

## Review of the Retirement Villages Act 1986

The following answers to the questions asked by interested parties has have been written in consultation, direct responses and feedback with the following groups/people too succinctly set out a response rather than lodge a number of responses that represent how over 1500 residents living in retirement villages in Victoria :



### PART 2: Retirement Village Sector and Regulatory and Policy Framework

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

No. The age and vulnerability of residents must be considered, and it should encapsulate the many other living arrangements where there are more than a certain percentage of residents of retirement age and vulnerability living in those gated communities.

The RV Act is there to protect those in the community that are not always able to fully protect themselves. Residential Tenancies Act doesn't apply, but there is an overlap that isn't being addressed. There are many other considerations as to who pays for repairs, maintenance enhancements and assets of the owner. Who runs the village?

If there is an Association and an applicable Management Contract, there should be a definitive cross reference to the Act so that Residents and Committees know where they stand. The new Act must not be retrospective.

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

No. Things have changed since 1986 and the RV Act needs to be upgraded to 2020 to protect the Residents from the owner/ operators outlandish costs and gouging of the residents in many ways.

There appears to be a move by developers to change or develop what amounts to gated communities or lifestyle communities, so to remove themselves from the obligations of the RV Act. We believe that where there is a majority of people over a certain age in group housing, the RV Act should move to protect them, as they are less able to look after themselves.

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

No. Not in its current form. Definition of a retirement village needs to be expanded and defined. It needs to include all models in the industry, where people are living together in some form of retirement. Inclusion of Caravan Parks etc. should be considered.

The people who are represented in this response feel that the RV Act does not adequately address their management system and, as a consequence, they are spending serious amounts of money in the legal system in order to ensure that their rights are preserved; it is not what they signed up for when they retired into a retirement village.

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

More relevant information is needed so as to enable prospective residents and stakeholders to do their due diligence. Updated to modern expectations and there should be penalties for those who do not comply.

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

There should be a register of Complaints made to CAV which should include but not be limited to any sanctions or breaches of the RV Act. These should also be on public record, including the nature of the complaint, year etc.

### **PART 3: Entering a retirement village**

6. Are 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?

It is felt that the 21 days is adequate but the three day cooling off period should be extended to at least seven days, in consideration of the age group of people entering a retirement village, as well as the stress involved in leaving the family home after a lifetime of living in the one place.

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, most definitely. (See our examples of why we believe this it to be the case under Part 5 leaving the village) There should clear detailed financial obligations spelt out before a prospective resident signs a contract. These financial obligations should include (a) Cost to purchase, (b) whether Freehold or Lease,(c)The monthly levy, (d) DFM fee and how it is calculated, (e)either In going purchase price or sale

price and cost in approximate dollar terms, instead of percentages. These financial obligations should be set out the same for all operators, so that prospective residents can make a fully informed decision.

Often residents are vague on what the DFM fee is and whether it applies to them, or whether or not they are to receive a percentage of any capital gains. This vagueness is at times caused by contracts not being definitive enough in relation to the DFM and capital gains. The references and suggestions made in this item need to be simple and easily understood by lay people of what they are getting themselves into. If there is nothing to hide why hide it?

8. Has the provision of a Factsheet and Disclosure Statement to prospective residents led 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?

No. For our village model it does not adequately address what the prospective resident is signing up for. It is often misleading, or incorrect information is provided. It is hard to read for a layperson, yet it is expected to form part of their decision making process.

The committee of management has come across a number of errors on the statements. We have constructed a policy and procedure to deal with these matters to ensure we are not the ones giving incorrect information at village level. Our staff directs all inquiries to the sales people of the owner (we are resident operated/managed villages).

We believe that the disclosure statement should spell out who is actually “running” the village. A lot of our new residents are told that the staff and village are “run” by the owner and this is not correct.

There needs to be more written on the fact sheets etc on what the process is when there is an issue relating to a breach of contract, in order to protect all parties, so that potential residents are fully aware that if they frequently breach the by-laws, or their contract, they can be asked to leave the village.

We have been told that one of our newer entries into the industry has a different interpretation, and believes that the disclosure statement overrides the management contract that the resident signs on entry. We are of the belief that this is incorrect, unless it states this fact within the body of the contract.

After all, if there is an error in the disclosure statement, or fact sheets, would this then void the contract? We suspect the owner would have a different view then. Why is it that residents have to continually teach owners about their own contracts, or those contracts that they have purchased from a previous owner? Is that not the purpose of the due diligence process?

If a resident is not expected to realise any capital gain upon exiting the village, and the style of village is now being referred to as a lifestyle choice, then any prospective resident and their families should be clearly told this, so as to save a lot of wasted legal costs in finding out that the fine print means that they will, upon leaving the Village, end up with less than what they paid to get into the Village.

In our villages we have had to negotiate from 2014-2018 to remove items in contracts that had been changed in favour of the owner, without consent of the other parties to the contracts. This is why we are “wary” of owners. We suspect that potential residents were not given or notified of any legal proceedings when they received these fact sheets or disclosure statements, and we believe that this is illegal and should void a contract. This is especially so in a case that spanned a number of years which could have resulted in a special levy being required to be made.

One final note is that the fact sheets and disclosure statements do not list disputes, or potential disputes, between the association and the owner, which could result in a special levy having to be struck for the costs relating to such disputes. We also believe this to be unfair to the potential resident, especially in cases where, for example, we are trying to get the owner to pay for asset replacement.

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?

The owner must be more transparent in all aspects of the cost of what the proposed new Resident will incur on entry and exit.

Example: Lack of transparency: the movement of detailed refurbishment requirements from the body of the contract into definitions and interpretations section. Not all residents look at the definitions, especially when the section sets out only some of the conditions, and the fine print is in another section.

We believe that contracts should clearly state the obligations. For example: lease holder: the resident is required to return the property to its original condition. (This is why we made an earlier comment above regarding the Residential Tenancies Act) In this case the resident is not sharing in the profit on sale of the unit and in this circumstance any “upgrades, remodelling, or improvements” should always be at the expense of the person or persons who are going to benefit financially in the outcome of the improvement. Residents and families should not be threatened that their unit will not sell without the upgrades, remodelling, or improvements.

The owner is in control of the pipeline of potential new residents and the price the unit will sell for. It is not the same as market driven prices out in a normal suburban block.

Leaving the village and upgrades, remodelling, or improvements is one of the biggest reasons there is a need to have an independent Ombudsman appointed to settle disputes. This body cannot be aligned to a property body.

The outcomes must be binding by both parties. Currently VCAT, while supposed to be a poor man's court, has, in our opinion, become expensive for residents and families as a counsel is needed to interpret the often complex contracts with their grey areas.

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

No. Not at the moment, unless changes are made to make them easier to read and interpret. We would like to see them be extended to 28 days.

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

These changes have, in some instances, made things better. Although they are still ambiguous, sections are often misinterpreted under the different management structures.

Naming conventions and whether the section is referring to the village manager or the owner is also problematic. The contract that is being used currently is suited for owner operator managed village. The problem with this is that it isn't always the case. The contract needs to be labeled so that residents can read and understand their responsibilities, the association if applicable can understand its responsibilities, and the owner's responsibilities are also known. residents get caught in the middle when they have an issue or a question relating to them.

The contract also needs to clearly set out the process whereby a resident's contract can be terminated. It should include what each party to the contract must do. In our case we have a dispute resolution process, whereby when all the evidence is gathered and acted upon, and as a consequence, we have complied with what we are required to do under the contract, the owner has to take over and fulfill their obligations.

The problem with this is, it is in the body of the contract between the resident and the owner of the obligations of both parties, and unfortunately the association is not privy to the obligations and process, and as a consequence, the owner "drags their feet" on doing what they clearly have the power to do or should do. This is then particularly hard for those residents who do not get to quietly enjoy their home or a resident who is not capable of living independently and as such, they are placing themselves at risk. For example: a resident is found wandering around the village aimlessly.

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

The management contracts being written currently are still vague. We have had to limit the power of attorney or its instrument of authorisation to ensure that we are given an update of every new management contract given to residents. We have to review each change to ensure that no changes are made to the management contracts without our knowledge, or more importantly, our authorisation. We have had to do this because the owner was changing the terms of the management contract without our knowledge and we need to ensure we were aware of changes made, and the potential financial implications of such changes

How do you manage a village with 50-100 different contracts out in the village including the by-laws? One example we have found in our management of the village is that some contracts have the committee of management is responsible for OC requirements and others in the village have no such requirement – how does one manage these inconsistencies?

You only find out that there is a problem when someone provides you with their contract, and it states something different to the assumptions and interpretations you have always had in managing the village. The contracts are still full of grey areas and open to interpretation, and mostly such interpretations always are to the advantage of the owner/operators.

Another example we have seen in lease contracts within some of our villages is where the power of attorney of the resident has been set aside. The lease contract has stated that the resident has to make a decision “in their own hand” – for this age group this is draconian, as often parents rely on their children to fill in forms and write on their behalf, isn't that what the power of attorney is for? In this case it relates to the 45 day rule and whether the resident wants to settle early and accept an even lesser amount.

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

This is an area what would take much consultation to answer. We will however say that there needs to be real protection for residents. We have found that lawyers in the past have looked at the contract as a clear purchase and sale of a house, and unfortunately, it is anything but simple. There should be a checklist that lawyers have to fill out when a resident comes to see them, it should be signed by all parties to say that they have been made aware of all their contract obligations and financial arrangements. This would help all parties to be responsible for their part in the contractual process.

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

We believe that under no circumstances should a resident find that they are worse off than when they entered in the contract. They should not receive less money than the original amount they paid to come into a village. The owner controls the pricing, the pipeline of leads that come into the Village for interested potential residents. The owner moves referrals and leads around its villages to suit its own means. The resident has to suffer if there is an issue in the industry and it affects pricing (ie [REDACTED]), the resident is left at the mercy of the operator.

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

Yes. DMF's should be calculated on a pro rata basis so a resident will know what financial obligations they are incurring, as well as any financial benefits upon their exiting the village. Often a resident will not know what they are getting back until the end of the process, and this then adds stress and complexity to the process, especially when there are already stress factors in play due to ill health or need to move to greater care.

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

An owner calculated estimate of departure fees, including reinstatement/renovation costs of the unit, should be compelled to be provided to the outgoing resident, and clearly labelled, so that all costs are known to a resident before they sign any document indicating their intention to leave the Village. We have seen many examples of where we have had a property surveyor calculate the cost of reinstatement to be around 20K and the outgoing residents have been charged 50k-70K. See our examples at Part 5 Leaving at village question. We have examples of where a resident or their family take the early payment option after paying for reinstatement costs they walk away with less.

Example: Resident paid \$201K to come into the village offer was \$203,854 then was expected to pay \$57K for reinstatement leaving them with \$54,146 out of their 201K – the unit would go on to be sold in excess of \$350K. Another resident paid 184K on entry and offered \$155K.

We have seen pricing documents that have “hidden” costs that are not actually incurred by the owner, for example, management and marketing fees when there is a willing buyer and no marketing has to be done. These high prices can occur even when a resident has only been in the unit for a short while.

In some instances residents have arrived under owner policy (a) and upon exiting the village, the owner policy has changed to (b), thereby leaving the resident paying much more on exit.

As an example: when a resident entered the village then it was common owner policy to just clean the carpet and curtains (due to a waiting list of new residents) without changing the carpet and curtains as per the contract. As the policy has now changed these same resident will be expected to change carpet and pay for new drapes. There have been many other examples brought to the committee of management's attention over the years.

The owner has even on occasions, tried to get a resident to pay for replacement dishwashers and air conditioners when there were not any in the unit originally. The owner stated that it was reflected in the price, yet nothing was in writing. In fact the alterations and addition forms over the years have not been provided to new incoming residents when they have agreed to take over the financial liability for things like air conditioners. It is these contractual ambiguities and interpretations that impact upon the outgoing resident's departure fees, in many cases, much to their chagrin.

#### **Part4: Living in a retirement Village**

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

In our Villages, the original owner had it written into the management contract and it was the association (the residents) that had to pay and remain accredited under the old RVA accreditation scheme. Under the original scheme the village would be notified of the impending audit, the village manager would spend weeks getting ready for audit, the audit would be done in a day sometimes two, get signed off and things would return to how they were until the next audit.

For any mandatory accreditation scheme to be taken seriously and complied with in good faith, it must sit outside the influence of the owners, otherwise it is a waste of time, and at best, it is a marketing tool designed to give a false level of comfort to the industry and prospective residents. It is for this reason we believe that any mandatory accreditation should be under the jurisdiction of the ombudsman.

To fund such an ombudsman office should be at the owners cost, not the residents, as it has been previously done by passing the costs down into unsuspecting residents through the maintenance fees. After all it, is the owner and the Industry that benefits, not the resident. The cost of the old RVA scheme was around \$8k out of pocket in resident's maintenance budget every two years, and it was always disputed at budget time.



It has now been written out of our current contracts and we will not allow for it to be put back in. It will be a “game government” that has it gazetted that retired residents on pensions have to pay to have an accreditation scheme that, in resident’s opinion, only benefits the owner.

If the accreditation scheme was to go ahead, the other point to consider would be the power to sanction, penalties and name and shame for operators that failed or had serious breaches.

In our villages we have paid to set up our own policies and procedures based on the old RVA accreditation scheme. We review them, change them as required and they are complied with – we actively self-manage and believe we, at committee of management level, are better able to ensure our village is run to a better standard and the cost of such self-management is far less than mentioned above, as well as being accepted by residents. We pay for policies & procedures to be audited so as to ensure our systems are working, and if any are found to be defective, these are reported to our monthly committee meetings for rectification. We also engage contractors to advise on all of our EH&S issues. This means we have a number of people advising us, not just one source.

If Consumer Affairs were to consider a mandatory accreditation system, it should not be a “one shoe fits all”, as large corporations run differently to small committee of management villages who rely on external support.

The issue for us is not that we are doing the right thing; it is the residents themselves who don’t see the value of the services we pay to keep the high level of adherence to the industry standards.

It could be an ombudsman’s office that could alert the management of any changes affecting the industry. In our case we are told by our service contractor of a breach or defective service that the owner is responsible for. We then get the “run around” as to who is responsible for the costs of rectification, such breaches or defective service, usually by the owner’s consultant advising that the Owner is not in breach, or our service is defective. Who do we believe?

This is where an ombudsman office would be of benefit. We currently ensure we have the owner’s opinion on ownership of the problem in writing, but even this doesn’t give residents any peace of mind. The example we are using is in relation to fire services, and it won’t help if there is a fire and the services don’t work due to disputation, and the possibility for potential injury or loss of life.

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

Independence, the scheme must have real power to force change, must be fair, real penalties, name and shame. Have a system that notifies changes in the Industry, an

education process to ensure that all have the ability to meet requirements and finally a levy whereby the owner is seen to be paying.

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

It is a toothless tiger; we have had this system under RVA. As stated at Q16 the only benefactor is the owner to enable them to sell units. It is used so they can be seen as leaders in their field and set them apart from those who are not accredited.

There has been no change to our villages since the accreditation scheme ceased other than a saving of costs.

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

We believe we have answered this in previous questions. For any system to work it must be seen as independent, the market place, including potential residents, must see it as transparent, independent and something they can rely on. Standard and quality of services are only part of the process, and there must be clear avenues for people who are not happy to have their say and to ensure their voice is heard.

It isn't about being right, it is about being seen to be right as well, so that people can rely on the system and have a degree of comfort in knowing that the decision they have made is based on the facts and the facts presented to potential residents are correct when provided.

The marketing hype has to be removed, sales and marketing people must be held accountable for the lies and embellishments they tell the potential resident. In our villages over the years most of the problems have stemmed from potential residents being told something and when they arrived after selling their house they find out they should have read the "fine print" and as a consequence, feel powerless to address the issues.

Example 1: By-laws—pets – village management are well aware that a resident can have a pet, there are however restrictions and policies that must be adhered to and if a resident fails to provide the comply with these, the animal must leave the village for the safety of others living in the village.

Example 2: By-laws – parking - when there are two vehicles owned by incoming resident residing in the one unit. Often there are not double garages, or vehicles not being allowed to park in front of garages on common property. The potential resident is told by sales they are allowed to park in the visitor's parking space or in front of their garage. Upon entering the village they are then told they can't park in a visitors parking space – have they been misled? We believe so.

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

Yes, currently there is a restriction in relation to who can manage a village, this should be extended to include charges or dismissal from service for bullying, or taking unfair advantage of someone they were in service to care for. It should also be extended to include unconscionable conduct as well as pertaining to their business behaviour where it can be shown that an action undertaken was particularly harsh or oppressive.

Managers must have a clear police record and the owner should not have any fines or ongoing actions relating to the above.

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

There are very few people in the marketplace that fit in to the role of village manager. We see it as one of the most diverse disciplines; it draws in managers that can be unscrupulous, taking advantage of residents who may not have family around them.

We believe that it is getting to the stage that there must be some sort of qualification (University level) needed to work in the industry due to the vulnerability of those that do not have a voice. In some cases where residents voice their concerns, they worry about the possible reprisals, thereby negating the voicing of their concerns.

For our villages, a manager must be good with facility management, understands EH&S, understands financial models, be able to negotiate contracts, manage various staff, interact with the committee of management. Also be able to guide without being aggressive, able to be compassionate, to be a mediator, be fair, keep cool in emergencies, be someone residents can look to and rely on and understand dementia etc., and above all, have a high regard for integrity and honesty.

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

An example of how this could be achieved would be to look at other professional associations. Example: CPA in public practice or similar, they train, they have to be accredited, they are audited, they must maintain professional development and they have to show they are above reproach.

Training should include: finance, budgeting, contract management, Dementia and like, mediation, letter writing, EH&S training, Emergency training, How to run meetings, write minutes, negotiation, staff management would be a good start in any degree. The professional development would need to be set by a professional body set up for retirement & aged care industry. The board of this body should be

from different areas of expertise, not all property related, as there needs to be some holistic thought rather than driven by money.

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

At our Villages we use business consultants, accountants, engineers, lawyers etc. to help add the relevant skills to the committee of management as needed. They provide advice on human resources, training, projects and difficult situations. This allows us to ensure we are meeting our obligations under our contracts and managing the facility in a professional manner.

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

For our villages, our committee of management has the required authority to manage our villages. The Association rules are updated as the industry changes and to meet the needs of the residents from time to time. Resident have input and final say in any changes so there is a sense of ownership.

As for villages that are managed by owners, we feel that a resident committee is paramount in such a village and should be mandatory. Looking at it from a resident perspective, we have seen in the early years that the owner had a greater control over the committee and this then has led to the committee of management and owner aligning, and as a consequence, the loser being the residents. There is also the issue of resident apathy and that is no easy fix, but making it compulsory to have a resident committee should ensure that the owner at least makes an effort to involve residents in the day to day operations.

In our Villages those with a permanent member (owner member that is not elected), such permanent member gets three votes, and this has, over the years, lead to resident committee members feeling powerless. For those committee level decisions that are deemed to be contentious, the committee will arrange a special general meeting for the residents to have their say. In our villages the voting can be unfairly biased against the residents where a permanent member is involved in the voting process, as the permanent member has 30% of the voting capability, and any special resolutions requiring 75% approval nearly always fail due to the voting capability of the permanent member. – unconscionable.

In these circumstances why vote at all, no wonder there is apathy. Owners coming into resident committee meetings should only be conduits to bridge the communication. The contract and by-laws set the tone of how the village is run.

Residents must feel they have a real say. We feel that all villages must have a resident committee. For those owner managed villages, the owner should be a member of the committee of management but, in order for the committee to feel

that they do have adequate powers, the owner should be limited to only one vote at any meeting of the committee.

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

Yes especially in the first instance. In our villages our dispute resolution process works because the residents seem to accept that it is their peers that are deciding the outcome.

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

In our villages, where our committee management set and control the budget, in theory and in practice we are elected by our peers to manage the village on their behalf. It stands to reason that if the budget is only going up by CPI as per S38, the committee can and should make that judgement. The resident is able to ask any questions on the budget at the special budget meeting. In practice in our villages we still have a meeting for the budget approval, whereby residents can ask questions to ensure transparency and ownership of the budget.

Some of our villages in our owner's portfolio are managed by the owner. We believe that based on what we are hearing the residents do not get much input into the preparation of the budget, the costs or the outcome. We are strongly opposed to being managed by the owner As we believe that non owner operated villages are managed for the benefit of the residents and not for the benefit of the owner.

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

Yes. We have spent many hours and legal costs to remove the permanent member from some of our villages. We feel this works well for our villages. Our sister villages who have permanent member (non-appointed) have to have more meetings and go to much more trouble to ensure the rights of the residents are preserved.

Over the years we have seen and witnessed many attempts of bullying to ensure that the owner has obtained a certain result. Example 1: Owner's staff bullied residents in accepting permanent member when they let it lapse.

Example 2: Owner's staff being heavy handed when village residents wanted to move from physical nurses 24/7 due to EH&S and Worksafe issues to an emergency call system with day clinics.

Example 3: Owners (staff making promised to the committee and then changing the outcome and making out they didn't make the promise in the first place, even if the meeting was taped and it could be proven).

This has led many of our villages seeking the services of a business consultant to sit in meetings to ensure the outcomes are carefully written to ensure there is a record of what has been agreed to, especially with regard to capital works and disputes. The village is responsible for repair and maintenance, not asset replacement. Our villages were set up with a Lease originally. Over time when there has been a weak committee of management, the “sweet talking” owner representative have and do try to get the village to pay for things that the village should not be paying for. These are just a few reasons on why we believe that the owner should never be allowed to influence the few that sit on a committee.

29. It's 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?

We believe our villages give full, independent disclosure of variances in our budget to actual at the end of the year as well as item by item at budget time. We have funds separately allocated and provide monthly reports for residents to view and ask questions. They receive a copy of the profit and loss for the month, Profit and Loss for year to date, balance sheet, receivables, payables and staffing provisions. They are provided the statutory accounts at the AGM and a Contributions & expenditure sheet to enable those without an accounting background to understand and ask questions. We feel it is full disclosure, sufficiently detailed and adequate.

As for owner operated villages, they only get a profit and loss statement and very little else. It is another reason why we would not like to change the management style of our villages. We have control over our funds and know our funds are in our bank accounts and not pooled with others for common use.

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

Our aim is always have the financials out to resident fourteen days prior to the AGM. Residents are able to question the reports at any time after the AGM. As the accounts are audited, they should get a level of comfort already and so, while it is important for transparency, the timing of the reports to residents should not be a real issue. Consequently, seven days is enough time, although any time leading up to the AGM should be acceptable.

31. Are there any other matters that should be addressed in the reporting requirements? No

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 identified for mixed tenure retirement villages be addressed?

Yes, in fairness for all owners. In our villages we have owners, leaseholders and those who have extra services. Each should have a voice. In one of our villages we had an instance where the village was sold except for a piece of land in the middle of the village. This dispute went over many years costing the village residents approx. 160K in legal and consultancy fees. The first owner wanted to pay only approx. 40K and when it went to court the village ended up with 450K and their legal costs paid. Our residents had to get a bus and turn up at court to hear the case; the cost on the health of those involved took its toll. It should never have been allowed to happen, it had an effect on owners and lease holders differently and separate meetings were held as they should have been.

Another village in our group spent considerable amounts of funds in a fight with the owner of defective work they finally won 2.6 Million and recently the villages had to band together as a group to defend an action brought against it by an employee, and the resultant legal costs were approx. 100k . The case was won by the residents, but would not have made it to court except for the owner's correspondence that suggested control over the Village. They had to obtain legal advice to ensure that they could use LTM funds to fight a LTM Defects case. None of these cases should have been allowed to happen at village level. If the builder didn't do the job right it should have been handled and paid for by the owner's corporation.

Our residents are fighting back it is wrong that the owner is allowed to get away with such outrageous behavior's. It is for this reason that we believe that some of the business behaviour can be shown to be unconscionable and their actions are particularly harsh or oppressive, and is beyond hard commercial bargaining. But on saying that, if there is not a mixture of tenants/strata title owners, there should be no need other than requirements relating to Capital Replacement Plan.

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

This again comes down to who has control of the day to day operation of a village; it is also a matter of who is responsible for the repair etc. In our villages we have control, we employ the manager and staff and they work for us. The amount of staff we have is set by budget and the budget is set by the resident's vote.

In villages where there are minimal staff (high volunteer residents) say once or twice a week in a newer village the request will only be done on the next cycle when the contractor is in the village so the current 3 days is too soon, this is especially so when it requires expertise not in the volunteer pool. For that reason we believe that the period has to be more like 7 days.

In other sister villages, they are older and have full time staff , their turn around is much quicker. We are working for our residents and if we don't attend to repairs in a timely manner, we are failing our residents.

However, when it comes to the owner and their responsibility, we have had many issues where residents have had to wait years for repairs to be done. In some of our villages we have heard over the years that the cracks in the units have been so bad that a resident has seen daylight through them, and they have had to endure vermin in their units.

We have had situations where the units have sunk, and elderly residents have had to put bricks under their beds to level them. This has meant that a resident has had to run downhill after getting out of bed.

Our residents have experienced sewer and plumbing which has come to its end of life, and consequently, sewage has run through their unit, or units that have continually been flooded, mold in units. We could go on.

In fact back in September 2018 we lodged our complaints into parliament. We are in an age group that is least able to look after ourselves against capitalism, so why will our Government not listen to our cry for help and appoint an ombudsman for our industry? Our contracts are grey as to who is responsible for what. Why should we pay for assets when we are not getting any return on our investment? We are actually losing money, yet we see the unit prices in villages rise – unconscionable.

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

It is not one fit all solution; there are many types of management. Some residents have a say and power and others where they don't. The Act does not adequately define the responsibility of certain things. In our villages the day to day management is with the residents, yet the sale and purchase of a unit is with the owner.

Making the village manager employed by the village responsible for something they are not a party to or have any control over is wrong. This was seen with recent audits by CAV's regarding disclosure statements and fact sheets and again with workcover relating to the service apartments.

Government departments appear to not understand the line of responsibility and how particularly the retirement villages operate. And if they don't appear to understand, how can you expect the lay person to understand? We are able to control our responsibilities, but not those of the owners. So why then should our village managers suffer for things they don't have a say on or have control over?

The Act can only do so much, and that is why we believe the answer to the various issues in the retirement village industry is an ombudsman.

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?



Our villages all have LTM repairs & maintenance plans that set out what we believe is the Association's responsibility. The owner, back in around 2012, paid to have a one size fits all LTM plan completed. Upon closer look, the LTM report was filled with both repair/maintenance and replacements/upgrade works. There was no clear delineation in what is considered a repair and what constituted a replacement. So it combined the association's responsibility with that of the owner/developer, with the implied view that it was the association's responsibility to cover all of this expenditure. The some residents are well aware of the deferred management fee, and the fact that the developer/owner/operator must set some funds aside for its responsibilities for replacements and upgrades etc.

The time lines all ended at around the ten year mark which doesn't fit with the pattern of repair and replacement, example of this was the roads of a 30 year old village will need to be replaced in ten years yet they were listed as in excellent repair and had seen a life of 30 years to date.

As the responsibility for each is a different entity and open to interpretation, it unfortunately didn't go far enough to clarify what each party is required to do, and mostly it was just the owner endeavoring to shift the onus on the villages and residents.

Our villages are a body corporate model with the Association holding a lease over the common property, and as such, the owner is responsible for asset replacement. The owner receives the profit on sale, so why then should residents pay, whether it be under the maintenance levy or upon the outgoing resident?

We believe that no one really understood when these villages were built what would happen in 40 years' time. A resident that has been in the village for five years should they be responsible to replace forty years of plumbing or power boxes?

Our contracts mostly state 8% should be put away into LTM funds. If you consider that to paint a village it can cost 460K, take into account the plumbing repairs, roof repairs, electricity repairs, concreting repairs, road repairs and maintenance on the community centre the 8% of the total expenses net of rates was never designed to cover replacement, regardless of what the management contract appears to state. The management contract itself is ambiguous in its use of words and is not set in plain English for the average lay person to understand, let alone a lawyer who has read over the contract and given their legal interpretations of the various management contract clauses.

If a village resident was responsible for repair and maintenance as well as replacement, the cost of entering the village, and living in the village, would only be for the so called rich. Would the rich live in such conditions as some of these residents endure? We think not. The maintenance levy would need to be so much higher, thereby making affordability a problem for sales and marketing process.

We can remember a time where sales would tell a resident that a levy would rise by x amount so much below what it really costs. Legislation in many areas has impacted on the cost of the monthly maintenance levy. If there was a change contemplated in this regard, there should be some sort of grandfathering arrangement for existing management contracts.

There would also need to be some robust and unambiguous requirements around what is and what is not covered, as well as how much was to be put away, so that potential residents were aware of their responsibilities – again plain English – spelt out exactly what they would be paying.

In some of our older villages it is difficult to work out who is responsible for what. At what point does the resident have to pay and the association or the owner. If the owner had their way they would pay for nothing. The resident is not given an exhaustive list of what they are responsible for – it could be done – it is not like units are 40 squares in size, and it is easy to define.

In our villages there is a basic lack of understanding of who pays for what? The outside of the door, the inside of the door, the security screen and the locks, at what point is the resident responsible for what?

Take the new resident that moves into a 40 year old unit, how they could be responsible for assets that were not new then they moved in because the unit sat vacant for years. Or the same resident that had to move to higher care a few years later gets hit with a massive bill on the way out because the buck stopped at them. All to be advised, “Sorry there has been a policy change so you are now responsible for xyz costs“.

Maybe each unit should have money set aside separately noted to be fair to each and every resident so the last person going in or out of a unit doesn't get charged with a huge reinstatement fee?

What we do know, is there needs to be consistent definitions on what the key words are regarding repair, maintenance, reinstatement and replacement, and they should be universal. All parties should work together to establish certainty in these matters.

We believe that there could be an argument much like the Goods Act with some of these units – they are not fit for purpose because they have been patched and covered up when there has been a resident turnover. The price would suggest the job was paid for by the outgoing resident, but the evidence suggests that the issues in the unit have not properly or adequately been rectified.

A resident has only a set amount of time to complain about various faults when they move in, otherwise they “wear” the problem and the costs of rectifying the inherited problem. The age groups that are being represented are often frail, having moved from their home of over 40 years and disorientated. How then they can be

expected to know that everything is working, or that there is a problem with the tiles etc – in our opinion, it is unfair and unconscionable.

Further examples of problems in this area are:

- a) One of our villages has been told its meter boxes are unsafe and condemned. Replacement must be done ASAP. The cost to the Association is over \$240k. The meter boxes, although meet the standard over 30 years ago, but they do not now meet standards of today. Other villages have had to upgrade the boxes out of the funds, a complete replacement more than double the cost.

The developer / owner have stated that it's the association's responsibility to pay. This clearly isn't a repair and maintenance issue and should be borne by the developer / owner / operator. The installation of an embedded network is an asset yet the villages are asked to pay to have it installed. The cost can be around \$50k for each parent meter and adjustments to each of the meters in the village add a further cost.

When a resident leaves the unit they are charged considerable sums to reinstate the leased property to as new, why are not the meter boxes replaced at the same time. Some residents feel that the developer is taking from the outgoing resident, the new resident as well as the village association.

- b) One of our villages had to wait for a number of years to get the front entrance gates replaced and the area made good. They felt that the delay was in response to the active nature of the resident movement within the village. The gates didn't work properly when the site was developed. It was felt that the developer / owner / operator didn't provide the safety of a secured gate that the residents expected when they came to live in the village.
- c) One of our villages needed to have its centre refurbished; it has been asked to contribute to put in a disabled toilet and other parts of the centre. This would leave the fund with next to nothing for future works. Refreshment and revitalisation of the centre is not repair or and maintenance.
- d) One of our villages needed to replace carpet in common areas, has kept it clean regularly, normal wear and tear has meant that it now needs to be replaced. Association has been told to pay to replace. This is an E H & S problem if there is the danger of a resident falling due to holes or tears in carpet.
- e) One of our villages boundary wall needed to be replaced, the association has been told to pay to replace. The wall doesn't provide the safety that the residents expected when they came to live in the village.

- f) Village bowling greens beyond repair, association told to pay to replace or nothing is done. A marketing draw card for potential residents is having their own bowling green. Many of the greens around the villages are not able to be used by the “serious bowlers”, due to the poor state of the greens.
- g) One of our villages needed work done on roofs and gables they are rotting and need to be replaced, association told to pay to replace.
- h) One of our village’s bridges, safety rails, decking rotted and needed to be replaced. Association was told to pay to replace. A large E H& S issue if they were to give way. A contractor fell down a steel grate in a village recently and was lucky he didn’t sustain a serious injury.
- i) One of our village’s drainage systems, including drainage pits, rotted out especially for those villages over 30 years old. There are a number of problems associated with drainage, whereby elderly residents are flooded on a regular basis, as well as sewage running through their unit on more than one occasion. The problem stems from poor workmanship in initial development. The problem is what constitutes a replacement and what is a repair considering the age of the village?
- j) The owner tells the association that the residents are responsible for Village roads, including cracking and repairing pot holes, or the replacement of the roads, after they cannot be repaired and have to be resurfaced.
- k) Village air conditioners need to be replaced, association told to pay for the replacement. This is clearly a replacement of an asset that has been maintained by a service agreement at the associations cost over its life.
- l) Village Trees, developer / owner / operator planted trees without giving thought to the impact on drainage, roads and roofs. After ten and twenty years, the trees have to be removed and the developer owner requests that the association replace with expensive mature trees. The association cuts down the trees, pays all removal and maintenance costs. Consequently, why should the Association have to replace these removed trees with mature trees for aesthetic purposes, only to incur further problems in the future?
- m) Village swimming pools, what constitutes a repair and at what point does it become a replacement.

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

Yes. Maintenance funds should be separated from capital replacement. One is the responsibility of the body corporate and the other is a maintenance requirement under the budget of the village. The owner must be made to put funds aside out of the sale to ensure there are funds available to pay for what is required.

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

There are already restrictions on what our LTM funds are for our villages. We have established a policy that guides the committee and management of what value and how things are to be paid.

We believe that if there is a capital replacement plan under the OC Act, the village should be able to view the plan and see what has been planned and the value in the fund.

Currently the owner controls and although says it will spend x on village for the year, they will often move funds around out of the village to other villages.

We believe, at a minimum, the funds for each village should be in a separate bank account and it should be used for the village that it is set aside for.

There should be no allowance for the owner to move funds meant for one village to another at its will. It is currently a way of a village being punished for not being "Cooperative", and this practice has to stop.

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?

These services are available whether in a Retirement Village or outside. Under no circumstances should an owner meddle. This seems to be set as booming profit making scheme for owners. Residents should be able to choose who they want to provide services. The owner should be sanctioned for telling lies about other services and the cost of such services. There should be penalties for doing so.

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

No, it leads to less services and funds available for residents as the market grows with the government giving out packages for keeping the elderly in the home there seems to be a move from owners to get a "cut of the action". Residents should be free to engage who they want to provide their services, especially in the independent living village models and alike.

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

No, it has the potential to be just like retirement living is now, a way for the owners to make more money at the expense of the residents who need the services. At one of our villages recently the owner's representative was overheard telling the residents they would be better off obtaining funded care packages, thereby saving

money to spend on a holiday. This is not what the funding is provided for. If owners are to provide services it needs to be audited to ensure the resident is getting the lion's share of the funding. No one is saying that providers are not entitled to a service fee – how much should be established. Otherwise taxpayers will end up paying for a system open to dishonesty by the parties involved, and again the resident will be the loser

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?

This is a difficult question. It is easier to answer if it relates to the village as a whole. Example if you have a resident who is hoarding newspapers, the whole unit is filled with a fire hazard, then you have to step in and there must be mechanisms in place to ensure the safety of all first.

The Act and all legislation at the moment do not go far enough of ensuring the safety of all is paramount. All of these matters can be dealt with in the Contract; it should be clear and concise as to exactly what is acceptable and what action will be taken against them. Recently a new Committee member stated that they felt that it was wrong to point out a breach to a resident and scare them with the outcome of a breach. But how else can the Association protect the residents, and at what point does an Association act?

Residents on entering a village must be made aware of the by-laws, at least in list form, so that they can ask questions. Other than those in the contract, they are not being provided in the first meeting, so again this means that potential residents are not being told the full extent of what it means to live in a Village, and more importantly, their obligations to comply with the by-laws.

In our villages we have a care program running with our well-being officers and committee of management to ensure that no one goes unnoticed. The issue for us is that the owner has the power under the lease contract to get a resident assessed, but drags their heels and it is only a matter of time before there is a resultant death due to the owner delaying taking action. The owner should never be allowed to sit on the fence and not act, especially when they are told and given evidence of the need to act, and if this has to be backed up in legislation so be it. The owner should provide security, properly funded and an environment that is conducive to keeping residents happy and healthy in their older years.

**PART 5: Leaving a Retirement Village**

Below are some examples of the difference in the amount of money paid by a resident for costs on leaving the village, if you couple this with legal fees, you have to ask yourself is the resident really being protected?

	Reinstatement/Refurbishment prior to intervention by legal	After Legal intervention
Case 1	\$52,123.56	\$ 26,430.00
Case 2	\$55,278.82	\$ 16,541.00
Case 3	\$57,513.34	\$ 20,736.11
Case 4	\$57,150.84	\$ 5,000.00
Case 5	\$55,278.62	\$ 16,541.00

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

No, we don't believe so. The RV act does not go far enough in ensuring processes are put in place. The contracts need to be in plain English, clear for a lay person to understand. If they are not, you have to ask the question why not, what is being hidden. It should be a simple matter; residents have a right to know what they are getting themselves into. What the actual costs are. But it appears the industry doesn't want to spell it out, because it will unduly affect sales.

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 ensure the right balance?

No. See the above examples at the start of the section. There is no process in place at all to protect residents. We have written a paper to help residents on leaving the village, the owner threatened legal action against the villages. Residents are forced to sign non-disclosure statements upon any settlements reached. Only residents or families objecting to their settlement proposals get satisfaction, and most of the families or residents do not fight for their rights, and as such, the owner still makes profits using the schemes as outline above. This area is where there is the greatest need for resident access to an ombudsman, again another area where tactics are harsh and unconscionable.

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?

This area is where there is the greatest need for resident access to an ombudsman, again another area where tactics are harsh and unconscionable. There is no process to properly protect a resident from leaving a retirement village at all. The work has to begin at the beginning, by enforcing simple plain contracts and transparency for

all, so that when a resident opts in they know what they are opting in for as well as what they are losing in the process. There should be more consideration given to conditions that are in the Residential Tenancies Act that set out what will a resident pay if they end their agreements each year for the life of the lease. After all it is being done presently in some Villages under some models. With the software available today this would not be onerous for owners.

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

Yes, although if simple English contracts were provided and the industry were transparent in calculating the exit payments, maybe via a calculator application, then at least the resident could decide for themselves as they would have the tools to make an informed decision.

## **PART 6: Dispute Resolution**

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

Removal of the role of residents committee in resident dispute mediation will only work if it is an independent body. Not resident or owner.

We have examples there the owner has made mischief for their own gain. Whether it is to take down a committee of management or a manager, there will always be complains. In this industry we have residents who make untrue statements due to their health and perception, owners and others who take advantage of these residents to enable them to change an outcome.

We are all about being transparent and fair. If a resident is making a complaint then an investigation needs to be carried out. Often within the village network residents are more aware of what is really going on within the village and the committee of management is often aware of all the facts due to the environment.

On recent audits at our villages, we passed our audits; this means that what you have in place at the moment works, the education process ensured we were addressing matters in the correct way.

Over the years throughout our village we can count on one hand the amount of disputes that have had to go through the whole process, these do not tend to be resolved even after this as they are complex and we are dealing with failing mental health issues.

The most need under dispute resolution process is the need to make owners/developers/operators resolve their issues in a timely manner. This is not



addressed anywhere in your paper. Disputes arise between these parties and the committee of management or a resident (we have listed amongst the questions above where these are problematic) cause distress, a feeling of helplessness and ill health because they are not being addressed in a timely manner. This is why we believe that the best solution is to establish an ombudsman; this will restore consumer confidence back into a market.

47. Should a party to a retirement village dispute seeking access to the Victorian Civil and Administrative Tribunal (VCAT) or the Courts be first required to have followed/exhausted the internal dispute resolution procedure?

Our experience has seen the Courts are not used as the Resident cannot afford to spend the money. More certainty and clear and concise contracts will reduce the need for these avenues to be accessed. Although we are seeing a rise in disputes relating to by-laws and lack of real means of handling these complex issues for the safety of the resident involved and the residents that are living in the Village. The Village may go through all of the dispute processes to then come up against the fact that nothing else can be done. When you add in Dementia, lack of family support, the resident is left to fend for themselves and they are often violent and disregarding of their safety and that of others. Examples: fire hazards; firearms; violent outbursts; not looking after themselves or someone else has taken advantage of them.

48. Should mediation of a dispute through Dispute Resolution Centre of Victoria (DSCV) be a pre-condition of access to VCAT or the courts?

Yes, although the disputes on leaving a Village are often more complex, and it is a waste of everyone's time as parties can't be compelled to reach an outcome.

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

Ombudsman is the only fair outcome.

We have been told that the Retirement Villages Act is silent on the mechanisms of how the residents or the association can take disputes to VCAT. The distress this has caused the residents could be avoided, if there was a better way of mediating between the parties.

We believe that many of the experiences we have endured could have be avoided by ensuring resident bodies are able to take their fight direct to VCAT or mediation. The cost of residents to take matters to court or the involvement of lawyers and barristers (if they can engage a lawyer or barrister) has a direct effect on the liquidity of a village and the finances of resident pensioners who are relying on a pension to survive.

**PART 7: Enforcement of The Act**

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

No, the penalties must be enforced and hard line taken, not just lip service so that on the outside it ticks all the boxes.

51. Should the Director of Consumer Affairs Victoria be given additional powers and enforcement options available under the Australian Consumer Law and Fair Trading Act 2012? If so, why? If not, why not?

There is a perception out in the market place that Consumer Affairs favour's owners and puts their needs ahead of the Residents. While we agree there needs to be an additional powers given to someone to ensure rights are protected. We believe that an Ombudsman is needed in the industry and that Ombudsman should not be within Consumer Affairs, thereby ensuring residents are given a fair go, at the same time residents perceiving that they are being given a fair go, and also a sense they are treated with respect and taken seriously.