



**Review of Retirement Villages Act 1986 - Issues List**  
(as at 14 July 2019)

<b>Overview issues</b>			
<b>#</b>	<b>Item</b>	<b>RRVV position</b>	<b>Comment</b>
1	Will amendments to the current Act meet the needs of the sector for the next ten years?	No. The paradigm is fundamentally flawed.  Throw out the 1986 Act and start again recognising that the current dominant model (the three bucket resident funded village model) will survive for at least another 20 years along with new models.	The current Act does not adequately recognise the three-bucket model and many of the rights and freedoms residents reasonably expect.
2	What is a retirement village?	The 1986 Act definition was never adequate. We need a prospective resident focussed definition that clearly distinguishes retirement villages from other like communities and aged care facilities	Clarity at the time of deciding to enter a community is critical
3	Are leasehold <i>retirement</i> communities retirement villages?	Yes	Who owns what is not the critical distinguishing characteristic. Instead, it's whether residents see the communities as retirement villages
4	Should a new retirement villages act cover strata titled retirement communities?	Yes	Even with the 2019 amendments, the Owners Corporations Act 2006 will not work well with a retirement villages Act.
5	What sort of regulation does the sector need and what kind of regulator?	<ul style="list-style-type: none"> <li>• A light touch or the right touch</li> <li>• Principles based, prescriptive or both?</li> </ul>	Light touch has failed residents Both principles-based and prescriptive

		<ul style="list-style-type: none"> <li>• A reactive or proactive regulator</li> <li>• Licensing?</li> </ul>	Licensing (meet minimum standards, or you will be forced to sell)
6	Should the review process start with the development of a charter of residents' rights, freedoms and protections built on a robust ethical framework?	Yes	RRVV is not convinced that the normal review process develops an adequate consumer focus.
7	How to cope with other models than the resident funded village	<p>Focus on residents rights, freedoms and protections and on ethical business practice</p> <p>Similarly, focus on ensuring conceptual clarity in new models</p>	
8	The necessity for extreme clarity	<p>The 1986 Act is anything but clear.</p> <p>Operators contracts, on the whole, are similarly unclear</p> <p>Having the law spelt out clearly would help residents resolve problems</p> <p>Similarly having clear, plain English contracts that are balanced and fair would enhance resident wellbeing.</p>	Residents in their 70's, 80's and 90's are not necessarily well equipped to assert their rights. Nevertheless, a surprisingly high number do turn to the Retirement Villages Act, the Owners Corporations Act and their contracts for answers to their problems.
9	The assumption that operators are in charge and that the village is their business (self-funded village model)	<p>Above all else, villages are 'home' to their residents. Even where operators own the village, they do not administer the villages as owners. Instead, they manage the operations of the village under contract and with the consent (in some cases, under the</p>	Not all village resident bodies will have the capacity or desire to give the consents necessary for the smooth operation of the village at a given time. On the other hand, some village resident bodies will have the capacity

		<p>direction) of the residents.</p> <p>An operator’s business is the entity that administers the village under contract</p> <p>Separately, in the case of leasehold villages, the owner has the ordinary rights and responsibilities of landlords. Conceptually the landlord business is a separate one even if the owner is also the operator.</p>	<p>and desire to take an active role in directing village operations. There are villages in Victoria where the operator is an incorporated association of residents.</p> <p>Accordingly, a new Act must recognise, facilitate and regulate a wide range of resident participation in village decision making</p>
10	<p>Strata titled villages</p> <ul style="list-style-type: none"> <li>• The current Retirement Villages and Owners Corporations Acts do not work well together.</li> <li>• The draft 2019 amendments to the Owners Corporations Act do little to solve the problem and in some cases hinder the solving of some problems.</li> </ul>	<p>RRVV recommends that a new Retirement Villages Act also cover strata titled villages</p>	
11	<p>Mixed freehold and leasehold villages</p> <ul style="list-style-type: none"> <li>• Neither the Owners Corporations Act nor the Retirement Villages Act (including the draft 2019 amendments) adequately recognises mixed villages</li> </ul>	<p>RRVV recommends that a new Retirement Villages Act also cover mixed villages</p>	
12	<p>Villages with services associations</p>	<p>RRVV recommends that a new Retirement Villages</p>	

	<ul style="list-style-type: none"> <li>• Most residents in these villages have difficulty understanding which Act to turn to resolve specific issues.</li> <li>• The problem is most acute in strata-titled and mixed freehold and leasehold villages.</li> </ul>	<p>Act also cover strata titled villages with a services association</p>	
13	<p>Conflicts of interest</p> <ul style="list-style-type: none"> <li>• Operators of self-funded villages have a responsibility to spend residents' money as directed or in the absence of directions, wisely, and to get the best price for goods and services of the required quality.</li> <li>• Operators who are also suppliers of goods and services that might otherwise be supplied by an independent contractor are conflicted. Subsidiaries, sister companies and associated companies are also similarly conflicted. Take operators who have village maintenance subsidiaries or associates that let out contracts to local contractors as just one example.</li> </ul>	<p>RRVV recommends:</p> <ul style="list-style-type: none"> <li>• Specific provisions outlawing conflicts of interest</li> <li>• Conflicted entities required to compete on the open market for each villages business.</li> </ul>	

<b>1986 Retirement Villages Act issues specific to resident funded village model</b>			
<b>#</b>	<b>Issue</b>	<b>RRVV proposal</b>	<b>Comment</b>
1	Residents rights <ul style="list-style-type: none"> <li>Weak and confused</li> </ul>	See separate sheets on rights and ethics	
2	Annual meeting definition <ul style="list-style-type: none"> <li>Section 3(1) annual definition at (b) is nonsense</li> </ul>	Delete it	
3	By –laws definition <ul style="list-style-type: none"> <li>Seems to be focussed on regulating residents (<i>e.g. apply to a resident</i>) rather than both operators and residents</li> <li>Does not require an operator to enforce a by-law</li> <li>Allows an operator to opt out by not including the necessary clause in the contract</li> <li>Both operators and residents find the definition hard to interpret</li> <li>Operators argue the scope is too broad and therefore invalid because it reduces their property rights (particularly in leasehold villages)</li> <li>Operators seek to include provisions that fit within the by-laws definition in their contracts and argue that such provisions are not caught by section 37(5)</li> </ul>	<p>Recognise that the opportunity for the community to make, revoke or alter by-laws provides essential flexibility to change the rules as the needs and wants of residents vary over time.</p> <p>Require operators to enforce by-laws</p> <p>Refine the scope of by-laws</p> <p>Clarify where a by law may be recorded and ensure that by section 37(5) catches them all</p>	<p>In resident funded villages, residents carry the economic risk (not the operators which are contract managers handsomely remunerated through the deferred management fees) and so should have a clearly articulated right to direct of the running of the village to the extent they reasonably choose.</p> <p>To the extent that residents do not choose to direct the running of the village, operators should have clearly articulated responsibilities and be subject to clearly articulated limitations.</p>

4	<p>Committee definition</p> <ul style="list-style-type: none"> <li>• Confused</li> <li>• A significant proportion of villages have multiple committees unrelated to the residents' committee</li> <li>• Few owners corporation committees understand their residents' committee role and act as if the owners corporation is in charge of everything</li> </ul>	<p>Recognise that the residents' committee is just one committee and recognise/regulate the other committees that are not sub-committees of the resident's committee (particularly their roles in relation to their roles the role of the residents' committee)</p> <p>Clarify the role of an owners corporation committee in a retirement village (amongst other things require an owners corporation committee to disclose when it is exercising the powers of a residents committee and therefore bound by the Retirement Villages Act).</p>	
5	<p>Disclosure statement definition</p> <ul style="list-style-type: none"> <li>• Largely out of date</li> </ul>	Update	
6	<p>Domestic partner definition</p> <ul style="list-style-type: none"> <li>• Why split the definition between section 3, section 4(3) and the Relationships Act 2008?</li> </ul>	Keep it simple	
7	<p>Exempt retirement village</p> <ul style="list-style-type: none"> <li>• Is there any need for exempt retirement villages?</li> </ul>	No	
8	<p>Ingoing contribution</p> <ul style="list-style-type: none"> <li>• Expect new models that require no ingoing contribution of the current type</li> </ul>	See comments on definition of retirement village	
9	<p>Maintenance charge</p> <ul style="list-style-type: none"> <li>• A confusing term. Most residents know it as a</li> </ul>	Clarify	

	<p>service fee and understand it to fund village operations mostly.</p> <ul style="list-style-type: none"> <li>In a significant proportion of villages the contract levies a separate fee for long term maintenance. Even when the maintenance charge covers long term maintenance, villages usually spend less than half (some much less) on long term maintenance</li> <li>Operators tend to treat the funds collected as their money and as having considerable discretion to spend it as they see fit. Note that section 34 only requires the operator to present a budget for the coming year. Residents in many villages want to shape the budget.</li> </ul>	<p>Make it clear that operators merely hold residents money and may only spend it as authorised by those residents. The residents of some villages may wish to delegate shaping of the budget to the operator.</p>	<p>Some enlightened operators to recognise residents' right to shape the budget and to receive regular reports (monthly or quarterly) of income and expenditure against the budget</p>
10	<p>Management complaint</p> <ul style="list-style-type: none"> <li>Many operators are reluctant to recognise a complaint or dispute (the distinction between dispute and complaint is unproductive).</li> </ul>	<p>Residents need a clear trigger definition</p>	<p>On the whole, early recognition of complaints aids in their resolution</p>
11	<p>Manager definition</p> <ul style="list-style-type: none"> <li>A confusing term</li> <li>Residents have difficulty distinguishing the village managers role from that of the operator</li> <li>operators who see the village manager as their employee doing their work rather than a person supplied to the village under contract to manage service provision on behalf of residents are also confused</li> </ul>	<p>RRVV prefers the term operator (distinguished from the owner where necessary)</p>	
12	<p>Management contract definition</p> <ul style="list-style-type: none"> <li>A confusing term given the variety of contractual</li> </ul>	<p>Simplify and clarify</p>	

	<p>documents offered by owners and operators. For example, operators often combine the management contract and the residence contract in a document titled lease, license or management agreement</p> <ul style="list-style-type: none"> <li>• Many operators are reluctant to enforce their contracts</li> </ul>	<p>Require all operators to enforce contracts ( i.e. they have no discretion if a resident asks for enforcement of a particular term)</p>	
13	<p>Owner definition</p> <ul style="list-style-type: none"> <li>• Too technical for residents and village managers</li> </ul>	<p>Simplify (use plain English)</p>	
14	<p>Owner resident definition</p> <ul style="list-style-type: none"> <li>• Too technical for residents and village managers</li> </ul>	<p>As above</p>	
15	<p>Personal services definition</p> <ul style="list-style-type: none"> <li>• Open to abuse (e.g. introduction of personal services used to shift costs onto residents)</li> </ul>	<p>Residents need an unambiguous definition of what services the base deal covers (subject only to resident approval of necessary funding), what are the guaranteed optional extras (guaranteed but subject to variation by special resolution) and those supplied without any form of guarantee?</p>	
16	<p>Prescribed period definition</p> <ul style="list-style-type: none"> <li>• Why not settle on the ATO financial year?</li> </ul>	<p>Use ATO financial year</p>	
17	<p>Refundable in-going contribution definition</p> <ul style="list-style-type: none"> <li>• A confusing term as there are usually substantial offsets</li> </ul>	<p>Clarify</p>	

18	<ul style="list-style-type: none"> <li>Residence contract definition</li> <li>See management contract above</li> </ul>		
19	<p>Residence documents definition</p> <ul style="list-style-type: none"> <li>Some operators argue that the separate listing of by-laws in this definition and elsewhere in the Act supports an interpretation that by-laws can only be found in a separate document and not in a contract.</li> </ul>	<p>Ensure the by-laws definition provision 'included in....a contract' is effective</p> <p>Ensure by-law included in a contract is covered by Section 37)</p>	
20	<p>Residence right definition</p> <ul style="list-style-type: none"> <li>Language out of date</li> </ul>	Update	What is the relevance of hospital reference?
21	<p>Resident dispute definition</p> <ul style="list-style-type: none"> <li>What is the definition of a dispute?</li> </ul>	<p>If there is a need to distinguish between a complaint and a dispute, define the difference.</p> <p>Note that many operators are reluctant to recognise a complaint or dispute. Residents need a clear trigger definition</p>	
22	<p>Residence documents</p> <ul style="list-style-type: none"> <li>Confusing terminology</li> <li>Do we need all of them?</li> </ul>	<p>Update and simplify</p> <p>Clarify that (g) the by-laws. does not imply that by-laws cannot be recorded in the contract <u>and</u> elsewhere or require the recording of all by-laws in a separate document</p>	Many operators lawyers argue that the definition of residence documents and other like references to documents taken as a whole override the by-laws definition
23	<p>Retirement village definition</p> <ul style="list-style-type: none"> <li>The definition requires an ingoing contribution</li> </ul>	A market focussed definition	The fact that another act now covers

	<ul style="list-style-type: none"> <li>Should landlease retirement communities be included in the definition?</li> </ul>	<p>The definition should focus on the purpose and residents rather than the ownership and financial arrangements (i.e. the definition should cover any new community explicitly established for retirees and likely to be seen by prospective residents as having the same purpose as a retirement village)</p>	<p>landlease communities should not be a reason to ignore the practical benefits of having the regulatory focus on all retiree specific communities.</p> <p>RRVV is aware of concerns that bringing landlease retirement communities under a new retirement village's act might increase costs and disadvantage poorer prospective residents. This concern is without foundation.</p>
24	Services definition	The definition is outdated	<p>Update definition.</p> <p>The fact that in-home care can extend to services that we once thought were the responsibility of hospitals does not justify the retention of the word hospital in the definition</p>
24	<p>Special resolution definition</p> <ul style="list-style-type: none"> <li>There are competing interpretations of the voting rules</li> </ul>	Standardise and clarify voting rules throughout the Act.	Also, see item 46
24	<p>Spouse definition</p> <ul style="list-style-type: none"> <li>Is there any reason to distinguish between a spouse and a domestic partner?</li> </ul>	Simplify if possible	
25	<p>Section 3(2) voting at an annual meeting</p> <ul style="list-style-type: none"> <li>Who can vote at an annual meeting (Section 6 does</li> </ul>	RRVV recommends one voting rule for all	

	<p>not define who may vote)</p> <ul style="list-style-type: none"> <li>• What makes residents who share accommodation jointly entitled rather than individually entitled to vote</li> </ul>	<p>votes and preferably one vote per resident voting</p>	
26	<p>Section 5(2) and Section 6 exemptions Are exemptions necessary?</p>	<p>No exemptions</p>	
27	<p>Section 9(4) (b) Encumbrances</p> <ul style="list-style-type: none"> <li>• Does requiring the owner to enter into an agreement adequately protect residents (e.g. what if the owner does not enter into the necessary agreements?)?</li> </ul>	<p>Make such release a condition of registration/licence?</p>	<p>Why not give residents unconditional priority? Why not a Government guarantee (similar to the Commonwealth guarantee of bank deposits)</p>
28	<p>Section 19 (2) Resident to be given certain documents</p> <ul style="list-style-type: none"> <li>• Are all of these documents (plus the fact sheet) necessary?</li> </ul>	<p>Solve the prospective buyer information problem by simplifying the Act and the contract, and prohibiting contract terms likely to confuse an elderly person</p>	<p>Treat the cause, not the symptom Prefer the simple solution over the complicated one</p>
29	<p>Section 26 Refund of in-going contribution</p> <ul style="list-style-type: none"> <li>• When taken in conjunction with the relevant regulations, can result in a former non-owner resident waiting years for the refund of an in-going contribution where there is no new resident</li> </ul>	<p>Require the village owner or operator to refund the ingoing contribution no later than 12 months after the non-owner resident has offered up vacant possession</p>	
30	<p>Part 5 Charges</p> <ul style="list-style-type: none"> <li>• Does the Berkley Living case illustrate weakness in Part 5 and the enforcement provisions</li> </ul>	<p>Residents need more effective protection than provided by the current Act.</p>	

31	<p>Section 32B Sale of premises</p> <ul style="list-style-type: none"> <li>• Allows the owner resident to set the sale price.</li> <li>• What about a leaseholder under a contract that returns the ingoing amount (after deductions) on the payment of an ingoing contribution by a new resident?</li> </ul>	<p>Leaseholders need protection against operators who claim they have the right to set the price</p>	
31	<p>Section 33 Annual meeting</p> <ul style="list-style-type: none"> <li>• Does not require the operator to conduct the meeting (some operators insist the residents' committee conduct the meeting and some residents' committee chairs and OC chairs insist on conducting the meetings)</li> </ul>	<p>Clarify</p>	<p>RRVV recommends that residents play no part in the organising or chairing the meeting</p>
32	<p>Section 34(3) Proceedings at annual meetings</p> <ul style="list-style-type: none"> <li>• Most operators present the operations budget in May or June so they can start the new maintenance charge from 1 July.</li> <li>• Few operators present the sinking fund budget for the coming year at the annual meeting let alone a full updated ten-year long term maintenance plan)</li> <li>• Most operators deliver their report on the preceding financial year around a set of special purpose financial reports. These reports (if properly prepared) satisfy most residents but not all</li> </ul>	<p>RRVV supports voting on the coming years budget and voting on the new maintenance charge (i.e. to select a budget and the necessary maintenance charge from alternatives (say three) in the last quarter of the financial year, whether or not the maintenance charge is above the adjusted maintenance charge</p> <p>Clarify the need to present a sinking fund budget (including residents choosing between alternative versions)</p> <p>Require a rolling ten-year maintenance plan for the sinking fund (income and detailed expenditure plan) and resident approval</p>	

		<p>Clarify that villages may choose to have as much involvement in preparing budgets as they wish (i.e. operators making all the decisions not on unless that is what residents choose)</p> <p>RRVV recommends giving residents who want more detail access to the source accounts under reasonable conditions (e.g. freedom of information process)</p>	
33	<p>Section 34(4) Audit</p> <ul style="list-style-type: none"> <li>• The audit requirements do not adequately protect residents</li> <li>• Some audits are so skimpy that they are a waste of money.</li> <li>• Residents typically play no part in choosing the auditor</li> </ul>	<p>RRVV recommends developing a more detailed audit mandate</p> <p>Similarly, RRVV recommends requiring operators to undertake and report on measures taken to:</p> <ul style="list-style-type: none"> <li>• detect and prevent fraud</li> <li>• ensure operators get the best value for residents money they spend (i.e. they spend it on the right things, and they buy at the best price for the quality required)</li> <li>• Gain all the necessary approvals required by the Act and the contract.</li> </ul> <p>RRVV recommends giving residents the right to choose the auditor by vote if they so wish</p>	
34	Section 36 Residents' committee		

	<ul style="list-style-type: none"> <li>• Nothing encourages a residents' committee to listen to or act on resident feedback</li> <li>• Committees' rights to fill casual vacancies are unclear to residents</li> <li>• Gives the right to call meetings of all residents to residents' committees but does not explicitly give ordinary residents acting as a group the right to call a meeting of residents.</li> <li>• Gives residents' committees the power to mediate disputes between residents</li> </ul>	<p>RRVV recommends giving broad powers to residents at a general meeting including the ability to delegate by special resolution some of those powers to their residents' committee or if there is no resident's committee, the village manager.</p> <p>Clarify the right to fill casual vacancies</p> <p>Give groups of residents the power to call meetings of residents and limit the ability of operators to call general meetings (subject to an exception when the resident body fails to take necessary action)</p> <p>RRVV recommends removing the power of a residents committee to mediate a disputes between residents in favour of independent mediators and not permitting a general meeting of residents to delegate the authority to approve a maintenance charge above the adjusted maintenance charge,</p> <p>Residents need the right to approve budgets (operations and sinking fund), sinking fund projects and to set reasonable limits on village managers spending on emergency repairs.</p>	<p>Residents' committees would benefit from model rules</p>
35	Section 36A Residents right to act through a representative	RRVV recommends limiting a person's right to appoint a proxy to represent him or her at a residents' committee meeting to committee	

		<p>members and requiring that a proxy be a member of that committee</p> <p>RRVV also recommends a resident have the unrestricted right to appoint a proxy to represent him or her at all general meetings of residents and elections</p>	
36	<p>Section 37 By-laws</p> <ul style="list-style-type: none"> <li>• Residents are not clear about whether they can propose by-laws, how to go about calling a meeting to deal with by-laws and who should chair the meeting.</li> <li>• They are</li> <li>• similarly not clear that operators must enforce by-laws</li> </ul>	<p>Clarify that residents can call meetings to make, revoke and alter by-laws and that operators must enforce by-laws</p>	
37	<p>Section 38 Increases in maintenance charges</p> <ul style="list-style-type: none"> <li>• Definition of special levy not clear. Not a maintenance charge (i.e. provision of goods and services) or a payment made in consideration of residence but: <ul style="list-style-type: none"> <li>○ what can it be for?</li> <li>○ is it a one-off payment (not a good idea if large) or a recurring payment of limited duration</li> <li>○ Application of section 38(5) not clear (needs a worked example)</li> </ul> </li> <li>• Section 38(4) voting is unclear</li> <li>• Section 38 (6) (b) not clear: <ul style="list-style-type: none"> <li>○ if the owner (village owner?) as distinct from</li> </ul> </li> </ul>	<p>Clarify</p> <p>Provide a worked example that illustrates all the aspects of 38(5).</p> <p>Clarify</p> <p>Clarify</p>	<p>RRVV can provide a worked 38(5) example, but one that has not yet survived serious testing</p>

	<p>the village must make an expenditure, why must the resident body cough up the cash? If the residents must pay (presumably a requirement of the Act, management contract or by-laws) and it's not for goods or services, what can it be for?</p> <ul style="list-style-type: none"> <li>○ an operator might too easily persuade residents who don't know their rights to pay up. It's too broad to be safe</li> <li>○ what could be in a residence contract that is not a payment in consideration of residence or a management contract that is not a payment for goods and services</li> </ul>		
39	<p>Section 38 AA Formula for calculation of adjusted maintenance charge</p> <ul style="list-style-type: none"> <li>• As written, the section requires calculation of the adjusted maintenance charge after the start of the financial year to which it applies, in most villages</li> </ul>	Calculate the adjusted maintenance charge in April in time for a budget meeting in May or June	
40	<p>Section 38B Maintenance charges – former non-owner residents</p> <ul style="list-style-type: none"> <li>• Stopping the maintenance charge after six months only penalises the remaining residents. A delay of longer than six months is usually the fault of the owner or operator</li> </ul>	Require the village owner to pay the maintenance charge	
41	<p>Section 38E Procedure for dealing with management complaints</p> <ul style="list-style-type: none"> <li>• The primary focus is on a document that the operator must produce more than on what residents want to know (their rights, the conditions that entitle them to complain, how to complain, the</li> </ul>	<p>Clarify residents' rights (including confidentiality).</p> <p>Early recognition of a complaint aids resolution and lowers administrative costs</p>	

	<p>process for resolving a complaint etc.</p> <ul style="list-style-type: none"> <li>• Many residents report that their operator denied that the conditions that entitle them to complain were met – often claiming that corrective action was in train (long delayed, according to the residents) so there was no complaint.</li> <li>• Many residents also report that their operator is unable to handle complaints against one of their staff members evenhandedly.</li> </ul>	<p>A resident may complain if he or she:</p> <ul style="list-style-type: none"> <li>• requested an action</li> <li>• is dissatisfied with the response to his or her request</li> </ul> <p>RRVV recommends that if a complaint is about an individual, the operator must prevent that person from handling the initial consideration of that complaint (e.g. if the complaint is about the village manager, the operator must arrange for someone else to deal with it). In the case of a small operator, it will be necessary to arrange for an independent party such as a local JP to handle initial consideration of the complaint</p> <p>An operator hearing a complaint against one of its own is very likely conflicted. If a resident believes that the handling of his or her complaint indicates the operator is conflicted he or she should have the right to take their complaint to an independent adjudicator immediately (i.e. an ombudsman)</p>	
42	<p>Section 38F Procedure for dealing with resident disputes</p> <p>The primary focus is on a document that the operator must produce more than on residents’ rights, the conditions that entitle them to complain, how to complain, the process for resolving a complaint etc.</p>	<p>Clarify residents rights (including confidentiality)</p> <p>Early recognition of a complaint aids resolution and lowers administrative costs</p> <p>Mediation is the preferred initial process,</p>	

	<p>Village managers often:</p> <ul style="list-style-type: none"> <li>• put themselves in-between the warring parties and end up becoming part of the problem</li> <li>• see themselves as judge and jury (and sometimes even the prosecutor)</li> </ul>	<p>preferably using a mediator who does not have a relationship with either of the parties</p> <p>In RRVV's experience, many complaints logged as resident complaints are three-way complaints (e.g., resident, resident and village manager or resident, resident and operator). RRVV recommends recognising three-way complaints</p>	<p>If the DSCV weren't so slow, a good solution would be a referral to that agency</p> <p>Take car parking, for example. The residents may be complaining about each other, but the root cause may be that the village manager has not enforced parking discipline or that the operator has not provided adequate visitor parking spaces.</p> <p>Village managers and operators are reluctant to accept that they might have played a part in what they see as a resident dispute.</p>
43	<p>Section 38G Residents to be informed of complaints and disputes mechanisms Not sufficiently specific</p>	<p>Make more specific ( when and how) Require operators to reach out to residents</p>	<p>Pinning a copy of the complaints procedure on an out of the way notice board is not good enough</p> <p>Similarly, advising residents they can get a copy from the office is not good enough.</p>
44	<p>Section 38H Recording and reporting requirements</p> <ul style="list-style-type: none"> <li>• Minimal</li> <li>• Most multi-village operators have little idea of the complaint lodged in their villages and so do not pick up systemic issues</li> </ul>	<p>Expand requirements RRVV recommends CAV establish a central complaints database.</p>	<p>It would be wrong to see expanded recording and reporting requirements as unproductive red tape. The time wasted on poor handling of complaints</p>

	<ul style="list-style-type: none"> <li>No one has an accurate picture of the number of complaints lodged in Victoria, the nature of those complaints and the outcome.</li> </ul>	Such a database would be a valuable source of information for the regulator, operators, residents and prospective residents	
45	<p>Section 38I Payments to owner residents</p> <ul style="list-style-type: none"> <li>Owner residents? What about non-owner residents?</li> <li>Why 14 day wait? If conveyancers can pay on the spot, why can't operators residents?</li> </ul>	Pay non-owner residents on the day of settlement	
46	<p>Voting at meetings of residents</p> <ul style="list-style-type: none"> <li>A mess</li> <li>Few operators understand the voting rules</li> <li>Even fewer residents understand the voting rules</li> <li>There is no provision for residents to vote by ballot</li> </ul>	<p>Simplify and clarify</p> <p>Voting by ballot an option but:</p> <ul style="list-style-type: none"> <li>Only after a general meeting at which residents had an opportunity to debate and amend the motion</li> <li>The need for a general meeting does not apply to elections of committee members</li> </ul>	<p>Some of the voting rules seem out of date compared to the voting rules followed in the wider community (for the most part, one person, one vote)</p> <p>Voting is a contentious issue in retirement villages. For example, some residents argue one service fee, one vote. Others argue that each service fee paid is largely a result of an obligation established by the contract between the operator and the individual residents to contribute funds to a pool of funds. Once the money is in the pool it loses its immediate connection with the contributor. Accordingly, they argue that all the residents who contributed to the pool, irrespective of the level of</p>



			their individual contribution, should have a vote on how the operators spend it
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<b>Contracts</b>			
<b>Resident Funded Village Model</b>			
<b>#</b>	<b>Issue</b>	<b>Current Act and Regulations</b>	<b>RRVV Proposal</b>
1	Residents' understanding: <ul style="list-style-type: none"> <li>• contracts are gobbledegook to most residents</li> <li>• payment structures are complicated (and in some cases tricky) and               <ul style="list-style-type: none"> <li>○ do not provide pricing certainty (e.g. some deferred fees keyed to the market price at contract termination)</li> <li>○ some fees commence at the beginning of the year and increment annually (unnecessarily coarse and an unnecessary complication)</li> </ul> </li> <li>• residents are unable to make an informed purchase decision</li> <li>• competition between villages inhibited</li> <li>• informed residents perceive contract complexity as disguising the real cost of retirement village living</li> </ul>	Does not address the issue	Solve the problem by addressing the cause rather than just the symptoms (further explanatory documents would not be necessary if the contracts were well drafted) Requirement: <ul style="list-style-type: none"> <li>• to issue contracts written in plain English</li> <li>• to offer simple payment structures               <ul style="list-style-type: none"> <li>○ all deferred fees keyed to the ongoing contribution</li> <li>○ all deferred fees incremented daily and calculated to the day</li> </ul> </li> </ul> Contract vetting <ul style="list-style-type: none"> <li>• contracts vetted by a competent authority before</li> <li>• Underlying policy commitment – informed purchasers and an efficient, competitive market</li> </ul>
2	Family solicitors' understanding <ul style="list-style-type: none"> <li>• Few family solicitors able to properly advise their clients</li> </ul>	Does not address the issue	
3	Vague contract provisions <ul style="list-style-type: none"> <li>• Residents unclear about what they have leased (e.g. what are the boundaries of the land they have leased)</li> </ul>	Does not address the issue	Include a site plan in the contract

	<p>and their responsibility to maintain that what they have leased</p> <ul style="list-style-type: none"> <li>• Maintenance responsibilities set out in contracts are often expressed in generic terms that do not align well with the specific property.</li>   <li>• The rectification of building faults is often treated as maintenance (a problem mostly arising during the tenure of the first resident but sometimes the faults do not show up until 10 or 20 years later</li>   <li>• New owners and operators tend not to honour interpretations of vague clauses negotiated by residents and previous owners and operators</li> </ul>	<p>Does not address the issue</p> <p>Does not address the issue</p> <p>Does not address the issue</p>	<p>Require itemised list that sets out the resident's responsibilities, the village's responsibilities and the owner's responsibilities specific to the property.</p> <p>Require the interpretation of vague contract terms to the disadvantage of the owner (e.g. if it is unclear, the owner or operator must pay)</p> <p>Rectification of building faults often charged to the sinking fund (i.e. charged to resident contributed funds). Treat this as misappropriation of resident contributed funds.</p> <p>Ensure responsibility passes from one village owner to the next</p>
4	<p>Classification of expenditure and financial responsibilities:</p> <ul style="list-style-type: none"> <li>• different contracts have different expenditure classifications and responsibilities</li> <li>• prospective residents, therefore, cannot readily compare one proposition against another (another complexity that tends to disguise the true cost of living in a village)</li> <li>• current residents are unable to effectively challenge</li> </ul>	<p>Does not address the issue</p>	<p>Standardise classifications and responsibilities</p>

	<p>their operator’s cost allocations (e.g. who pays for the replacement of capital items in a leasehold village and who pays for leasehold village improvements that have the potential to increase the owner’s income?)</p>		
5	<p><b>Gouging</b></p> <p>There are as many opportunities to gouge as there are discrete contracts, but only a minority of owners and operators take advantage of the opportunity</p> <ul style="list-style-type: none"> <li>• Example 1 – Excessive DMF charge <ul style="list-style-type: none"> <li>○ A resident paid an ingoing contribution equivalent to the market value of a similar outside the village.</li> <li>○ DMF of 35% of ingoing amount reached at the end of year 3</li> <li>○ The resident died at the beginning of year 4</li> <li>○ The DMF cost to the resident (i.e. excluding the maintenance charge) taken over the three years is around 11.5% a year – much more than the cost of renting a similar non-village property</li> <li>○ In summary, the resident has paid capital for the property plus has above-market paid rent on the property</li> </ul> </li> <li>• Example 2 – Excessive reinstatement charge <ul style="list-style-type: none"> <li>○ The contractor purported to give the operator the right to undertake reinstatement necessary to achieve the best resale price</li> <li>○ A 33% DMF struck as a % of the resale price</li> <li>○ \$15,000 of the resident’s money spent on repairing</li> </ul> </li> </ul>	Does not address the issue	<p>The argument that a retirement village property is a lifestyle decision and not an investment is irrelevant.</p> <p>Similarly, the argument that the contract presented all the facts, so the resident was fully informed is unsound. This is a resident who needs protection</p> <p>A ruse to extract more money form residents?</p>

	<p>damage (including new carpets and painting</p> <ul style="list-style-type: none"> <li>○ \$10,000 of the resident’s money spent on new appliances to bring the unit ‘up to contemporary standards’. The operator estimated this would add \$10,000 to the resale price. It did</li> <li>○ The increase in the price increased the DMF the resident paid by \$3,300.</li> <li>○ In summary, the operators spent \$10,000 of the resident’s money for a return of \$7,700 and pocketed the balance.</li> </ul> <ul style="list-style-type: none"> <li>● Example 3 Sharing of capital gain but not of capital loss <ul style="list-style-type: none"> <li>○ If resale crystallises a capital gain, the operator takes 50% of the gain</li> <li>○ If resale crystallises a capital loss, the resident must pay the operator the full amount of the loss from the sum received from the new resident.</li> </ul> </li> </ul>		<p>Heads I win, tails you lose?</p>
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