

Options Paper Summary - Options for reforming the Retirement Villages Act 1986

The Options Paper is an important step in the review of the *Retirement Villages Act 1986* (the Review). The Review is being undertaken in recognition of the importance retirement villages play in the Victorian community. It is essential that all Victorians, including older Victorians, can make informed choices when choosing where and how they would like to live.

This document has been developed to assist in navigating the Options Paper which can be found on the Engage Victoria website at <https://engage.vic.gov.au/retirementvillagesact>

About the paper

The Review sets out the following five key questions that are the basis of the Review

- 1. What does the *Retirement Villages Act 1986* (RV Act) need to include to support well-functioning retirement villages?**
- 2. What information should be provided to prospective and current residents and when?**
- 3. How can protections for exiting retirement village residents be strengthened?**
- 4. Are the current internal and external dispute resolution processes adequate?**
- 5. What is the best governance framework to support well-functioning retirement villages?**

Under each of these key questions a set of options have been developed to help guide feedback in response to the Options Paper.

Each Option includes a high-level summary of the issue and option/s to address the issue. Also provided for each option is a detailed analysis of the issue, a summary of stakeholder feedback and additional details.

You can choose to provide feedback on some, or all of the questions and options.

Key Questions

What does the RV Act need to include to support well-functioning retirement villages?

If residents and prospective residents are to understand their rights, it is essential that everyone has a common understanding of what a retirement village is. The current scope of the RV Act is narrow and excludes some forms of retirement housing, such as a retirement village established or operated by a religious or charitable organisation, exempted by the Director, Consumer Affairs Victoria or Part 4A Parks which often advertise as Lifestyle Village. The RV Act should clearly outline the types of housing and residential options inside and outside its scope.

The purpose of the RV Act also needs to be clear. The current purpose is narrow and doesn't provide a rights-based framework for robust protection of the rights of residents. Both New South Wales and Queensland have legislation with detailed objectives that specifically address the rights and obligations of residents and operators, and the need for transparent information and clear and detailed contracts. This Options Paper asks whether Victoria should adopt a similar approach.

Option 1 - Amend the RV Act to:

- *explicitly clarify types of housing which fall outside its scope, and/or*
- *more clearly define particular types of tenure.*

Option 2 - Amend the Act to provide an expanded set of purposes or objectives.

What information should be provided to prospective and current residents and when?

Stakeholders have been clear that they want to be active and informed in making choices about their retirement living, given the importance of such a decision. Confidence in decision making can only happen if prospective residents are provided with the information they need, in a form that can be easily understood. The complexity and significance of the decision to enter a retirement village demands transparent information to ensure residents (prospective and current) have a clear understanding of what to expect as a resident in a village. This information needs to be available both when someone is considering entering and exiting a village. The Options Paper discusses the need to improve information in areas highlighted by stakeholders.

Disclosure obligations

The RV Act requires operators to give prospective residents certain information before a contract can be signed. However, even with this information, residents can still be caught unawares by the fees that may arise and the overall cost of residing in a retirement village. The Options Paper asks whether all fees should be disclosed in advertising materials, and whether more information should be provided in different formats.

Option 3 - Amend the RV Act to improve disclosure obligations to provide more support to residents by:

- *requiring all fees to be disclosed in advertising materials and/or*
- *introducing material fact provisions and/or*
- *requiring factsheets and disclosure statements to be available online*

Payment options

There are several different payment options for retirement villages, but most include a deferred management fee (DMF). Residents told us that, as DMFs are set by individual operators, it is difficult to calculate a DMF and to compare costs between villages. Residents can also be surprised by the amount of the DMF. The Options Paper suggests that a DMF be defined in the RV Act, that education about payment methods be improved and that villages offer yearly contract check-ups to residents that clarify the status of their DMF.

Option 4 - Improve understanding of retirement village payment models by:

- *defining 'deferred management fee' and/or*
- *expanding education materials on the deferred management fee to include alternative payment models and/or*
- *introducing yearly contract check-ups on request*

Contract complexity

Residents and their families continue to find retirement village contracts too complex. The reforms in 2014 made some improvements, but also resulted in longer contracts with more required terms. The Options Paper discusses further improvements that could be made to contracts, the benefits of using plain English in contracts, and whether more can be done to improve residents' knowledge and understanding of contracts and the significance of particular aspects of a contract. The paper also raises the option that residents should be required to get legal advice before signing a contract, while acknowledging this advice may be costly to provide.

Option 5 - Reform the contract process by:

- ***requiring contracts to be in plain English and/or***
- ***working with advocacy and legal assistance services to improve knowledge of contracts and/or***
- ***introducing a requirement that residents must get legal advice before signing contracts.***

Maintenance charges

Retirement Villages need regular maintenance and repair to ensure that the infrastructure and facilities remain safe and age-friendly, and residents generally pay a regular maintenance fee. However, there is often, confusion about who is responsible for repair and maintenance of units and common areas of a village. The Options Paper discusses the need for greater clarity in this area and asks whether the RV Act should be amended to explicitly set out who bears the responsibility for maintenance of each area and to provide greater resident oversight of maintenance.

Option 6 - Amend the RV Act to clarify all maintenance and repair requirements

Supported and informed choices

Even if information is easily available and clearly understood by prospective residents, the decision to enter a retirement village remains complex and is a significant financial decision. The significance of this decision is balanced by the requirements of the consideration period and the availability of cooling off and settling in periods. The Options Paper looks at each of these.

Submissions to the Issues Paper identified that the current 21-day consideration period appears well accepted, and therefore the Options Paper does not suggest any changes to it. Cooling off periods vary across jurisdictions and Victoria's period of three business days contrasts with the seven days required in New South Wales and the 14-day period in Queensland.

The RV Act does not provide a settling-in period, during which time a resident could change their mind and move out, without significant financial penalty. This option is a feature of the retirement village market in several other states.

The Options Paper suggests extending the cooling-off period and introducing a settling-in period and asks what length of time would balance residents' need to have their choices supported with operators' needs for financial certainty.

Option 7 - Amend the Act to:

- ***extend the cooling-off period and/or***
- ***introduce a settling-in period***

How can protections for exiting retirement village residents be strengthened?

The complexity and significance of the decision to move into a retirement village requires consumer protections that go beyond those provided for general transactions. Strengthening these protections will protect vulnerable residents and support the provision of safe and secure housing for senior Victorians.

Stakeholders were particularly concerned about their exit entitlements. The Options Paper discusses operators' ability to levy on-going charges after a resident leaves and a new resident moves in, and whether there should be time limits on these charges. The responsibility for reinstatement and renovation costs is often unclear and departing residents and their families can be faced with unexpected costs when a unit is sold or re-leased. The paper also explores whether these costs can be more clearly defined, and if condition reports upon entry should be mandatory. The RV Act already enables residents to take an active role in selling a residence, but residents said that they could be better informed and have more power in this process. Residents' rights in sale or re-lease of a unit could be clarified in the RV Act and selling costs could be regulated.

The RV Act does not prescribe how capital gains and losses are shared between residents and owners. Currently individual operators determine how capital gains and losses are distributed. Residents raised a variety of concerns with this process, while operators raised concerns with limiting flexibility in these arrangements. The Options Paper considers whether the share of capital losses should be regulated.

Residents on a strata-title arrangement have no guarantee that their exit entitlement will be paid back within a certain time after their departure. If the sale of their residence takes longer than expected, this delay can become difficult to bear. New South Wales and Queensland set requirements for mandatory buybacks after certain time limits and the paper considers whether this should be replicated in Victoria.

Ongoing charges

While village operators rely on ongoing charges to pay for ongoing services and maintenance provided during the transition period between residents, these charges can create financial difficulties for residents leaving a retirement village and their families, particularly if there are delays in securing an incoming resident.

Option 8 - Amend the timeframe in which ongoing fees (personal services and maintenance charges) can be charged to residents leaving a retirement village.

Reinstatement and Renovation costs

Current contract-based arrangements have led to a lack of clarity regarding responsibility for reinstatement and renovation costs. This can leave departing residents (and/or their families) exposed to unanticipated costs during the sale/re-leasing process and create issues for village operators.

Option 9 - Clarify reinstatement and renovation requirements for RV residents and operators by:

- ***defining fair wear and tear, reinstatement and renovation works and/or***

- *requiring a condition report to be completed on village entry and exit and/or*
- *allocating renovation costs in line with capital gains share*

Sale and re-leasing

The RV Act enables residents to take an active role in the sale of a residence by setting a sale price and appointing a selling agent of their choice. It also requires operators to provide regular information to residents on sales activities at the request of the resident but leaves some of the selling process to the residence contract. Residents feel they could be more informed and empowered about the sales process.

Option 10 - Clarify residents' rights in the sale or re-lease of retirement village units, including regulating costs incurred by residents and operators.

Capital gains and losses

Residents may be disadvantaged by the current model of capital gains and loss distribution, which is set out by individual operators in the residence contract. The RV Act and regulations do not prescribe how capital gains or losses are apportioned or detail how these may interact with other costs that may be incurred on the residents' behalf. Residents may not be in a position to absorb capital losses.

Option 11 - Regulate share of capital losses

Mandatory repayment of exit entitlements

Where a resident has entered into a contract after 2006 with a loan-lease or loan-licence arrangement (non-owner resident), they may receive their exit entitlement within six months of their departure or take on an active role in the re-lease of their residence, such as appointing an agent (depending on their contract).

Residents on strata title arrangements (owner residents) can also take on an active role in the resale of their residence, however there are no provisions for the repayment of the exit entitlement if their residence remains unsold. Where the sale of a residence is delayed or takes longer than expected, owner residents face a significant wait to receive their exit entitlement.

Option 12 - Introduce a requirement to repay a resident's exit entitlement for RV units not re-sold within a specified timeframe.

Are the current internal and external dispute resolution processes adequate?

Disputes arise in any community, and in retirement villages it is important that there be a simple and accessible way to resolve these disputes. The Options Paper discusses how existing internal dispute mechanisms could be improved and the role of resident committees in resolving disputes. Retirement village staff and managers could undertake accredited dispute resolution training, and government could establish a mandatory code of conduct for the resolution of internal disputes.

Option 13 - Clarify and enhance internal dispute resolution procedures, including removing the role of residents committees in resident disputes and/or mandating a code of conduct.



There is also a role for external dispute resolution if internal processes are unable to resolve a dispute, but these processes can be seen as costly and complicated. The Options Paper raises whether conciliation should be mandatory, and whether there is a place for binding orders.

Option 14 - Reform the external dispute resolution process by enhancing specialist services and introducing mandatory conciliation.

What is the best governance framework to support well-functioning retirement villages?

The foundation of a strong and equitable retirement village market is a robust governance framework. The Options Paper discusses this from a foundation in clear rights and responsibilities through merits of accreditation, strengthening the existing voluntary accreditation or developing a mandatory accreditation scheme in consultation with stakeholders.

Rights and responsibilities

Residents and operators should have a clear understanding of their respective rights and responsibilities. Residents have called for greater recognition of their rights and the Options Paper suggests a range of rights and responsibilities that could be included in the RV Act. The paper also discusses the potential for a legislated code of conduct.

Option 15 - Amend the Act to prescribe rights and responsibilities for RV operators and residents, supported by a mandatory Code of Conduct.

Residents committees

Responses to the Issues Paper revealed that many residents do not have confidence in residents committees, particularly in making impartial decisions. The Options Paper discusses clarifying the powers and functions of residents committee by establishing rules around tenure, the maximum number of members, meeting procedures, village budgets and resident fees, reporting on committee deliberations and several other areas.

Option 16 - Improve the operation of residents committees by:

- ***clarifying residents' committee powers and functions and/or***
- ***providing additional guidance on village operators and managers attending residents' committee meetings***
- ***clarifying arrangements for resident participation***

Staff Accreditation

Currently the RV Act does not require that staff have any particular qualifications or training. Responses to the Issues Paper highlighted that standards and skills can differ between retirement villages and residents suggest that managers at least should be required to have a certain level of training or competency. The Options Paper discusses the development of a training regime or a mandatory qualification that could be required for those who work in retirement villages.

Option 17 - Improve staff qualifications by:

- ***expanding disqualification criteria for RV staff and/or***

- *developing and mandating participation in a training and professional development regime*
- *developing and implementing a qualification for managers of retirement villages*

Village Accreditation

While some operators have obtained accreditation under the voluntary accreditation scheme there is currently no obligation for retirement villages to be accredited in Victoria. Retirement villages can therefore vary significantly in their practices, and in the quality of accommodation they provide to residents. Feedback on this issue indicated both support for an accreditation scheme, and concern that it would be costly and not practical for some providers.

Option 18 - Improve industry practices and resident outcomes across retirement villages by:

- *strengthening existing voluntary accreditation or*
- *developing a mandatory accreditation scheme in consultation with stakeholders*

Industry Ombudsman

This option centres on enabling integrated service planning and delivery through an Industry Ombudsman. The Ombudsman would provide information services, advice, and referrals, help through internal resolution processes, mandatory conciliation, issue binding orders as a result of mandatory conciliation, and provide independent policy advice.

Option 19 - Reform the external dispute resolution process by the creation of an Industry Ombudsman.

How to be involved?

Responses can be submitted until 26 April 2021 on

- **Online at:** www.engage.vic.gov.au/retirementvillagesact
- **By email** at rvreview@justice.vic.gov.au
- **By mail**

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