accreditation, internal audits, fines for non-compliance, what happens to continual non-compliance? Who will police this? Being mandatory, it doesn't sort the wheat from the chaff. Who is responsible for the costs? Residents or operators?

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

Basic standards should include compliance issues, some "reasonable person/company" ie experience check on capability. We are a diverse industry from mum and dad owned to large organisations, each offering a different cultures and dynamic that shouldn't be lost. This should be weighed in this process to strike a balance between minimum required standards and "best practice". With increased compliance generally inevitable it is a concern that increased costs over the sum total of all changes might be prohibitive to smaller players.

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

Benefits: Is a selling point / marketing advantage for those that opt in and may therefore, over time, weed out poor service providers.

Costs: Registration costs, possible auditing costs, administrative costs in implementing and managing the accreditation, internal audits, fines for non-compliance, what happens to continual non-compliance? Fixed penalties, 3 strikes and you're out? Is it necessary to do this with the Property Council Accreditation (ARVAS) commencing in 2020? Who is responsible for the costs? Residents or operators?

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

Sign up to Property Council Code of Conduct and then the voluntary Accreditation by ARVAS.

Questions for consideration

Your views are sought on the current regulatory requirements for persons involved in retirement villages and whether retirement village managers and employees should be required to undertake certain training and meet ongoing professional development obligations.

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

Include offences to the person as per NSW and SA – excerpt from SA Act 2016

10—Certain persons not to be involved in the administration of a retirement village

- (1) A person to whom this section applies may not be concerned in the administration or management of a retirement village.
Maximum penalty: \$35 000.
- (2) This section applies to—
- (a) a person who is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or
 - (b) a person who—
 - (i) has during the preceding 5 years been convicted of an offence to the person or an offence involving fraud or dishonesty; or
 - (ii) has served a sentence of imprisonment for an offence to the person or an offence involving fraud or dishonesty, being a sentence that ended during the preceding 5 years.

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

Benefits: Employee retention – quality and relevant qualifications provide a degree of recognition. Provides a level playing field for managers and potential managers.
Consistent level of service for residents

Costs: What would be the training level? Mandated training needs to include compliance categories only initially, with Professional Development encouraged but not mandated. This can be reviewed in 3-5 years post implementation as all operators would welcome and perform some level of PD. A phase in period would assist small operators “get their house in order”. Need to consider who would bear the cost? Operators or Village? Training takes staff away from the day to day operations, when residents want to see staff on the ground. Will prior knowledge/experience be applicable/acknowledged?

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

Based on level of involvement, role based. How involved are they in the day to day operations ie VM, maintenance/gardening/resident services, or are they involved at a higher level ie upper management, financial, WH&S, legal. Prior knowledge/experience should be recognised? Will other qualifications or experience be transferrable/recognised? Current training programmes offered by Property Council and/or LASA are perfectly satisfactory, don't reinvent the wheel..

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

Create a minimum requirement for compliance training and for record keeping of additional PD training available for scrutiny by Consumer Affairs

Questions for consideration

Your views are sought on whether the RV Act adequately provides for resident participation in retirement villages.

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

Resident committees should be there as representatives of the Village residents and should work to their best interests as a whole in a consultative manner. Their current powers are too high, for example making the decision regarding above CPI increases.

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

Resident-to-resident disputes can be emotive and Villages have their cliques etc. It is not always pertinent to have the committees work on this type of dispute. If the dispute cannot be resolved by VM, it should be handled by an impartial agency such as ARAS or OFAW.

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

No. They should consult with the VM on budgetary matters including potential above-CPI increases, but should not make the decision. The VM and the Operator manages the budgets for the Village and have to ensure they are covering the costs adequately. In some cases, above-CPI increases are necessary, for example if there have been unforeseen expenses, or if the previous year has run at a deficit. Residents will always be hesitant to accept them and if the increases were denied, this could potentially lead to a deficit in the budget, which would then mean the funds would have to be drawn from elsewhere. Providing actual invoices to verify increases could be a trade-off.

28. Should retirement village owners and managers' involvement in meetings of the residents' committee be prohibited unless invited by the committee? Yes. The residents' committee meetings are run by the residents, for the residents. VMs/Operators should only be there to present their relevant Operational /Financial business.

Questions for consideration

Your views are sought on the adequacy of annual reporting requirements.

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?

No, Remove the requirement for statement around ingoing contributions and beef up other P& L reports (see 31 below). Auditors statement of the financial viability of the underlying operator would also help.

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

Yes, 14 days prior to allow them time to send in questions

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

Provision of capital accounts for the village and have a surplus/deficit policy for the general fund

Questions for consideration

Your views are sought on the best way to manage the obligations to hold residents meetings under both the OC Act and the RV Act in mixed tenure retirement villages.

32. In mixed tenure retirement villages, 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 OC Act? If not, how should issues identified for mixed tenure retirement villages be addressed?

NA, we are not an owners corporation

Questions for consideration

Your views are sought on the role of the RV Act in regulating responsibility for repairs and maintenance and whether the RV Act should address all the recommendations of the Parliamentary Inquiry in relation to repairs and maintenance.

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

The Premises Condition Report, at Incoming AND at Outgoing, should cover the responsibility as well as the contract regarding who is responsible for some expenses such as electricity should be made plain. I would avoid at all costs template contracts but require clear statements for laying out cost responsibility.

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

There would be huge problems with prescriptive requirements for ALL circumstances. It would be an administrative mine field to implement as a variety of circumstances across a variety of categories (eg cost, asset involved, isolating and pinning down cause of failure of assets, wear and tear, warranty)

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?

A broad definition should be given to Capital items and left to voluntary codes to go into detail. Clarify that maintenance includes the operational costs for the Village, including wages, administration, rates, taxes (where applicable) etc.8

Questions for consideration

Your views are sought on whether all retirement villages should be required to have a maintenance and capital replacement plan and fund.

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

Should this be legislated? I'm not convinced. This is where best practice Codes of Conduct can play a role and/or accreditation. Capital solutions can come from a variety of avenues. Having annual updates on the Capital Funds is sufficient I think to shine a light on whether the Funds are sufficient to cover future improvements or replacements.

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 to be held)?

Annual reporting as a minimum, held in appropriate accounts.

Questions for consideration

Your views are sought on the regulation of retirement villages providing privately funded care services and the role of retirement village operators ensuring the welfare of residents.

37. 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?
38. Do you think retirement villages should provide privately funded care services?
39. 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?
40. 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?

NA no care provision

Questions for consideration

Your views are sought on the role of the RV Act in the sale or re-leasing of a retirement village unit.

41. 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 residence contracts? If not, what improvements could be made to ensure the right balance?

There needs to be clarity around the statutory 'buyback' rule. 6 months is too short for many operators and the 'real estate agent' rule is clumsy with most operators using this clause to then refer to their own contractual period, which can be as long as 10 years. 18 months' buyback is a much more workable solution, but may be too short a period for those villages located in country areas, where the market is traditionally and historically slow. I suggest doing away with the whole 6-month mandatory buyback (under its current rules), and follow the SA/QLD ruling with 18 months being the buyback timeframe (with the option to engage a REA and perhaps 24 months in rural areas. The 6-month rule that NSW and ACT currently have is already under scrutiny.

Questions for consideration

Your views are sought on the role of the RV Act in relation to reinstatement and refurbishment obligations when a resident leaves a retirement village.

42. 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?

Clarify the difference between a reinstatement and a renovation. Specify that if a resident does not share in Capital Gain, they should not bear the cost of a reinstatement/renovation (fair wear and tear, reinstatement of alterations & additions excepted)

Questions for consideration

Your views are sought on the role of the RV Act in relation to regulating ongoing charges after a resident leaves a village and capital gains.

43. 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?

Clarify what 'personal services' means. Does this include services to the unit that the resident may pay for independently such as electricity and/or water? 6 months' maintenance fees post Vacant Possession is standard throughout the industry and should stay to be consistent, but further clarity about Vacant Possession would be beneficial as this can cause confusion.

44. 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?

Allow for flexibility with full and clear disclosure.

Questions for consideration

Your views are sought on potential improvements to current internal dispute resolution procedures in retirement villages.

- **What are your views on the reform proposals identified by the review of internal dispute resolution procedures in retirement villages outlined in this Paper?**

- *Introduce a definition of 'complaint' into the RV Act, and clarify requirements around recording complaints*

Other Acts do not define 'complaint' but do advise that Operators should have a Dispute Resolution Policy that specifies what a Dispute is and the SA Regulations (Regulation 18) goes into further details as to what the Dispute Resolution Policy should include.

- *Introduce a requirement that any dispute resolution body considering a retirement village dispute takes into account the extent to which the good practice protocols have been followed*

'Good practice' – use the industry Code of Conduct as a guideline for best practice. Who sets the good practice protocols?

- *Clarify in legislation the avenues for directing complaints about village managers*

Specify it in the Dispute Resolution Policy – Dispute Settlement of Victoria (DSCV) for mediation and Victorian Civil & Administrative Tribunal (VCAT) for legal disputes, Consumer Affairs Victoria (CAV)

- *Remove the role of residents committees in resident dispute mediation*

Definitely agree with this one. Residents committees can be too emotive and involved. Cliques and concerns about breach of privacy when dealing with a group of people.

Questions for consideration

Your views are sought on potential improvements to the management of and mechanisms for external dispute resolution.

45. Should a party to a retirement village dispute seeking access to VCAT or the courts be first required to have followed/exhausted the internal dispute resolution procedure?

Yes, external dispute resolution should be the last resort in the process.

46. Should mediation of a dispute through DSCV be a pre-condition of access to VCAT or the courts?

Yes, it always preferable to seek early resolution before resorting to further legal processes.

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

Having a defined process, attempt early resolution. Have clearly defined Act, laws and regulations and clearly defined rules/code of conduct for both resident and operator that are not in direct conflict or contradiction with each other. Effective disclosure, clear, fair (to both resident and operator) and transparent regulations and contracts.

Questions for consideration

Your views are sought on the adequacy of the enforcement provisions in the RV Act.

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

VIC seem to have more powers than other states, so I would suggest the current powers are sufficient.

49. Should the Director of Consumer Affairs Victoria be given additional powers and enforcement options available under the ACLFTA? If so, why? If not, why not?

No