

6 December 2019

Retirement Villages Act Review
Consumer Affairs Victoria
GPO Box 123
Melbourne
Victoria 3001

By email: rvreview@justice.vic.gov.au

Dear [REDACTED],

Re: Review of the *Retirement Villages Act 1986* Issues Paper

Please see RRVV's question-by-question answers to the Issues Paper attached. Please also see the other attachments.

We appreciate that an Issues paper cannot cover every issue every stakeholder might want to raise, and we acknowledge the hard work that went into preparing the material. Nevertheless, we are concerned that the document does not address some of the more significant issues confronting the sector. Some of these issues require a look into the future, others recognition of the complexity faced by residents but sidelined by the reductionist approach of the paper and others again require an analysis of the nature of older Victorians.

Village Models

The issues paper concentrates on village models from the last few decades. It does not consider:

1. Rental Villages. Rental villages are not new but are few in number. If the tendency of older people to enter communities at increasingly later ages continues, we might see more interest in rental contracts. Why would people with a life expectancy of three or four years go to the bother of entering into a complicated loan-lease contract? The current Act does not deal well with rental agreements.
2. Villages without operators. One of the big commercial village developers is trialling strata-titled retirement villages run by the owners corporation. RRVV understands that the company does not have a trial village in Victoria because state legislation does not support strata-titled developments with age and work restrictions.
3. Integrated retirement village and aged care developments. These developments are not the same as the current developments that have a retirement village and an aged care facility on the same site. Residents capable of independent living live alongside others who need onsite care.
4. Retirement villages that cater for multi-generational families. These villages allow older people to live alongside their offspring who would otherwise not qualify for retirement village entry.

RRVV recommends CAV gives these and other models serious attention before release of the Options Paper. Nevertheless, please do not infer that RRVV is an advocate for any of these models.

Complexity

While the Issues paper does canvas various issues in the current Act and operators contracts, it does not address fundamental weaknesses. These include the cumulative effects of unclear provisions and gaps in the coverage of the Act, similar defects in contracts and the inability of many in the legal profession to give sound advice to prospective, current and departing residents. RRVV sees these omissions as constituting a troublesome flaw in the first stage of the review.

Not all operators can deal with complexity. Nevertheless, complexity disadvantages residents more than operators.

It appears that operators believe offering a more extensive range of choices is the way of the future. For example, one operator offers prospective residents a selection of four contracts. Others offer a wide range of personal services. Others again see offering care services as the way of the future. More often than not, offering residents choice makes their decision making more difficult than giving them limited or no choice.

RRVV recommends recognising complexity as a stand-alone issue.

Older Victorians

RRVV contends that both Consumer Affairs Victoria and retirement village operators do not understand older people and retirement village residents in particular.

RRVV contends that nature, needs and wants of older people must be front and centre in the review of the Retirement Villages Act.

For example, as we age we lose some of our mental agility. We are less confident thinking on our feet than we once were. Moreover, we are not at our best when we experience conflict with someone else. These characteristics have relevance in several areas of our lives. Take dispute resolution as a specific example. Retirement village residents tend not to handle negotiation well, but many mediations attempt a negotiated resolution. Mediation, therefore, is not necessarily the best dispute resolution approach for older residents. Similarly, the adversarial approach employed in VCAT hearings is not the preferred dispute resolution approach for older residents.

RRVV recommends commissioning a study of retirement village residents to inform the development of options for inclusion in a new Act.

Landlease Communities

Older people who seek to live in a community of like-aged people for the rest of their lives need the same rights, freedoms and protections irrespective of whether they live in retirement villages, landlease communities or something similar. Having retirement villages and landlease communities operating in the same market space but under different legislation increases the complexity of the task prospective residents face when deciding to move into a community.

The regulation of landlease communities is an issue missing from the Issues Paper.

Focus on housing

RRVV contends that the current Act's focus on housing and property rights downplays what residents are buying and experiencing. To some extent, sector participants do recognise this by saying that entering a retirement village is a 'lifestyle choice'.

The term 'lifestyle' might be adequate in marketing brochures, but for policy formulation purposes, it does not define what residents are buying.

The vast majority of people contemplating entering a retirement village own a house or apartment. What prompts them to consider moving when they already have accommodation? We can identify a range of push factors and pull factors. There is considerable variation across the cohort, but overall, push factors play a more significant part than pull factors. People consider entering a retirement village because they realise they cannot keep living the way they have been for the last decade. The main reasons are:

1. Physical limitations (usually an inability to look after a family-sized house and garden)
2. Health concerns
3. Financial constraints
4. The stress of homeownership
5. Death of a partner
6. Changes in the local community (for example, as their age cohort reduces locally, leading to a loss of social connections)

They are looking for a solution to these problems. More positively, they are looking for a renewed, simpler and freer life. This new life includes:

1. Social connections with like-aged people
2. Freedom from much of the responsibility of homeownership
3. Reduced housework
4. Lower living costs
5. Security
6. An opportunity to participate in activities of interest (both inside and outside the village)

Prospective residents are also looking for a pleasant living environment. They tend to favour newer villages over older villages and renovated units rather than dated units. Nevertheless, these are not dominant considerations of the decision to live in a retirement village. Other non-housing factors collectively play a more significant role.

The drivers of satisfaction with life in a retirement village are similar to factors considered at the time of deciding to move. There are naturally some shifts in emphasis as residents become familiar with the lifestyle.

RRVV contends that the regulation of retirement villages should focus more on the non-housing aspects of retirement living.

Transition

Almost all people moving into a retirement village have either owned their own home or rented. There is little in this experience that prepares them for the complexities of life in a retirement village. The transition into a village would be much easier if the regulation of retirement villages recognised the prior experience of residents.

Take leases, for example. A majority of people entering a retirement village have leased property at some period in their lives. They have great difficulty understanding why their retirement village lease differs so much from what they expect a lease to be: why, for example, they are responsible for the maintenance of cooktops, ovens, dishwashers, air conditioners, hot water services, garage door openers and the like.

Similarly, most of the people entering a retirement village understand that each voter has one vote. They have great difficulty understanding why in a retirement village, voting is sometimes one resident one vote, at other times one residence one vote. Similarly, they have great difficulty understanding why sometimes a motion passes if a majority of people voting vote for it and at other times, a motion succeeds if a majority of people attending a meeting vote for it.

Much of the differences between retirement villages and the real world are unnecessary. RRVV contends that the regulation of retirement villages should as far as possible be consistent with residents prior experiences.

Redefining the relationship between residents and operators

A new generation of residents is moving into retirement villages; baby boomers. This generation is likely to want a different relationship with village management than the generations whose formative years were before or during World War 2.

Judy's story

Judy (not her real name) reported severe cracking in her unit to her village manager. The village manager inspected the cracks and arranged for a consulting engineer to investigate and report upon the problem. The engineer visited, examined the cracks, made measurements and searched for indications of the cause. His visit was intrusive as he moved furniture, poked around in a wardrobe and trampled on several parts of her garden. Judy did not mind. He was polite and did take care to minimise the disruption.

When Judy had heard nothing after several weeks, she asked the village manager for an update. He said he had received the engineer's report and was waiting on advice from the owner. Judy asked to see the report. The village manager declined saying only the owner was entitled to see the report. He added that this was because she was a tenant. Judy paid the full market value of the unit to secure a lifetime residence right.

RRVV contends that Judy's interest as a stakeholder in the unit is at least equal if not higher than that of the owner. It is her home. She contributed all the capital. She is personally responsible for the maintenance of the interior of her unit. In common with other residents, she is responsible for the remainder of the maintenance of the residence and maintenance of the communal areas of the village. Similarly, in common with other residents, she is responsible for funding village operations through the maintenance charge she pays periodically.

Her interest in her unit and her village is both emotional and financial. The Act does little to recognise the strength and magnitude of her interest. Neither does her residence and management contract.

Village management

RRVV is aware of cases where operators assert, in the absence of any provision in the Act or residence and management contract to the contrary, that 'we own the village, so we make the rules'. Judy's case above illustrates that assertion is contrary to the facts of residents' interests in their communities.

The Act largely assumes that the operator manages the village on behalf of the owner. It does recognise that residents have certain rights but does not give residents any significant powers to direct the operator. It does not require, even tacitly, that the operator to serve residents. Take the framing of the village budget as an example. The Act merely requires the operator to present the budget to residents. When confronted with a recalcitrant operator, the only way residents can influence the budget is by vetoing a request for a maintenance fee increase above the adjusted maintenance fee. Given the budget shapes the bundle of goods and services residents receive, surely the Act should require the operator to give effect to residents' expressed preferences.

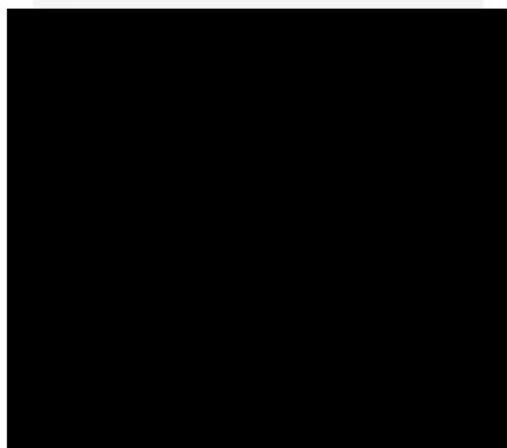
Many contracts contain a clause that purports to give the operator absolute discretion to deploy any operating account surplus as it sees fit. The Act and many contracts provide that if a village falls into deficit, the residents collectively have the responsibility to contribute funds sufficient to remove the deficit or suffer a reduction in services.

More enlightened operators recognise that residents contributed the funds held in the operating account and the sinking fund (if any) for specific purposes and remain the property of the residents of the village if not spent. Accordingly, residents retain the absolute discretion to deploy any surplus as they collectively see fit.

When compared to their predecessors, baby boomers are better educated and less respectful of authority. They do not respond well to the patronising, paternalistic and authoritarian style of management common in retirement villages over the past few decades.

The village management style of the past few decades is, in no small measure, a product of the assumptions about the appropriate relationship between residents and operators embedded in the Retirement Villages Act.

Proposed model relationship between residents and operators



RRVV recommends the new Act recognise that residents and operators:

1. Are both stakeholders in their villages
2. Share responsibility for the running of the village, with the residents of each village deciding, from time to time, how much responsibility they want
3. Have different but complementary non-hierarchical roles (see diagram above)

The way forward

RRVV contends that the sector needs a new Act with the capacity to reform the operation of current villages and adapt to a wide range of likely developments in retirement living over several decades.

Yours sincerely,



Lawrie Robertson
President