

Submission to the Review of the Retirement Villages Act 1986

Thank you for the opportunity to submit comments in regard to the changes needed to the Retirement Villages Act 1986. This submission is made on behalf of the Residents' Committee of Classic Residences (Retirement Village) [REDACTED].

We strongly support the need for a review and a major rewriting of the current act. The key changes we consider necessary are

- Improving the information provided to prospective residents prior to their committing to buying into a retirement village
- Raising the financial reporting required of owners/operators
- Establishing auditable and independently audited codes of conduct for owners/operators and service providers including enforceable performance indicators
- Establishment of a low cost independent and enforceable dispute resolution process
- Separating the contractual arrangements for provision of accommodation from those for the provision of services; to bring the arrangements more in line with Aged Care
- Clarifying the distinction between maintenance and capital works in order to clarify who is responsible for such works – the village or the resident(?)
- Clarifying the rights of village management to refuse to accept as new residents persons who are not capable of living independently, (even with support if necessary).
- Strengthening the role of residents' committees including strengthening the requirement for owners/managers to provide such committees with adequate and timely information.

These points are addressed in more detail below (note the numbers in brackets refer to the question in the issues paper where relevant)

Purchase of Property

1. Clarity of offer

In-house sales teams be required to comply with a Code of Conduct that requires sales staff to be responsible and to not make inaccurate or unrealistic claims regarding future services or residents' rights.

Background: There have been claims of sales staff misrepresenting the rights of residents to change the interior décor of an apartment or change the landscaping of gardens adjacent to a villa. Prospective residents may select an apartment or villa anticipating that they are going to be additional amenities provided or that they will be able to make modifications to the residence of choice and it is important that the rights of resident are realistically set out.

2. Clarity of exit costs (8)

Recommendation: Retirement village owners/operators be required to provide a clear and concise statement of exit costs when residents/residents nominees begin the

purchase process. This should include the nature of the costs and how they will be calculated.

Background: Despite the requirement in the current act for a disclosure statement it is apparent residents are still confused about exit costs especially those costs associated with refurbishment and reinstatement

The nature and scope of exit costs are in effect an addition to the purchase price. Some village owners/operators are now providing for the deferred management fee to be paid up front. The increase in the purchase price when this option is offered provides the “real” cost of purchase. It also enables the resident to determine whether or not the purchase represents value for money or whether the residence is overpriced.

3. **Deferred Management Fee (14, 15, 16, 45)**

- a. *Recommendation:* Deferred management fees should be capped at 20%. This would mean 20% of the sale price when the resident/resident’s nominee sells the property or alternatively 20% of the purchase price if it is to be paid up front.

The DMF should not be charged twice on a move to a smaller property within a retirement village.

Background: The deferred management fee is the resident’s contribution to the refurbishment of the common areas of the retirement village which is charged on an “enjoy now, pay later basis”. The fee is currently calculated on the basis of an agreed percentage of the sale price multiplied by an agreed number of years. It varies from retirement village to retirement village. A cap on this would ensure that retirement village owner/operators would bear some of the responsibility for and effectively manage maintenance and upgrade programs to a budget.

There has in some villages been a practice when a resident moves within a retirement village (for example to a smaller apartment on the death of a partner) to charge the DMF twice i.e. on the sale of the original property and on the sale of second property. Best practice and social policy would indicate that this is no longer an acceptable option

- b. **Further, re question 14**

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

Recommendation: Village operators should be required to disclose potential deferred management fees to prospective residents during purchase negotiations.

However, in disclosing the estimated future Deferred Management Fee (DMF) it needs to be recognised that at the time of entering a retirement village, the DMF is at best an estimated amount because it is calculated on a formula dependent on the number of years living in the village, capped at a maximum.

Further both property values, economic circumstances and the time value of money can change over time.

c. Re question 15

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

Recommendation: Arrangements for pay –as-you-go or pro rata DMF are a desirable option. However, care needs to be taken to ensure this does not have the effect of encouraging residents to enter a RV at a very frail time of their life, knowing they probably have only 2-5 years before exiting anticipating that, a pro rata DMF will not greatly affect their exit value.

Background: DM Fees were originally intended to work to lower the entry price by recognising the freehold value retained by the village owner. However, they have become the primary means by which income is generated for the village owner

d. Re question 16

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

Recommendation: An up-to-date estimate of departure fees should be provided to every resident on an annual basis, or at least every time an independent valuation is made on all individual residences within a village. It would be formula-driven based on the terms of each resident's contract and include the estimated current market value of each residence. So it would not be costly to administer this annual (or bi-annual) disclosure. It is important disclosure to residents in enabling them to regularly review their financial planning and decision-making in retirement.

4. Role of Residents' Committees (25-28)

Recommendation: The role of Residents' Committees should be updated to provide more scope for the audit, review and replacement of village management/service providers where critical key performance indicators are not being met or where village management is not meeting their fiduciary obligations to act in the best interests of residents or has unreported or unresolved conflicts of interest. By implication, there is a role for Residents' Committees in auditing and review of charges for services and utilities, financial management, maintenance and capital works.

Background: The nature, scope and populations of Retirement Villages have changed substantially since 1986. In addition, consumer rights and corporate obligations have also changed. The role of Residents' Committees should change to reflect this and to enable management of issues at a local level, as far as possible,

Corporate Structure

5. Separation of ownership, management and services supply structure(s) (25, 26, 27, and 28)

Recommendation: Retirement village residents should be able to “replace” village management or goods and services providers where an independent village audit identifies that critical key performance indicators are not being met or where village management is not meeting their fiduciary obligations to act in the best interests of residents or has unreported or unresolved conflicts of interest.

Desirably there should contractual separation between ownership/management and services/goods supply

Managers/operators should be obliged to make available to resident committees details of contractual arrangements entered into with external providers for the provision of services

Background: It should not be forgotten that village management is charged with managing villages for and on behalf of residents using residents’ money. Residents’ Committees currently have very limited powers and there is no independent oversight of the manner in which services are provided.

Where retirement village management is part of the same legal entity as the village owners/operators or suppliers of goods and services, there can be significant conflicts of interest e.g. care and support services, maintenance and refurbishment contractors and sub-contractors, increases to service charges, loans agreements with residents etc.

It is a not uncommon practice in age care for owners of aged care residences to sub-contract all or part of operations/management to a third party

6. Annual meetings and reporting

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

Recommendation: The minimum disclosure requirements in financial statements of RVs needs to be seriously reviewed, ensuring that RVs with different complexities of operations are all covered. In particular, full disclosure details should be given relating to financial transactions of embedded electricity, telephone and broadband systems; any internal profit-centres like the operating of a Village-staffed restaurant. The Long-term Maintenance Fund should give standardized disclosure categories within maintenance and development expenditures.

Background: The level of detail included in financial statements is currently inadequate because it is not subjected to the disclosure requirements of AASB101 Presentation of Financial Statements. Rather, RV financial statements are classified

as 'special purpose reports'. This allows Villages to avoid certain accounting-standards based reporting requirements such providing comparative figures of the prior year's financial statements, or not giving details in footnotes for several items.

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

Recommendation: The annual financial statements for a Village should be made available to residents at least 14 days before an AGM. If the Village has a Residents' Committee, then this committee should receive financial statements at least 21 days before an AGM.

Background: The reason is that a Residents' Committee is likely to be able to line up one or more residents with high-level accounting/finance expertise, to study and comment on the financial statements and, if necessary, convey their comments/analysis to all residents in advance of the AGM.

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

Recommendations: Financial statements should not only be presented annually, but also quarterly. Quarterly actuals for operating revenues and expenses should be compared with operating budget and variances shows. These quarterly results should, at least, be provided to the Residents' Committee (and its Finance Subcommittee).

Background: This frequency of financial reporting will make Village management better accountable to residents. Further, at each Village annual budget meeting, residents should be given, in advance, and asked to endorse the Annual Operating Budget, together with an accompanying 5-year rolling Long-term Maintenance Fund Budget.

7. Maintenance and capital replacement funds and plans (36 & 37)

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

Recommendation: All retirement villages should be required to have maintenance and/or capital replacement plan and funds?

Background: Without maintenance and capital replacement plans and funds, an RV would become unattractive and unsafe. Maintaining an attractive and safe life style should be the mantra of every RV in order to uphold the good reputation of the retirement living industry.

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

Recommendation 1: All RV's should have a 5-year rolling Long-term Maintenance (LTMF) Budget . This budget should be presented to residents annually for their endorsement. This gives residents the opportunity to put their views on the prioritization of capital expenditure projects in their Village.

Recommendation 2: The practice of taking a percentage (usually 4%) of resale proceeds (when resident's exit) as the primary source of income for the separate LTMF provision account should continue. LTMF monies should be restricted to low-risk investments that have a liquidity profile that matches the 5-year LTMF budget.

8. Scope and responsibility for renovation/re-instatement (43)

Recommendation: Retirement village owners/operators be required to advise, at the time of purchase, future residents or their nominees of the scope of the refurbishment that has taken place on the property under consideration, the scope of their responsibility for renovation/refurbishment on the eventual sale of the property and the current day cost of same.

Background: The nature and scope of renovation/re-instatement costs are in effect an addition to the purchase price. This is particularly so when there is a significant differential between the renovation provided on entry to the property and that required on exiting the property.

9. Sale of property (43)

Clarity of exit costs

Recommendation: Retirement village owners/operators be required to provide a clear and concise statement of costs when residents/residents nominees begin the sale process. This should include the nature of the cost and how it has been calculated.

Background: Many residents/residents' nominees require certainty re the residual amount when the sale has been completed. There have been complaints that this is often not the case. This leaves residents/residents' nominees financially compromised with respect to their next move.

10. Scope and responsibility for renovation/re-instatement (43)

Recommendation: The responsibility for the cost of renovation/upgrading (excluding fair wear and tear) be shared equally between the retirement village owner/operator and the departing resident/resident's nominee in equal proportion to the share of the gross capital gain on the property. The cost of fair wear and tear be borne by the village and the cost of reinstatement of damage be borne by the departing resident/resident's nominee

Background: Most retirement villages enter into life time leases with residents. While the resident benefits from any renovation/re-instatement in the capital gain received when the property is sold, this capital gain also benefits the retirement village owner/operator.

There needs to be more clarity regarding what is fair wear and tear and what is upgrade or modernisation and what the incoming resident should expect and what the outgoing resident and the village/operator is responsible for

The legal position of retirement village residents appears to be somewhere between commercial tenancies and residential tenancies. Given the residential nature of the investment, legal rights and responsibilities should more closely aligned to the residential tenancy requirements.

Most retirement village owners/operators have rules and guidelines re the use of external contractors on-site and most have preferred contractors. This tends to inflate the cost to the resident. This is in part because it is difficult for residents to directly engage contractors as contractors may be unwilling to go through the processes required for being able to work on site. It is also in part due to the lack of competition. It may also be regarded as a subtle form of third-line forcing.

11. Code of Conduct for in-house sales teams (42)

Recommendation: In-house sales teams be required to comply with a Code of Conduct that requires sales staff to apply their best efforts to the sale of all properties and to charge commercially competitive rates; and to not make inaccurate or unrealistic claims regarding future services or residents' rights (see 1).

Background: There have been reports of instances in retirement villages where in-house sales staff do not apply their best efforts to the sale of particular properties. This has a significant impact on the ability of the resident to make the next move. The reasons for this are varied but they are often impacted by difficulties in personal relationships between staff on the in-house sales team and the resident.

Rates charged by in-house sales teams are at the upper end of the market and should be more closely aligned to the level of skill and effort required.

12. Time frames for sale

Recommendation: Retirement village owners/operators be required to purchase vacant properties at market value if they have not sold within 12 months of the resident/resident's nominee providing vacant position. Renovation/reinstatement should be carried out as quickly as practical after "vacant possession" Retirement village owners/operators should be required to pay the service fee and other recurrent costs on behalf of the resident/resident's nominee after six months after vacant possession.

Background: There are often substantial periods of time before retirement village owners/operators are offered vacant possession by residents' nominees. This has the effect of delaying renovation/re-instatement.

In-house renovations/re-instatements are often not tightly managed and take place over extended periods of time. The resident/resident's nominee ceases to pay the service fee at the end of 6 months or another specified period of time. This means that the cost of these delays is borne by the resident body generally.

Residents/residents' nominees bear the cost and other impacts of delays in sale. There is little incentive for in-house sales teams to ramp up sales activity or to price to the market. A requirement for retirement village owners/operators to purchase

properties at market value if not sold within a specified period of time would provide such an incentive.

Compliance with legislation and Code of Conduct

12 Resident's Rights

(a) Suitability of retirement village environment for individual (4.2.4)

Recommendation: There should be a transparent and auditable process that enables retirement village owners/operators to assess the suitability of the retirement village environment for individuals on health and capacity grounds.

Background: Villages, residents have expressed concern at the frailty of some new residents. Village management often emphasises independent living and only provides services for these residents at significant additional cost. In many instances, caring for the frail elderly falls to neighbours who are also aging.

Legislation and regulation in this area needs to be carefully worded to prevent misuse of the powers provided. For example it should not be allowable for a prospective resident to be rejected on the grounds of disability for which the prospective resident is provided support

(b) Quiet enjoyment

Recommendation: All villages should have a Code of Conduct based on a model Code of Resident Conduct to be provided for by legislation/regulation. There should be a transparent and auditable process that enables retirement village owners/operators in conjunction with village management to address situations in which a resident or group of residents interferes with the quiet enjoyment of other residents. Such a process should include a range of options for dealing with such residents up to and including a revocation of the lease or contract. Options provided should be proportional to the resident conduct and be similar to those provided in Owners' Corporations

Background: While most residents are mindful of the conduct requirements underpinning "quiet" enjoyment, there need to be scope to address issues that do arise in a consistent manner that provides procedural fairness to residents. Legislation and regulation in this area needs to be carefully worded to prevent misuse of the powers provided.

13. Need for Retirement Villages Ombudsman (47, 48, 49)

Recommendation: The amended Victorian *Retirement Villages Act* should provide for a Retirement Villages Ombudsman Scheme which would have as its functions regulatory compliance auditing, complaint handling, dispute resolution, provision of advocacy services for residents in dispute with management and oversight of processes for removal/replacement of village management. Such a scheme would ensure fairness in each of these areas and address the current power imbalance between residents and retirement village owners/operators.

Background: Currently village compliance with the Retirement Industry Code of Conduct is voluntary and subject to self-audit only. Where a process or conduct does not comply with the code of Conduct, self-audit is of little value. (Refer also point 12 below)

The current processes for residents with complaints or disputes with village management varies from village to village and are heavily weighted towards village owners/operators and village management. There is a tendency to over-ride or ignore resident concerns. This is of particular concern when you are dealing with an aging and vulnerable group.

It is not appropriate for Residents' Committees to be involved in the resolution of disputes between residents. Apart from the obvious conflicts of interest that can arise, members of these committees are generally not skilled in disputes resolution.

14. Code of Conduct

Recommendation: All Owner/manager/operator performance should be required to be independently audit against Industry Code(s) of Conduct with enforceable penalties for non compliance.

Background: Currently village compliance with the Retirement Industry Code of Conduct is voluntary and subject to self-audit only. Where a process or conduct does not comply with the code of Conduct, self-audit is of little value.

Operators do their own internal auditing of compliance and provide their own written confirmation of compliance to the code administrator. Upon receipt of which the code administrator issues a certificate of compliance. Thus the code relies for its routine performance on the operator's own claims as to how well it is performing.

We acknowledge that there is provision for independent audits in the event of an operator being found to have severely breached the code or to have been guilty of three major breaches within 12 months, but even then the auditing is limited to the areas of activity where the breaches occurred. This seems seriously inadequate since if an operator has been guilty of a severe breach (or worse still of three major breaches) the operator should be required to show that all of its activities are compliant.

In our view for the code to be truly effective operators should be required to undergo an independent audit (at their cost) at least once every five years.

We also believe the code should specify what the administrator is to report on annually. It is essential that the same issues/events are monitored and reported year by year so that a picture can be seen of whether or not compliance is improving or worsening

15. Retrospectivity of changes to RVA

Recommendation: Where current contracts are in conflict with changes made under the *Retirement Villages Act*, the provisions of the retirement villages act are to be read into the contract.

Background: Without retrospectivity of key clauses, the sunset clauses will last way too long

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