

Review of the Retirement Villages Act 1986 Issues Paper

Details of this submission:

Respondents:

The elected Committee of the [REDACTED] Residents' Association Incorporated,
[REDACTED]

Contact:

[REDACTED]

The retirement village:

[REDACTED],
[REDACTED]

Type of Retirement Village:

A small, For-profit, over 55, independent-living village with a total of 42 units, currently accommodating [REDACTED] residents, all under a non-owner lease contract.

General Introduction:

This committee met and discussed our response to the Issues Paper. We felt that a number of points of clarification should be considered prior to directly addressing the recommendations, questions and comments included in the briefing paper.

It should be recognised that there is a large 'Power Difference' between the majority of residents and the owner/manager of every RV. The majority of residents have a relatively fixed income and expenditure, whereas the owner/manager generally moves in tune with or above the CPI.

- RVs generally describe a 'life style' that they are offering to residents. It would be advantageous to prospective residents that the advertising material package should include a form of quality assessment, perhaps similar to the hotel 5-star system (rating RVs as 5 for excellent in every aspect to 1 being meaning Improvement required). This quality rating system to be reviewed every 3 – 5 years.
- The contracts for title or leasehold are often loosely written at present, leaving opportunity for misunderstanding, misinterpretation or even deliberate unilateral redefining of aspects of the contract to the financial benefit of the owner. This should be addressed in the legislation, and a clear division of responsibility applied. In particular, the boundary between 'Internal area' and 'External area' needs to be more strictly and clearly defined.
- When disputes do occur, managers and their staff can adopt a bullying approach to ensure that residents attend to and pay for problems that fall into the grey area of identifying responsibility. Many residents will then give up and pay to have the problem fixed, in situations where it should have been the owner's responsibility, thinking along the lines of "I can't afford to engage in a costly and lengthy legal battle, and will probably die before the owner fixes this!".

- While there is a limited free legal interview available to residents under the auspices of the Law Institute of Victoria, using accredited legal firms, this is restricted to only half an hour and provides an estimated cost of any legal action, but no free legal advice is offered. A free mediation service is available via the Dispute Settlement Centre of Victoria (DSCV), but this is not well known and takes a considerable time, probably due to a significant backlog of cases. Attendance at these mediation sessions is voluntary. We suggest that a free process should be more easily available, should be publicised more, and attendance at the DSCV should be mandatory for both owners and residents, once the service is activated. This would establish if a dispute can be easily settled, or if the next step needs to be taken. For example, this might involve CAV, VCAT, or court action. At present there is no requirement for an owner to even answer the DSCV request for mediation or to attend a mediation session.
- It is our opinion that there should be a specific Ombudsman for the RV 'Industry'. This is an ever-growing sector and one which will impact on an increasing number of elderly citizens. The longer that these citizens are able to remain comfortably in an independent or supported-living facility, the less the demand on the future Aged Care system.

Issues specific to [REDACTED]:

This view of retirement living is based on a loan-leasehold non-owner residential agreement between our residents and Pinnacle Living (the owners of [REDACTED] retirement village). This review, the comments above and below, have been prepared by the [REDACTED] Residents Association Committee on behalf of and following feedback from our residents.

- [REDACTED] has now been in operation for 10 years. During this time, we all entered based on the 'normal' glowing vision of what our lifestyle and living conditions would be.
- Many of the promised guarantees (and published advertising material) have been delivered, with the major joy being the friendship and camaraderie among the resident group.
- However, in hindsight based on 10 years accumulated experience, a number of now obvious failures are present in how our lease and interaction with the owner/manager occurs.
- There is no obvious Vision or Business Plan available to residents on how the 'life style' promises are delivered or will continue to be delivered or improved.
- We were promised (and entered) a 5-star boutique facility, and insufficient attention has been paid to ongoing maintenance in order to keep our facility at that level. At times necessary (critical) building maintenance has occurred on a retro-active rather than scheduled pro-active basis.
- The staff generally work directly for and answer to the owner/manager and at times have little empathy for the ageing residents.
- Although a recurring budget item for staff training is included in the reported operating expenses, there has been no expenditure for training of staff in the 10 years that Yarrbat Place has been in operation. It should be mandatory for the owner/manager to ensure their own skills and those of their staff are sufficient to successfully operate such a facility in the long-term.
- There is often a large perceived 'power difference' between owner/staff and a number of residents, bordering on bullying, and a lack of support for problems raised.
- There has been little exterior painting during the 10 years – only occurring after necessary repairs to specific repaired rendered surface areas.

- The leasehold agreement contains a vague description of ownership of responsibilities for repair of the property and buildings owned by Pinnacle Living. This particularly applies to the boundaries between External and Interior surfaces.

It would be logical to assume that if a lease is written well, following standard regulation, with clear and transparent description of responsibilities, then later disputes with management would be greatly reduced. With a Lease the owner owns the structures, therefore the maintenance of structures is their responsibility. The residents live in the enclosed space, so internal wear and tear and internal damage is their responsibility.

Any exterior surfaces that are degraded by environment, weather, are the responsibility of the owner, even those within the living area of the residence (e.g. external patio, decking). The resident is liable to keep these areas clean and tidy, and must accept the normal caveats such as responsibility for any wilful damage.

Logic would also indicate that the owner has applied due diligence and developed a resultant Business Plan, including analysis of the market to provide appropriate funding to run the RV business. The resident signs a lease based on that assumption, to receive the promised quality of life style at the costs projected within the original Leasehold Agreement for the duration of their residence, be it 2 years or 30 years. This can only be assured where the leasehold agreement is clear and transparent throughout.

If the owner then realises that the funding is insufficient they should be required to answer to a governing body or organisation and develop plans to protect the non-owner resident's right to receive the promises made for their entire residency.

In summary. The following are the major issues that we would like to see addressed.

- The appointment of a dedicated Ombudsman, or as a minimum, the development of a specific area within an existing Ombudsman's responsibilities, provided that this is resourced adequately.
- In general, previous leasehold agreements are often weak with unclear definition of specific areas, and there is a need to force (legislate) clearer and more definite terms in order that transparency of responsibilities is satisfactory for both owner/manager and leasehold non-owners.
- It is critical that owners of a non-owner residential establishment are required to very clearly and precisely define the details of the sales process, and that all responsibilities and actions are transparent for both the selling non-owner resident and the prospective buyer, including the price set and the responses of prospective buyers. Non-owner residents must be able to engage their own sales agents. All residents should be protected as described in the first paragraph of the first paragraph of 5.1.1 of the initial review report.
- The Register of RVs should contain information from CAV identifying the number of official disputes between the owner/manager and the residents of each RV. This should be available to prospective purchasers.

- Every RV must prepare/maintain and have available for inspection a well thought out Business Plan that clearly identifies the long-term aspects of operation of the RV. This would include:
 - VISION: What the RV is, and how is it going to stay at that level.
 - STRATEGIES: For each business segment (e.g. training, finance, customer service, maintenance, communal aspects).
 - ACTION PLANS: Individually for each segment, particular Long-term maintenance of all Structures of the premises.

These RVs are multi-million-dollar operations. Any other successful commercial business of this size would automatically be required to adopt sound business planning and practises, subject to the appropriate controlling bodies.

On the following pages we have addressed a number of the Recommendations included in the Issues Paper supplied. A number of the points above co-relate directly to these comments included. In the instances that our committee agrees completely we have simply noted them as 'We Agree'.

Comments on Parliamentary Inquiry recommendations

Recommendation 1

That the Minister for Planning give consideration to planning provisions that encourage increased supply of retirement housing, such as the establishment of Retirement Housing Zones.

COMMENT

Given Australia's ageing population, there is likely to be a corresponding increase in the demand for retirement housing, so it seems appropriate to plan for the establishment of Retirement Housing Zones. When planning these Zones, consideration would need to be given to the proximity of medical services, hospitals, public transport and other services.

Recommendation 2

That the Victorian Government review the *Retirement Villages Act 1986*. The review should determine the effectiveness of the Act in providing consumer protection while allowing growth and innovation in the sector.

COMMENT

"Consumer protection" should be paramount; "allowing growth and innovation" should not be seen as a signal to Owners to seek exorbitant profits.

The review of the Act should look to give non-owner residents similar protections afforded to renters in the wider community through the Residential Tenancies Act.

Recommendation 3

That Consumer Affairs Victoria collate its online 'Retirement villages' information into a booklet. Retirement village operators must provide this booklet to potential residents, either as a hard copy or electronically.

COMMENT

We agree.

Recommendation 4

That the Law Institute of Victoria's Elder Law Committee develop professional accreditation for specialists in retirement housing and also provide training to general practitioners to improve their understanding of this area of law.

COMMENT

We agree.

Recommendation 5

That the Victorian Government investigate measures to ensure that all retirement village units hold the same owners' corporation voting rights.

COMMENT

We agree that owner residents and non-owner residents should be treated equally under the Act.

Recommendation 6

That the *Retirement Villages Act 1986* and related regulations define whose responsibility it is to pay for repairs and maintenance, both inside units and in the communal areas and facilities. These amendments should further require all works to be undertaken within a reasonable and mutually acceptable timeframe.

COMMENT

We agree.

Currently, the Residents' Association of our village is in dispute with the Owner over this very issue, and has been since May 2018. We are also in dispute over what constitutes the "inside" and the "outside" of a unit.

We have attained a written legal opinion that supports our argument.

Having failed to reach agreement using the [REDACTED] Internal Dispute Resolution policy, we have now enlisted the help of the Disputes Settlement Centre of Victoria. Recently, the Centre invited the Owner to attend mediation, but to our knowledge he has yet to respond.

A clear weakness of the DSCV system is that attendance by the Owner or his representative is not compulsory.

The next step is likely to involve a considerable financial outlay by residents. Many retirees cannot afford to fund a legal challenge to Owners.

Recommendation 7

That the Victorian Government require that retirement village operators disclose ingoing prices with and without deferred management fees.

COMMENT

We agree.

Recommendation 8

That the Victorian Government require that deferred management fees are applied on a pro rata basis.

COMMENT

We agree.

Recommendation 9

That the Victorian Government require that retirement village operators provide every resident with an estimate of their exit fees every financial year.

COMMENT

We suggest that an estimate of exit fees provided every 3-5 years might suffice.

Recommendation 10

That the Victorian Government make provisions to allow retirement village operators to pay either the refundable accommodation deposit (RAD) or daily accommodation payment (DAP) for residents entering aged care until the resident's unit is sold.

COMMENT

We agree.

Recommendation 11

That the Victorian Government give consideration to developing a model for mandatory accreditation for all retirement housing providers.

COMMENT

We agree.

Recommendation 12

That the Victorian Government ensure that an appropriate minimum Certificate level applies to retirement village management courses.

COMMENT

We agree.

Recommendation 13

That the retirement housing sector engage more proactively with disability and aged care design professionals when designing villages to facilitate greater choice and an ability for people to age in place.

COMMENT

We agree.

Recommendation 14

That the Victorian Government require retirement villages to report on compliance with maintenance plans funded by maintenance charges paid by residents.

COMMENT

We agree.

Recommendation 15

That the Victorian Government introduce a new alternative for low cost, timely and binding resolution of disputes in the retirement housing sector. This may be through a new body or by extending the powers of an existing Ombudsman.

COMMENT

Given the likely growth in the retirement housing sector, we suggest that it would be appropriate to appoint a Retirement Housing Ombudsman, rather than add to the load of an existing ombudsman.