SUBMISSION TO THE RETIREMENT VILLAGES ACT REVIEW

Principles underpinning the Act

The Retirement Villages Act is written in a very old-fashioned style which does not clarify rights of residents, owners and managers. It opts to define requirements in detail, either in the Act or regulations, rather than defining the principles that apply.

Definition of retirement villages

The Act defines a retirement village as a retired person ‘required to pay an in-going contribution’.

This is at odds with the motivation of many people considering a retirement village who are looking to live in a community setting which provides accommodation and services suitable to an older group.

What good or service is being purchased?

The issues paper identifies five financial models of retirement villages:

1. the strata title model;
2. the loan-lease or loan-licence model;
3. the mixed tenure model;
4. the full rental model;
5. the company share model.

In items 1, 4 and 5 there are overlapping legislative requirements with the Retirement Villages Act and there is greater clarity about the nature of ownership.

In the case of the loan-lease or loan-licence model, it is unclear what product or service is being purchased and whether there is readily tradable ownership.

Is the loan-lease/ loan-licence model a financial product?

A resident entering a retirement village pays an ingoing contribution to gain the right to reside in a specific unit. There is no interest paid on that contribution. The ingoing contribution does not appear to represent a ‘bond’ that is contingent on the state of the unit on departure, as in a rental situation. If it did there would be a requirement for condition reports at entry and departure.

If the resident departs, they are required to pay a deferred management fee; they may or may not share the capital gain on the unit; and they may not be able to receive the balance of their contribution until the unit is sold. As a result, there are very significant financial implications to entering a retirement village. The implications can impact the resident and/or their family.

In such a scenario, it can be argued that most of the risk is managed by the resident. This could be limited if there was a requirement for the owner/manager to take out insurance to cover the delay in sale of the unit.

Given the financial implications, entering a retirement village can be argued to be a financial product that should be regulated by ASIC. Entry to a village would be best informed following **personal** financial advice from a registered adviser.

Application of Australian Consumer Law

There is an urgent need to clarify how the Australian Consumer Law applies to the loan/lease model.

How do the following apply to this model:

- unfair contract terms;
- unfair business practices; and
- unconscionable conduct?

Many residents argue the model is unfair. Guidance on consumer protection in the retirement villages industry is needed.

National regulation

All States and Territories have dealt with, or are currently dealing with, similar concerns about retirement villages to Victoria.

For example, Queensland has recently addressed:

- the disclosure process;
- reinstatement or renovation issues;
- determining resale value;
- village closure, redevelopment or transition;
- standardised contracts;
- financial reporting;
- general service charges;
- termination rights; and
- advocacy and support to residents.

A consistent national model can deliver benefits to both consumers and the industry.

National Regulatory System for Community Housing

There is already a national regulatory system for community housing which includes a National Regulatory Code. Victoria has not adopted the national system at present.

Whilst many community houses are targeted to low income or special needs clients, many of the issues in the national code equally could apply to retirement villages: including registration, services, asset management, community engagement, governance, probity, management and financial viability.

I would argue that retirement villages should be considered community housing given that residents have opted to live as a community and participate in community life.

I understand that there is currently a COAG review of community housing.

Opportunities for multi-age community housing

There are examples of inter-generational community housing where students reside with older people etc,

Retirement Villages could become more flexible if they were regulated as community housing.

Aged Care

Residents of retirement villages are very likely to require health care support at some time. The transition from retirement village to age care support, via home care packages, or nursing homes, needs to be well managed.

It can also have significant financial implications. The transition can cause enormous uncertainty for residents. Clear models need to be developed.

Security arrangements in retirement villages can cause issues with the provision of outside services, and this can increase pressure for residents to utilise services offered at a cost by village operators and managers.

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