

5th 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

Thank you for the opportunity to respond to the Retirement Villages Act 1986 Issues Paper.

As a relatively new retirement village resident of 2.5 years, I am discovering how little I understand about this complex area. While I have a background in law and public policy, I did not appreciate many of the implications retirement village living until I had the opportunity to experience the day to day issues and talk with other residents.

I attach a paper responding to the questions outlined in the Issues Paper as far as my current knowledge allows. In reality each resident has different desires and experiences of retirement living. From the discussions I have had, and my own experience, the fundamental element is the ability to enjoy retirement living, but not lose the ability to be engaged in decisions about their own life. Access to information is key to being able to make those decisions.

It is difficult task to comment on legislation during its development as it encourages a wide ranging response to a myriad of issues. The current Act requires a fundamental review to address existing flaws and omissions and to ensure that the future of retirement accommodation is safe, secure and adaptive enough to meet the needs of operators and residents of the future.

The opportunity for all stakeholders to meet and discuss issues is fundamental. I would like to thank the department for enabling that discussion through the three forums held in Geelong, Shepparton and Melbourne CBD. I found this a very informative, enabling discussion and exchange of ideas with other residents, operators and researchers.

When introducing the Retirement Villages Bill to the Legislative Council in 1986, the Hon. J.H. Kennan, Attorney General, noted that the Bill sought to:

- “ 1. ensure prospective residents are made aware in advance of the implications of entering a retirement village;

2. ensure that the rights of residents are unambiguous and enforceable;
3. ensure that the actions of management do not infringe the rights of residents and
4. avoid undesirable marketing practices by promoters of retirement villages...
by setting out the basic rights of residents, the standards which are to apply to all dealings in relation to retirement villages caught by the Bill and to the ongoing relationship between the owner, the manager and the residents of a village.”

I believe these objectives remain valid and that the current Act fails to achieve these goals.

Future legislation must address a number of matters not appropriately addressed in the current Act. These include:

- ensuring that a range of clear and accessible information products are available to prospective purchasers, residents, their families and advisers about specific villages about retirement living options, including the pros and cons of different rights to occupy, prospective costs of living, a predictable process of reinstatement of accommodation upon exiting and agreement about the resale process.
- scoping broader relationship between operator and resident. Residents aren't just acquiring a right to occupy and asset they are seeking intangible outcomes including lifestyle and emotional outcomes, though an ongoing relationship with the operator and/or manager. The current regulation is paternalistic, enabling some operators to adopt a dictatorial attitude. Going forward the regulation ought to encourage open communication and collaborative relations between stakeholders.
- planning for village closure, redevelopment or transition to a new owner which includes the residents.
- streamlining grievance handling, promoting better information access, research and communications and providing advocacy and support for residents of retirement villages.
- adapting to changing demographics and psychosocial attitudes to ageing and retirement living.

Thank you for the opportunity to participate in the review process.

Yours sincerely

██████████

Part 1 – The retirement village sector

Over the next decades the retirement living sector is going to be confronted by a number of challenges as outlined in the Issues Paper, and noting with some chagrin, that the figures quoted at page 13 are for over 65's when retirement villages accommodate people like myself who are over 55!

The per centage of over 55's in Victoria recorded at the 2016 census was 20% of the State's population – a substantial portion of the state's population planning for retirement living. The impact of baby boomers is anticipated to greatly increase demand for retirement accommodation, however in the longer term there will be reducing proportion of elders as part of the population.

The vibrancy of this sector will be greatly impacted by the next iteration of legislation, as those approaching retirement seek to change aspects of their time and financial investment without losing their rights or independence.

We are living longer. This is not a negative, as older persons continue to contribute to the economy in many ways. Many may continue to work part-time, share the cost and responsibility of care of grandchildren, volunteer and support the economy generally through travel, investment and general consumption. Concomitantly, there are also challenges relating to the health and well-being of elders, as we seek to age in place with the support of specialised services.

Part 2 – Regulatory and policy framework

Application and scope of the *Retirement Villages Act 1986*

1. Should the payment of an in-going contribution be the defining factor in determining whether the RV Act applies to a retirement village? If not, what other considerations ought to be appropriate?

No.

The definition of a retirement village by virtue of an in-going contribution reflects, I believe, an operator rather than a consumer perspective. Consumers seek other qualities when considering retirement village living including location near their home and therefore within their wider community, price, facilities and additional services.

It is also possible that a definition based on a financial attribute alone potentially limits owner/operator business models if they wish to operate within the RV Act.

Alternatively, a simplistic requirement allows owner/operators who would otherwise fall within the ambit of the RV Act to avoid its operation.

The definition of a retirement village, which tends to be about what is not included rather than what is included, is difficult as there is a 'blurring' or overlay of concepts of independent

elder living and financial/property models of retirement villages as envisaged by state legislation and 'aging in place' as provided by the *Aged Care Act*, 1997. This jurisdictional discontinuity requires resolution. The only model I can currently see is through the national consumer framework – which needs to be reassessed from product view to include a stronger services perspective.

Some advocate a finance or insurance model – however the national approach to these areas have fundamentally failed. Trust in these sectors are low and getting lower. Public inquiries and commissions have failed to reveal the depth and breadth of corruption and consumer manipulation that continues to emerge in the media.

The consumer model has the potential to provide for jurisdictional service delivery – responding to demographics, state planning opportunities and economies while providing a national perspective (even international with the benchmark of New Zealand through Consumer Affairs Australia and New Zealand) enabling a state and territory based service delivery with a defederated overview in relation to research, compliance and overall consumer protection and oversight.

The review of retirement villages is just one slice of a wider continuum of housing and accommodation policy.

Isolating housing and accommodation sectors, I believe, is counterproductive. The consequence of piecemeal policy is that we create housing 'ghettos'. – not age based, income based nor ability based. Not as slums (on one definition of ghettos) but as isolated social groups, within building structures designed for a redundancy. As a mid-fifty year old living in a retirement village, I wonder if I will outlive the integrity of the building fabric. The answer must be yes! Not only because structures are not built for longevity but because our social and personal attitudes to housing, sustainability and service delivery will change markedly in the next thirty years.

The concept of a 'village' is arguably, linguistically outmoded as owner operators move to providing community model of a 'continuum of care' as part of a more integrated model of elder care. This drive to a changing model is, I believe from brief discussions, hampered by legislative boundaries between federal and state jurisdictions which inhibit development of a true continuum or flexible model of care.

As a resident of a retirement village the factors involved in deciding whether pay an ingoing contribution was a necessary requirement of the retirement village operator as weighed against achieving other (personal) objectives that were offered in the retirement village environment. If another financial model had been available, and those personal criteria could still be achieved, then I would have considered that financial/legal model.

Other factors include: location of the retirement village; access to public transport, health services and community facilities; familiarity with the location and wider community; location in relation to family members; affordability; likely period of residence; co-location of aged care facility operated by the same organisation; accessibility of the building and consideration of physical requirements as we aged; reputation and experience of the

operator in managing retirement villages; living in a residential community with similar interests, issues and ages but with access to the many benefits of a wider multicultural community.

2. Is the definition of a retirement village under the RV Act otherwise appropriate? If not what other changes would you recommend?

The definition of a retirement village is strongly linked to the purpose/objective of the legislation. It also tends to be described – in many jurisdictions – by what it is not! Other retirement living options – caravan parks, hostels - are not regulated by the RV Act. It is not clear to me how the interests of consumers/retirees in these forms or retirement living are regulated or protected, or how newer models such as the ‘mobile home community’ where a resident owns a dwelling and leases the land from the operator can be protected from unscrupulous operators seeking to take advantage of the lack of regulation and/or complexity of regulatory overlay.

It appears that the RV Act is a historic response to address an asymmetry in the relationship between providers and consumers. The RV Act may now be an historical anachronism, but it forms the basis of an entire sector and impacts the interests of a range of individuals and organisations.

A new definition in the RV Act should seek to define by inclusion rather than exclusion. The definition must ensure openness and transparency as between stakeholders including regulators, land owners, property managers, service providers and residents and their families, potential residents and advisers (including legal and financial).

The purpose of the *Retirement Villages Act 1986*

3. Is the current purpose of the RV Act still appropriate? If not what do you think the legislative purpose of the Act should be?

No. The current purpose needs review to strengthen consumer/resident rights and this ought to be reflected more strongly in the RV Act provisions. As outlined above in the former Attorney General’s speech the purpose of the Act is to protect prospective residents by informing them of the implications of entering a retirement village, clarify the rights and responsibilities of residents, operators and managers, ensure that actions of operators and managers do not infringe individual freedoms and prevent inappropriate marketing practices.

Despite the current purpose stating that the intent of the document ‘...is to clarify and protect the rights of persons who live in or wish to live in, retirement villages’ there is little in the RV Act which reflects this purpose. Most provisions relate to procedural matters such as conduct of meetings by operators but fail to address the cultural and community aspects of living in a lifestyle community, being a community where residents share similar social, recreational and health interests often sharing amenities, facilities and potentially programs and services, enabling shared service delivery cost/benefits.

Those served by the RV Act include residents and prospective residents, their families and advisers as well as operators and managers. However, the current RV Act appears to reflect an operator position rather than a resident perspective. This is understandable as the RV Act originated at a time where there were limited, if any, resident interest groups or forums to present a resident viewpoint.

Going forward the purpose of the legislation ought to recognise the role of the regulation in not only addressing an asymmetry in the relationship as between individual rights and those of large corporates in respect of financial strength, information and human resources to address issues and capacity both physically and potentially cognitively, in addressing planning, grievances and problem solving.

The purpose of the Act needs to look to the future of the sector and the impact of an aging population and the issues that elders, and therefore operators of retirement villages, will face. Future legislation ought to establish safety nets for the most vulnerable, thereby ensuring protection for rights and responsibilities of all and adopt an inclusive rather than paternalistic language, to underpin a collaborative rather than an adversarial approach to relations.

The purpose and use of the current register of retirement villages

4. What improvements could be made in the register of retirement villages?

The current public register has very limited information including the name, physical and postal addresses and whether an exemption has been sought.

If the purpose of the RV Act is to ensure openness and transparency in the sector then the register ought to have more information and be updated, maintained and monitored to ensure that information is current and correct.

The register may include information such as the current owner/operator, the history of changes in owner/operators/ whether the owner/operator is a company, business or charity – enabling cross referencing to other government held registers and searches – important in verifying facts as a potential resident.

The additional information supports decision making as owners/operators can investigate the operational and financial performance of an operator can be ascertained by advisers and potential residents.

This process of maintaining the register could be ensured through a licencing process akin to a business licencing process.

5. What other information should operators be required to include in the register?

A range of information could be made available which would assist regulators, operators, researchers, existing residents and people interested in moving to retirement villages similar to land, business or company registers.

In relation to a particular village information might include current and historical information:

- The village name and address
- The name and registered business address of the operator/applicant (and successors)
- No of units/residences/homes
- Type(s) of accommodation available
- Type of community management – residents committee/ owners corporation/ operator
- Currency of insurance certificates.
- Number of complaints/disputes and number of resolved disputes in the previous year (tabled as part of a village AGM)
- Acknowledgement of involvement in accreditation scheme (if applicable)

Improvements to the register ought not duplicate existing information sources such land title registers, business or company registers, for example.

Part 3 - Entering a retirement village

Consideration and cooling-off periods

- 6. Is the current 21 day ‘consideration’ period and the 3 day ‘cooling off period’ under the RV Act effective in achieving their aims? If not, what other or additional measures would be effective and fair?**

These timeframes are reasonable in relation to the contract process.

Operators are now beginning to adopt a period (post occupancy) for residents to reconsider their decision to move to a retirement village without deferred fees, upon payment of rental for the six month period (presumably at market price) and the costs of any damage. This allows the resident to trial retirement village living and become aware of the costs and issues related to residency. This is entirely reasonable as residents are not just buying a right to occupy but learning about the community that they are joining.

Disclosure obligations

- 7. When advertising the ‘price’ of a retirement village unit, should there be a requirement to include a reference to any deferred management fees and other departure fees and charges?**

Yes. An estimate or actual statement of financial outgoings on an annual or monthly basis ought to be available as well. This should may include additional outgoings like council rates, service and maintenance fees, allocation of contribution to hot water and electricity payable in addition to levy amounts.

It is noted that this is difficult in relation to new operations where costs are not known, however a list of potential disbursements would assist comparisons between villages and operators.

8. Has the provision of a Factsheet and Disclosure Statement to prospective residents let to an improved understanding of the financial and contractual arrangements relevant to living in a retirement village enabling prospective residents to make an informed decision?

The fact sheet and disclosure statement are helpful in so far as they are a summary of aspects in the contract.

A less complicated approach would be to simplify, or have a standard, plain English contract overcoming the necessity to produce another document which duplicates information and increases the potential for error in transcription.

When I received the facts sheet (14 pages) and disclosure document (11 pages) I was also forwarded a deed of agreement for lease (in duplicate), a residence and management contract (in duplicate) and a loan agreement (in duplicate) for 21 days consideration. The fact sheet and disclosure documents were not substantially different and contained information that was generalised (not specific to the unit I was purchasing) and duplicated in the related documents (approximately 150 pages).

Although I had a law degree and had practiced in conveyancing (interstate) I sought legal advice but found it difficult to locate a solicitor with experience in this area. My own experience of conveyancing and lease documents was not very useful as this was unlike a typical purchase of an interest in property or lease arrangement. The issues surrounding the management of the village on a day to day basis were not as clearly defined as a strata or owners corporation typically were.

Terminology was also loosely used. I was asked to enter a 'loan agreement' that is not a loan in a conventional or common sense.

These issues arising from complexities documents and language are not remedied by simply summarising documents and replicating the flaws.

9. What, if any, further improvements could be made to improve prospective residents' understanding of the potential financial and contractual arrangements relevant to living in a retirement village?

Simplify the contract, provide a consistent approach to language in contracts and marketing used in the retirement sector, introduce standard contract terms, summarise the financial commitments succinctly in a page of the contact, provide information about support services available to potential purchasers and more independent information to assist retirees in determining what kind of questions they ought to ask of operators to make an informed decision.

In part this links to clarification of the relationship of an owner/operator and a resident as equals in the negotiation process. In a former life a resident had more control over decisions making and access to their capital by way of mortgage or loan arrangements, re-sale or subletting/licensing arrangements, and access to funds on leaving the village would be immediate upon the transaction. These limitations are not always understood although the issues may be embodied in complex provisions in lengthy contracts.

Without some level of consistency, the response varies depending upon the approach of the individual provider, their resources, their sales agent and other independent advisers and the background (including education, life experience and personality) of a prospective resident.

10. Are the current timeframes for provision of a Factsheet and Disclosure Statement to prospective residents appropriate?

No. The fact sheet, disclosure document and contract were provided after I had indicated that I wanted to proceed with acquiring a right to occupy.

By the time the documentation is presented many other factors had influenced my decision making, including reducing the number of stressors, settling my partner who is a person with dementia, locating near family for support, having access to public transport and medical care, for example.

It also took time to understand potential problems given I had not lived in a retirement village previously. This was in part complicated by the fact that, in my case, I had purchased off the plan and key elements of the future community were not in place or were unknown – for example no residents committee, no history of costs and disbursements and no information about the age profile, attitudes (as demonstrated through prior decisions) of the resident population and lack of clarity about developer operator services to encourage sales and longer term access to services.

Contracts – form and complexity

11. Has the form and content requirements for retirement village contracts introduced in 2014 improved residents' understanding of the contractual arrangements they have entered into?

Generally, no. Anecdotally most residents of villages are confused by their contracts and surprised by practical implications of provisions – particularly the ability to engage in sale of their interest should they wish to leave and access to funds upon sale.

I understand earlier contracts had a format that mirrored the lifecycle of retirement village living i.e. entering, living in, exiting. With the addition of a preliminary statement of resident and operator rights and obligations and a final statement concerning grievance resolution this would seem to be a format with more personal resonance for most residents.

12. To what extent do retirement village contracts remain unnecessarily complex?

To a large extent contracts are too complex, legalistic and difficult to compare as between providers and jurisdictions.

Fee structures and terminology are confusing and poorly defined often reproducing sections of the existing Act, and unnecessary repetition and complexity.

13. What further improvements could be made to contractual requirements under the RV Act?

The RV Act ought to be in plain English and establish key principles without trying to prescribe details. It ought to provide the framework for key contractual provisions and terminology requiring plain English, standard issues to be addressed in the agreement and provide clear definitions.

Key problems in our retirement village relate to a poor understanding of the RV Act and the ability to misinterpret or utilise the RV Act to obfuscate communications.

The contract ought to:

- be plain English and not overly long.
- In a standard form document, if practicable, noting that there are a wide variety of residential models which may necessitate different forms of standard clauses.
- Define what responsibilities each party has in relation to maintenance requirements particularly in relation to fixtures and fittings. They may not be as assumed in non-retirement village accommodation or lease arrangements depending upon the operator.
- Incorporate standardised terms and meanings such as independent living (particularly fraught in my own village!), assisted living, wear and tear, long term maintenance, deferred management fee and how its calculated (a formula),

upgrade, exit procedure, rights of residents on exit and timeframes agreed for receiving funds.

- Perhaps be something like the form of a conveyancing contract – additional or special conditions of particular operators then can be clearly placed in an annexure and be identified as variants.

The contract need not reproduced sections of the RV Act. It only serves to overwhelm and confuse those reading through contracts.

A standard form of contract would assist advisers and potentially reduce the cost of legal advice as solicitors would have more consistent information to compare across operators and not have to expend hours in reviewing lengthy documents.

Financial models and deferred management fee

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

I'm not sure what this comparison seeks to achieve as the deferred management fee is only one form of retirement living model and one element of the financial obligations. On one occasion the DMF was described to me by an employee of the operator as a loan. The description was withdrawn when I asked how the loan would be secured and where the funds would be securely held and whether I would receive interest. This is an example how the effort to explain finance models may not be clearly understood or articulated by either party to the agreement.

Clear understanding of terms and education of operator staff and representatives would be more effective. Educational materials for prospective and existing residents would also be beneficial allowing them to be more confident in raising or defending issues.

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

Possibly, if it is pro rata per diem.

It is helpful to have a common understanding of what a deferred management fee is, how its calculated and options for payment.

Retirees are often limited in managing their income and the concept of an unexpected lump sum or failure to understand fees leaves them concerned about financial security – adding stress and anxiety to their retirement years. Improving the financial literacy of elders and advisers may help with this aspect or awareness of Professor Kyng's online financial calculator.

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

Whenever requested.

Most residents feel they are 'locked in' to residency after entering the retirement village. Unlike a typical housing or lease arrangement there is not a publicly available comparison of entry or exit fees to keep residents aware of the performance of the 'market'. Some operators are already willing to provide information upon request.

Part 4 – Living in a retirement village

Accreditation of retirement villages

17. What do you consider to be the benefits and costs of introducing a form of mandatory accreditation for retirement villages?

In theory accreditation supports the planning, development and improvement in professional performance of a business leading to more reliable and consistent operations, and hopefully better outcomes for customers/residents.

I'm not aware of an accreditation program that has been successful in providing a low cost, consistent improvement in non-process driven service delivery. Retirement village operations involve complex psycho-social interactions as well as physical process management potentially over an extended period of years or decades

While improved outcomes for retirement village residents ought to be the purpose of the RV Act, I'm not in a position to comment on the costs/benefits of an accreditation scheme (mandatory or voluntary). The information to respond to this question is held by operators and/or their representative bodies.

I note, generally, that development and review of processes to attain accreditation can be expensive and debate exists as to whether accreditation is cost effective and in fact achieve better consumer outcomes. Smaller operators may have difficulty in scaling accreditation schemes to their operations. Effective accreditation may depend upon selection of appropriate metrics and internal systems improvement which may not be scalable across operators.

Licensing may be a more effective process to ensure compliance and better service delivery outcomes.

18. What do you consider to be the necessary elements of any mandatory accreditation scheme?

See above.

19. What do you consider to be the benefits and costs of voluntary accreditation schemes?

See above.

20. By what alternative means could the standard and quality of services provided by retirement villages be improved?

A better consumer outcome may be achieved through public accountability and review by an independent body which provides oversight, ensures fair and reasonable conduct, promote good industry practice and systems and/ or training requirements of managers and staff to meet the needs of specific villages

Qualification and training of retirement village managers

21. Should there be any additional limitations or requirements on persons who can be involved in promoting or operating retirement villages?

Qualification and training for village managers must include an understanding of the operation of the RVA, and other related legislation appropriate to management of a retirement village. For example, Owners Corporation Act, Residential Tenancies Act, Occupational Health and Safety and Australian Consumer Law and Fair Trading Act.

The potential list of skills and training can be extensive and include: general management education and/or experience, financial management, contract management, property management skills, dispute or grievance resolution, first aid and potentially dementia care (noting that the population is increasingly impacted by the syndrome who are encouraged to continue to live at home in a familiar space).

Clearly qualifications and training needs require regular review and must be assessed in accordance with the needs of the particular retirement village community.

Although not encompassed by this question – but finding no other relevant area to include this feedback - while the current RVA does reference persons not to be involved in retirement villages at section 17, it would seem appropriate to extend this provision to include physical violence, threats, harassment and intimidation.

Persons in management positions with a history of such offences are not appropriate employees or operators in communities where residents may be made feel vulnerable in their own home.

22. What do you consider to be the benefits and costs of mandating training and professional development requirements for retirement village managers and employees?

This is difficult to answer as it depends upon the village requirements, the operational resources available to the operator and the nature of the training required.

Often professional development is part of an employee's package and training can also be an element of levies passed on to residents.

23. How should any requisite professional development requirements and training be determined?

Professional development requirements are largely an issue for the operator's consideration in relation to their particular performance. Generally, criteria are outlined in the requirements of a position or job analysis, informed by knowledge of the operational requirements and systemic issues which arise in villages, the legislative and policy environment impacting the sector and strategies being adopted by the operator.

Logically it would assist the operator to consult with residents or resident committees not only as to type and cost of training if funded partly or wholly from resident levies and perceived issues or service delivery needs of the resident community, but also to inform of study leave impacting absence from the workplace.

These issues are not necessarily a legislative matter – unless outlined in principles which support an open, respectful relationship, disclosure of information relevant to or impacting the resident community and communications to support better stakeholder outcomes.

24. Are there any other ways to ensure that retirement village managers and employees have the requisite skills and professionalism to undertake their responsibilities?

Skills and professionalism can be encouraged through experience, career development within organisations, continuous learning, networking across operators and through industry bodies, regular updates on the retirement villages through forums and conferences, awards and recognition of excellence and a fundamental understanding of the legislation and their role/objective as service providers and balancing profit with the creation of community.

Residents committees

25. Is the current role of the residents committee appropriate and are its powers adequate?

No. The RVA outlines a specific role to the committee a small group of persons who may or may not have the requisite skills and qualifications to oversee a retirement village and represent residents vis a vis the operator.

The potential exists for residents' committees to override or assume positions, misunderstand the operation of the RVA and failing to consult or engage the wider village population. The wider population can find it difficult to influence decisions or understand the factors influencing those decisions.

The nature of the committee relationship can vary whether the community is impacted by the RVA or if the community operates under the Owners Corporation Act or even a composite of resident occupancy rights.

Although not familiar with the Owners Corporation Act in practice, theoretically the management model would seem to be more representative and equitable.

26. Should residents committees have a role in dispute resolution involving resident-to-resident disputes?

No. Often resident committee members can become immersed in the grievance or dispute. As a part of the resident community it is difficult to remain independent, even if the requisite skills exist.

27. Should residents committees have the power to approve above CPI increases in maintenance charges? If not, why not?

Generally, no. All residents ought to receive information and voting in their own right on a matter which may have significant impacts upon them individually and the community at large.

Resident circumstances change, as do residents within the village, it ought not be assumed that an increase above CPI can be individually financed by everyone as the financial circumstances of residents vary considerably. The outcome of the decision is important and each resident should have the opportunity to put their case forward.

28. Should retirement village owners and manager involvement in the meetings of the residents committee be prohibited unless invited by the committee?

I believe so, although I have no personal experience on a residents' committee I understand this has been the practice.

The residents committee ought to be able to have frank and free discussions without concern about possible owner/manager responses or knowledge of opinions or positions put forward by members of the committee.

Annual meetings and reporting

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

No. The information in financial reports is often meaningful to operators and their organisational processes but less relevant to residents day to day appreciation of finances.

Financial information provided by operators ought to include:

- clear categorisation of income and expenditure is required which relates to resident understanding avoiding overly corporate terminology
- plain English explanatory notes or briefings to assist the understanding of a financial report by residents may be helpful providing time for consideration of the ramifications of the finances
- access to background material, if requested.

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

Yes! A month (28 days) before the annual meeting, or any general meeting considering financial impacts, would be ideal if practicable but no less than 7 days. All documentation including the manager's report and summary of disputes/complaints ought to be provided prior to meetings. This would allow residents time to read and understand the document particularly if they are unable to attend the meeting and wish to instruct a proxy or seek advice from trusted advisers and/or family involved in their financial management decisions.

Early circulation of information would also allow residents to discuss the information, inform those who are not clear about reading a financial statement and to crystallise issues for discussion or response in advance to a meeting, potentially enabling a faster more coherent meeting.

One operator has the view that the documents don't need to be provided before the meeting as the Act says they are to be table and spoken to. That is sufficient compliance. It also avoids questions as residents cannot always hear or consider the implications of a verbal report. Even if documents are provided to residents after the meeting it does not enable discussion or community engagement in matters relating to the village.

31. Are there any other matters that ought to be addressed in the reporting requirements?

Clarification of the timeframe to provide documents, and the information provided in, complaint and grievance handling reports; information about identified capital works program or a forward plan of works, currency of insurance certificates. Most of this can be documented in a checklist or summary form. It simply ensures that residents are kept informed and reminded that certain management compliance responsibilities are being addressed.

Retirement villages with an owners corporation

32. In mixed tenure retirement villages, should there be separate meetings for the village, according to the provisions of the RV Act, and for the owners corporation, according to the provisions of the OC Act? If not how should issues be identified for mixed tenure retirement villages be addressed?

It would seem reasonable for separate meetings to be held in mixed tenure arrangements to ensure that requirements of the relevant Acts are addressed. Voting rights at meetings relate to those within the particular tenure, but ought to be open to observers from the wider village to ensure transparency and an understanding of the operation of the wider village.

Maintenance and maintenance charges

33. To what extent should the RV Act further address issues of 'responsibility' and timeliness for repairs and maintenance in retirement villages?

It would be helpful for the RV Act to require the clarification of responsibilities for maintenance and repairs as between parties, noting that these may change over time.

Managers can sometimes be confused by the variations that occur as there may be different agreements over time with residents over time as well. A record would ensure that operational staff and residents were clear of their rights and/or obligations.

It is difficult to strictly regulate timeliness as a number of factors including availability of parts or labourers can impact speedy resolution of issues. A competent operator would keep residents informed and engaged in the process and agree upon solutions as issues arise, rather than failing to advise of issues or make decisions without consulting the resident(s).

34. What are the problems of more prescriptive requirements applying to all types of retirement villages and in all types of circumstances?

Prescriptive requirements cannot anticipate solutions to every issue. An attempt to be prescriptive is likely to leave gaps in the information or guidance provided.

Prescriptive approaches also assume, or require, that everyone works on the same organisational model, circumstances or business solution. Operators have different business models or resources as between each other and circumstances may change for a particular operator over time. Access to resources, including government services, staff and training will differ as between urban and regional locations.

Some broad principles such as timeliness in undertaking repairs and maintenance; minimising future risk to property and person by undertaking urgent repairs; seeking competitive market solutions if that option exists (noting that some villages may not be able to seek multiple quotes in a limited time frame) may be useful.

35. To what extent can or should the RV Act regulate what constitutes maintenance and capital items and to what extent should these issues be left to voluntary codes or guidelines?

If this question is about defining these terms then the answer is, yes.

Regulation of these by seeking to define how and when items fall within one or another definition is less relevant in practice.

A principle based approach of clear communication between operator and residents (both ways!) and a clear understanding of the ramifications on the individual and the fabric of the asset ought to inform the maintenance process and professional management of human and building maintenance issues.

By way of an example, an ongoing water drip in a ceiling space may be considered to be general maintenance issue but it may also reflect degeneration of the water reticulation system. Arguing whether it's a maintenance or a capital item is not productive, especially as this can contribute to wider issues including mould and health issues, rot, painting to remove standing etc. These arguments are generally about avoiding cost rather than finding best solutions.

Maintenance and capital replacement funds and plans

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

Yes. The maintenance of a building and capital items ought to be planned to ensure issues are considered and progressively addressed.

Funds ought to be held in trust for the village and not mixed with other funds. The expenditure of funds ought to include residents' input, unless an assessment reveals a health or safety risk needs to be immediately addressed.

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

Funds ought to be held in trust, expended with resident input, informed by a professional independent building report unless agreed as between operators and residents.

Given that villages may change hands as between operators, or that operators may fail, it ought to be recognised that the funds held securely for the village and its residents.

The plan must be regularly reviewed – perhaps annually so that it forms part of the s.33 meeting process. Information would therefore be regularly tabled to inform residents and available to prospective residents as well as supporting and informing the financial decision making process.

Regulation of care services in retirement villages

38. If you are a current or former resident of a retirement village, what are your experiences with receiving privately funded care services through a retirement village?

The overlay of purely privately funded care services, Home Care Packages which incorporates a financial contribution and self-funded informal or family care arrangements provides a very complex environment for carers, the cared for and independent retirement living providers.

First, the concept of independent retirement living and what that means to potential residents. Some residents believe that means no external carers can support residents. The definition needs to be made clear. The desire to explain the term has given rise to new terms such as 'assisted' or 'supported' living.

Marketing does not help inform the understanding and can mislead prospective residents about their future lifestyle options.

Operators often offer privately funded care services ranging from health care services which are regulated by the Health Practitioner National Health Law and allied health such as masseuses etc. Other services to support activities of daily living (ADLs) such as personal care assistance, meals, laundry and cleaning services may also be provided on a user pays basis. Services such as financial and elder law advice may also be offered. This may be directly from the operator's own 'in house' experts or allied services or business entities, or via contractors.

Difficulties can arise when there are grievances about quality and cost of services. In house services are often offered without residents confirming details or feeling that they are obliged to use those services (as opposed to external providers) for varying reasons including ease of access, centralised provision of a variety of services, co-ordinated billing and a local contact through the village manager or staff to make arrangements. The process of raising grievances can be fraught as the service is external but allied. Problems may not be quickly or easily addressed and not resolved locally.

Professional negligence or misconduct is more serious and even more difficult to resolve as residents may not be aware of professional bodies, dispute resolution or other processes available to them. Often the village operator is seen as the only contact and residents can be reluctant to raise issues and be considered troublesome.

On rare occasions residents have shared stories about problems with other service providers having access to the building or other impediments to them delivering their services in the village context. These may be for valid reasons, but those reasons have not been made clear to them when they have sought clarification.

This more commonly arises with Home Care Package (HCP) providers. While the HCP is partly funded federally there is also a private contribution. Carers from non-village operators can find it difficult to access the residence or unit of the person due to

security measures, particularly if care is required out of business hours for example. This is generally due to security access arrangements in the instances I'm aware of. It does however mean that residents requiring assistance with ADLs are left for periods of time without the care they have externally sourced and funded.

While New Zealand has a different policy base, the flexible service models provided in that jurisdiction are enticing, especially when supported by a mixed funding approach.¹

39. Do you think retirement villages should provide privately funded care services?

Provision of privately funded care services is an option but not an obligation.

Several retirement village operators also provide care services. The right belongs with the resident to accept or reject an offer from a particular provider.

A difficulty may arise if impediments are placed in the way of other providers obtaining access to a building or are limited by operational policies or procedures within a retirement village. In these instances, resolution of grievances raised by third parties are presumably addressed by a manager in the employ of the operator which can lead to an unsatisfactory resolution.

Retirement village operators must make it clear that their services are an option and inform residents of options and the complaints processes available to the resident, both to the operator and externally.

40. Is the current regulatory framework for delivery of privately funded care services sufficient to ensure that potentially vulnerable and frail residents receive safe and high quality standards of care?

No. A clear gap exists in care options and in the knowledge and advice available about available options is poor. Some people in need of care prefer to 'muddle on' rather than address the bureaucracy involved.

For those residents who live on their own, who may be becoming physically or cognitively frail, there is a great deal of stress about when it is time to make the decision to move, managing costs, the transition of care, accessing assistance and making decisions about future care while preserving their personhood.

The culture of a community, and level of support of a village manager, may also influence the decisions and level of comfort of individuals in remaining in independent living.

As indicated by the Aged Care Quality and Safety Commission the provision of personal care services to elders is sadly substandard. The provision of care services in retirement

¹ Property Council of Australia & Ansell Strategic , 2017, Delivering home care in Retirement Villages; Research report for retirement village home care analysis project, Accessed at <http://www.retirementliving.org.au/wp-content/uploads/2017/01/Operator-Guide-FINAL-for-website.pdf> and

villages ought to have high care standards, significant concern about the quality and propriety of carers involved in personal care and entering homes and restrictions upon financial gains being personally received by carers from residents.

It is rare but on occasion unscrupulous individuals have requested direct payment or cash contributions to help them out because they are poorly paid. This is a very difficult position for elderly people to address or even raise with others.

Finally, the transition of persons from retirement living to residential aged care can be impeded by the 'exit process'. Concerns about funding aged care or funding two homes if one person is in aged care and the other continues to reside in a retirement village is of great concern. The issues are common for the general exit process and therefore addressed at below. The difference where care provision is the reason for the exit process being initiated is the immediacy of the need and the additional stress created.

Where the aged care provider is also the retirement village operator the process can be facilitated as there is an asset within the control of the operator. However, where individuals need to seek aged care services elsewhere the process can be stressful and complex as the village operator has control of the sale/release process, timeframes and release of funds with one family waiting over two years for funds to be released by the village for their mother's residential aged care.

41. What role if any, should retirement village operators have in ensuring the safety and welfare of their residents, taking into account a resident's right to autonomy and privacy?

Retirement village operators have a responsibility from the outset to be frank with prospective residents and point out difficulties or issues which may arise. The priority ought not be a sale but the health and safety of the individual and the wider community. Only be possible if the resident is frank about their circumstances or evident.

Managers ought to be approachable and assist in resolving queries as quickly as possible rather than being obstructive or non-responsive. Often managers will undertake an informal wellness check, by telephone or in person, to ensure that a resident is well if they haven't left their home over a period or time.

Part 5 – Leaving a retirement village

Selling/re-leasing a retirement village unit

42. Does the RV Act strike the right balance between the interests and operators in the sale and re-leasing of a retirement village unit? Including the appropriateness of the process whereby the prescribed terms are inserted into the non-owner residence contracts? If not, what improvements could be made to ensure the right balance?

No. Residents often have little control over the circumstances of leaving a retirement village. It is necessitated by the death of the tenant or of a partner, their own health or change in financial circumstances or on occasion a desire to leave what has become a toxic community from the resident's perspective.

The selection of agents, pace of the sale process, priority of sale if other units held by the operator have not been sold, deferral of payment of funds to the outgoing resident or their estate, continued payment of levies and charges, are all within the control of operators.

In circumstances where outgoing residents have selected agents access to the building to show the property and provision of information by operators to support the sale process can be impeded.

Reinstatement and refurbishment of retirement village units

43. Does the RV Act strike the right balance between the interests of departing residents and operators? If not, what improvements could be made to secure the right balance?

No. A process of determining potential works and costs needs to be clarified by agreement between the parties. A condition report at time of purchase would be helpful as it would inform later reinstatement processes.

A difficulty arises when there is discord in what constitutes reinstatement and/or refurbishment as operators may actually intend to renovate the unit to meet new consumer or safety or occupancy requirements.

The preparation of a record of works by the operator which can then be reviewed by the resident with or without the advice of a professional who can advise on costs and necessity of works would be beneficial.

Ongoing charges after a resident leaves a retirement village and capital gains

44. In relation to the regulation of ongoing charges when a resident leaves a village, does the RV Act strike the right balance reconciling the interests and needs of departing residents, remaining residents and the retirement village operator? If not, what changes should be considered?

No, the right balance is not met by the current RV Act. Clearly residents who leave villages seek to relocate as soon as practicable. The need to relocate often necessitates the release of funds from the retirement village to pay ongoing fees for another property or residential aged care home.

In instances where the residence or aged care facility is held by the same operator the process can be facilitated by internal processes. However, moving to another provider can be complex and stressful as communications become multidirectional and fraught.

Clearly the interests of the operator and remaining residents need to be considered, as any future repairs, capital works payments etc ought not be transferred to others. Generally, this is addressed in the wide housing sector by retaining an amount to cover possible or via legal agreement.

In some jurisdictions I understand a timeframe has been placed on the period within which operators are to finalise payments to outgoing residents in other states. I'm not aware how successful or practical that process is.

45. Should the RV Act regulate the way in which any capital gains (and losses) are treated when a retirement village is sold or released? If so, how should it be regulated?

Yes, the RV Act ought to consider the implications when amending the Act.

The capital gain is often shared but losses are wholly placed on the resident.

It would seem that there are fairer or clearer ways for operators to structure or discuss arrangements rather than cost shifting to residents who would normally not be impacted by capital gains in relation to their primary place of residence.

The Australian Tax Office has sought to address various retirement village arrangements in Taxation Ruling 2002/14 – a complex document in itself! The taxation process is obscure to residents and would seem to relate entirely to the way operators structure their operations and defray their financial obligations.

Part 6 – Dispute resolution

Internal dispute resolution

46. What are your views on the reform proposals identified by the review of internal dispute resolution procedures in retirement villages outlined in this Paper?

Whether an issue is a request for action, a grievance or a dispute is often irrelevant terminology as a resident. There is an issue that requires resolution, that is not appropriately addressed for a wide range of reasons.

Review (or account) by subsequent dispute resolution bodies of the extent to which good practice protocols are followed would seem to be too late in a long process. The dispute resolution body must have some ability to review the entire process, including requiring documentation, and recommend remedies and systemic changes.

For a resident this review at the end of the process is too late or may not ever eventuate if the resolution process is delayed and issues not resolved. Noted, that it may address systemic issues if an internal dispute was elevated to a review status i.e. the resident had the resilience (psychologically, physically, financially) to pursue the grievance.

There ought to be alternative appropriately trained personnel to the village manager as alternatives in dispute resolution even if the issue does not relate to the village manager. It provides options to progress issues if the village manager is absent or does not feel comfortable in being involved in the resolution of a dispute.

The residents committee ought not be involved in resident to resident disputes. As fellow residents they may already be involved or aware of the dispute issues and taken a notional position about the issue or residents involved. There is also the issue of appropriate training and skills to be involved in resolving disputes.

External dispute resolution

47. Should a party to a retirement village dispute seeking access to VCAT or the courts first be required to have followed/exhausted the internal dispute resolution procedure?

No. This should not be mandatory.

48. Should mediation of a dispute through DSCV be a precondition to VCAT or the courts?

No. This should not be a precondition.

49. What do you think is the best means to achieve low cost, timely and binding resolution of disputes in the retirement village sector?

Access to an independent person that has some power to require information, investigate or seek relevant expertise to assist the parties in achieving a resolution with clear steps and timeframes to implement that agreement.

That outcome ought to be documented without identifying parties to develop a knowledge base and information about disputes to ascertain systemic issues and therefore continue to improve the overall resolution of disputes.

Part 7 - Enforcement

50. Are the enforcement provisions incorporated in the RV Act sufficient?

No. The retirement village sector is becoming more varied and complex with new approaches and the ability to respond to these changes and potential contraventions will require greater enforcement powers.

The additional issues mentioned in the RV Act IP are all appropriate enabling access to information and documents which may identify a breach and engage with other enforcement agencies are essential.

The ability to order cessation of trade, corrective advertising and adverse publicity orders ought to be available too.

51. Should the Director of Consumer Affairs Victoria be given additional powers and enforcement options available under the ACLFTA? If so, why? If not, why not?

Yes. More extensive powers, already available in the ACLFTA, ought to be made available to enable appropriate responses to breaches of the RV Act.

This will allow the Director to take steps to investigate and review by requiring information and enable better oversight and monitoring of compliance. These additional powers would enable the Director and CAV to make appropriate informed decisions about operator activities and provide more confidence in the enforcement process.