

Review of the *Retirement Villages Act 1986*

Issues Paper



Minister's foreword

As the proportion of Victorians reaching retirement age increases, it is important to ensure that there continues to be a range of housing options available so that older Victorians can choose where and how they would like to live.

The retirement living market is evolving. This is being driven by a number of factors including our ageing population, changing expectations and needs of retirees, increasing land values and reducing housing affordability.

It is no surprise then that the choice, availability and regulation of housing options for retirees has attracted significant community attention in recent years. This is reflected in the Inquiry into the operation and regulation of the retirement housing sector in Victoria by the Legal and Social Issues Committee of the Legislative Council of the Parliament of Victoria in 2016-17 (Parliamentary Inquiry). The Parliamentary Inquiry received 766 public submissions, the majority of which related to retirement villages.

In its response to the report of the Parliamentary Inquiry, the Victorian Government supported the Inquiry's recommendation that the *Retirement Villages Act 1986* (RV Act) be reviewed in order to determine its effectiveness in providing consumer protection while allowing growth and innovation in the sector.

While a number of significant reforms have been introduced into the RV Act since 1986 to address issues that have arisen in the retirement village market, the RV Act has not been the subject of a comprehensive review since 2004.

A review of the RV Act is therefore timely and I have asked the Department of Justice and Community Safety, through Consumer Affairs Victoria, to undertake this review and report to the Government on reforms to the RV Act to ensure that the regulatory framework strikes a fair balance between facilitating growth and innovation in the sector while protecting the rights and interests of retirement village residents.

All Victorians have the opportunity to contribute to this important review which is launched with the release of this Issues Paper and I encourage them to participate by going to the Engage Victoria website for more information.

Marlene Kairouz MP

Minister for Consumer Affairs, Gaming and Liquor Regulation

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About this Review

The *Retirement Villages Act 1986* (RV Act) regulates the contractual arrangements for residents entering retirement villages, including ongoing charges, management of disputes and the sale of residential units.

Since the RV Act was first enacted, the retirement village market has grown and evolved as a result of the ageing population, changing expectations of those entering retirement, rising land values and decreasing housing affordability.

In September 2017, the Victorian Government supported the recommendation of the Parliamentary Inquiry into the retirement housing sector (Parliamentary Inquiry)¹ that the Government review the RV Act in order to determine its effectiveness in providing consumer protection while allowing growth and innovation in the sector.

The Minister for Consumer Affairs, Gaming and Liquor Regulation (Minister) has asked the Department of Justice and Community Safety (the department), through Consumer Affairs Victoria (CAV), to undertake the review and report to the Government on potential regulatory reforms to the RV Act.

Terms of Reference for the review are attached at **Appendix 1**.

The Review Process

The release of this Issues Paper marks the beginning of public consultation for the review of the RV Act (Review). Having regard to the Terms of Reference for the Review, the Issues Paper addresses key issues relating to the retirement village sector that have been the subject of recent reviews and inquiries (including the Parliamentary Inquiry), are commonly raised with the Government or have been identified as potential emerging issues and challenges for the sector.

We are seeking your views to enhance the Government's understanding of the retirement village sector. Your feedback will inform the development of options.

Following consultation on this Issues Paper, an Options Paper outlining potential reforms will be released for public consultation. Submissions to the Options Paper will assist the Government in determining reforms.

¹ Legal and Social Issues Committee of the Parliament of Victoria's Inquiry into the retirement housing sector, March 2017.

Getting involved and having your say

CAV and the department invite your views and comments in response to this Issues Paper. The paper poses questions you can respond to or use as a guide to write a submission.

Until **Friday 6 December 2019** you can provide your response to the paper in a number of ways:

Online at:

www.engage.vic.gov.au/retirementvillagesact

In addition to responding to the full Issues paper, the website will also allow you to respond to six specific topics as an alternative to responding to all of the issue raised by the full Issues Paper.

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

By mail:

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

At a community forum, by registering via the above website. Details of the community forums are as follows:

Geelong – Tuesday 12 November 2019

Geelong RSL, Function Room
10.30am-12.30pm, registration from 9.45am

Shepparton – Friday 15 November 2019

Shepparton RSL, Lone Pine Room
10.30am-12.30pm, registration from 9.45am

Melbourne CBD – Friday 22 November 2019

156 Collins Street, the Assembly Hall building, Werner Brodbeck Hall
10.30am-12.30pm, registration from 9.45am

Note: Unless you label your submission as confidential, your submission or its contents may be made publicly available in this and any subsequent review process. Submissions may be subject to Freedom of Information and other laws. Consumer Affairs Victoria reserves the right to not publish information that could be seen to be defamatory or discriminatory.

About this Issues Paper

This paper is divided into 7 parts:

- Part 1 - The retirement village sector
- Part 2 – The regulatory and policy framework
- Part 3 – Entering a retirement village
- Part 4 – Living in a retirement village
- Part 5 – Leaving a retirement village
- Part 6 – Dispute resolution
- Part 7 – Enforcement

In each part, issues have been raised for consideration and comment. Questions for consideration are also presented throughout the paper.

A Glossary of terms used throughout the Issues Paper has been included at Appendix 3. While the Issues Paper includes references to data or evidence around the existence of issues where available, the purpose of the paper is to draw out evidence and commentary from stakeholders about the nature of the issues and the extent of any problems. Together with other inputs to the Review, this feedback will contribute to the evidence base for potential reform of the RV Act and the regulatory framework.

Feedback from this Issues Paper will inform the development of an Options Paper on potential regulatory reform which will be released in the first half of 2020.

Glossary of questions

The regulatory and policy framework (Part 2)

Application and scope of the *Retirement Villages Act 1986*

1. Should the payment of an ingoing contribution be the defining factor in determining whether the *Retirement Villages Act 1986* (RV Act) applies to a retirement village? If not, what other considerations would be appropriate?
2. Is the definition of 'retirement village' under the RV Act otherwise appropriate? If not, what changes would you recommend?

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 RV Act should be?

The purpose and use of the current register of retirement villages

4. What improvements could be made to the register of retirement villages?
5. What other information should operators be required to include in the register?

Entering a retirement village (Part 3)

Consideration and cooling-off periods

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?

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

Contracts – form and complexity

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?
12. To what extent do retirement village contracts remain unnecessarily complex?
13. What further improvements could be made to contractual requirements under the RV Act?

Financial models and the deferred management fee

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?
15. Should deferred management fees be calculated on a pro rata basis? If so, why? If not, why not?
16. When should retirement village operators be required to provide a resident with an estimate of their departure fees and what are your reasons?

Living in a retirement village (Part 4)

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?
18. What do you consider to be the necessary elements of any mandatory accreditation scheme?
19. What do you consider to be the benefits and costs of voluntary accreditation schemes?
20. By what alternative means could the standard and quality of services provided by retirement villages be improved?

Qualifications 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?
22. What do you consider to be the benefits and costs of mandating training and professional development requirements for retirement village managers and employees?
23. How should any requisite professional development requirements and training be determined?
24. Are there other ways to ensure that retirement village managers and employees have the requisite skills and professionalism to undertake their responsibilities?

Residents committees

25. Is the current role of the residents committee appropriate and are its powers adequate?
26. Should residents committees have a role in dispute resolution involving resident-to-resident disputes?
27. Should residents committees have the power to approve above-CPI increases in maintenance charges? If not, why not?
28. Should retirement village owners and managers involvement in meetings of the residents committee be prohibited unless invited by the committee?

Annual meetings and reporting

29. Is the level of detail about the financial activity involving the retirement village required to be included in the financial statements adequate for residents? If not, why not?
30. Should residents be provided with copies of the financial statements before the annual meeting? If so, what period is reasonable?
31. Are there any other matters that should be addressed in the reporting requirements?

Retirement villages with an owners corporation

32. In mixed tenure retirement villages (i.e. retirement villages comprising both owner-residents and non-owner residents), 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 *Owners Corporation Act 2006* (OC Act)? If not, how should issues identified for mixed tenure retirement villages be addressed?

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

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?
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)?

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

Leaving a retirement village (Part 5)

Selling/re-leasing a retirement village unit

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?

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 ensure the right balance?

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?
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?

Dispute resolution (Part 6)

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?

External dispute resolution

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?
48. Should mediation of a dispute through Dispute Resolution Centre of Victoria (DSCV) be a pre-condition of access to VCAT or the courts?
49. What do you think is the best means to achieve low-cost, timely and binding resolution of disputes in the retirement village sector?

Enforcement (Part 7)

50. Are the enforcement provisions incorporated into the RV Act sufficient?
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 (ACLFTA)? If so, why? If not, why not?

Part 1: The retirement village sector

This Part surveys the demographic and economic information that underpins the retirement village sector and discusses the changes that are affecting the sector.

Retirement villages are a form of independent living accommodation for mostly retired people over the age of 55. They provide a community setting with access to a range of services. Retirement villages are not a conventional property purchase or investment. There are different types of tenure, contracts and financial arrangements available to prospective residents of a retirement village.

What is a Retirement Village?



Most residents are aged **55 or older**, or are retired from full time work



Services are provided, as well as housing



One or more residents have paid an **ingoing contribution** that was not rent

According to the Property Council of Australia's 2017 Retirement Village Census only 16 per cent of retirement village units in Australia are occupied on a freehold basis². The majority, around 74 per cent of retirement village units, are occupied on what is often referred to as a loan-lease or loan-licence basis³. A loan-lease or loan-licence retirement village unit is a financial model under which the village owner grants residents a lease or licence-to-occupy their unit and requires, among other things, the payment of a substantial (refundable) ingoing contribution and a deferred management fee.⁴

² Residents who own the 'freehold' of a retirement village unit are referred to as 'owner residents' throughout this Paper.

³ PwC/Property Council of Australia, Retirement Village Census, 2017.

⁴ Residents who occupy a retirement village under the loan-lease or loan-licence model are referred to as non-owner residents throughout this paper.

At present, there are 467 retirement villages in Victoria⁵, with around 36,000 individuals living in them. Currently, the retirement village market provides housing to approximately 3.7 per cent of Victorians 65 and older.⁶

1.1 Social and economic setting

1.1.1 Retirement villages as a form of retirement housing

The population of Australia, and Victoria, is ageing.

Between 2011 and 2016 the proportion of Australia’s population aged 65 years and over increased from 11.8 per cent to 14.7 per cent. Based on these figures, by 2021 the population aged 65 and over will reach about 16.3 per cent and will number 4.3 million. The ageing population means that higher numbers of older Australians are likely to seek retirement accommodation and it is expected that the retirement village sector will play a role in meeting this need.

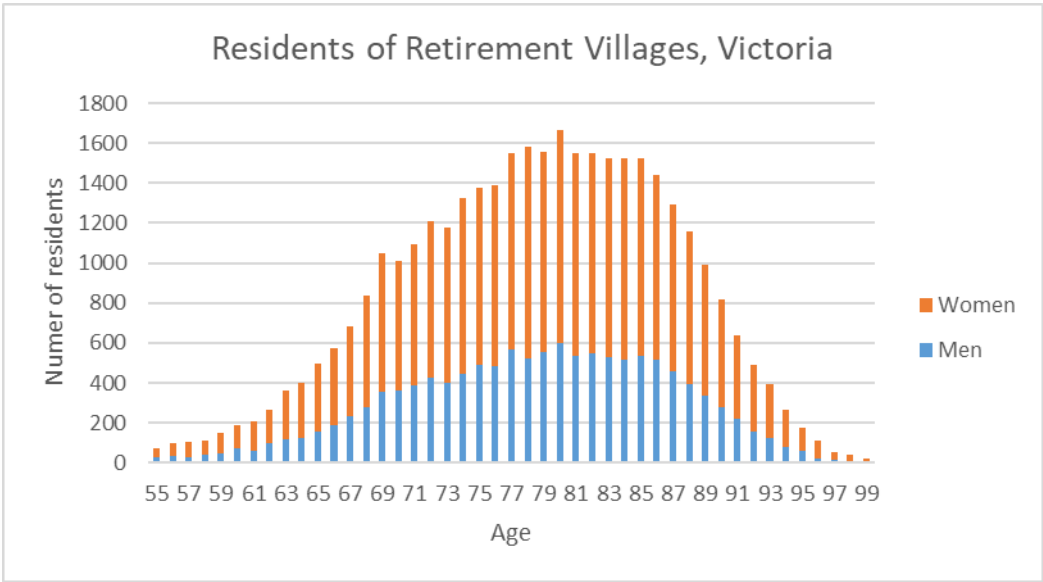
In 2015 the Productivity Commission reported that around 6.6 per cent of people in Australia aged over 65 lived in housing provided by the retirement housing market. The report noted that 4.5 per cent comprised retirement villages.

The most popular housing choice for retirees remains their own home. In 2011, 73.4 per cent of people over 65 were home owners, while 7.3 per cent lived in private rentals and 6.1 per cent in social housing.

1.1.2 Residents of Victorian retirement villages

At the 2016 Census, 36,099 Victorians were residents of retirement villages.

Figure 1: Victorian Retirement Village Residents 2016, by age and gender



Source: Census of Population and Housing 2016, Australian Bureau of Statistics, custom data analysed by Department of Justice and Community Safety

⁵ CAV internal data, August 2019.

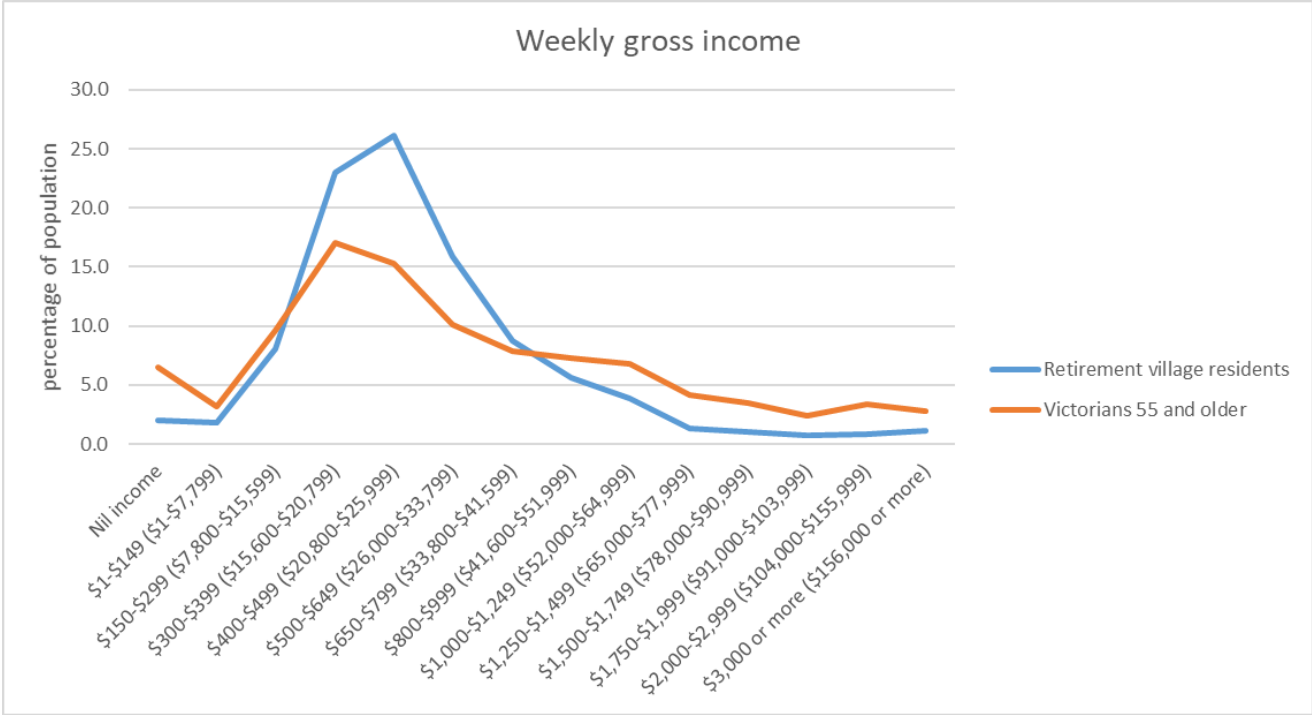
⁶ Source: ABS 2016, Census of Population and Housing 2016, custom data analysis by DJCS.

The average and most common age of residents in a retirement village is 80. Women outnumber men in every age group and overall, making up 65 per cent of the retirement village population.

Income

Retirement village residents are more likely than Victorians overall who are over 55 to receive an income in the range of \$300 to \$499 per week. They are less likely to receive an income over \$33,800 per annum (\$650 or more per week) than other Victorians in that age group.

Figure 2: Weekly gross income, Victorian retirement village residents and all Victorians 55 and older.



Source: Australian Bureau of Statistics, 2016 Census of Population and Housing, Custom data generated in Tablebuilder.

1.2 The Victorian retirement village industry

Market share concentration in the retirement village industry is low.

In Victoria, there are several large commercial operators with national operations, and many smaller commercial or not-for-profit owner managers. Australia wide, the recent Property Council of Australia survey found 72 per cent of villages are owned by commercial (for profit) operators, with the remainder owned by not-for-profit operators.⁷

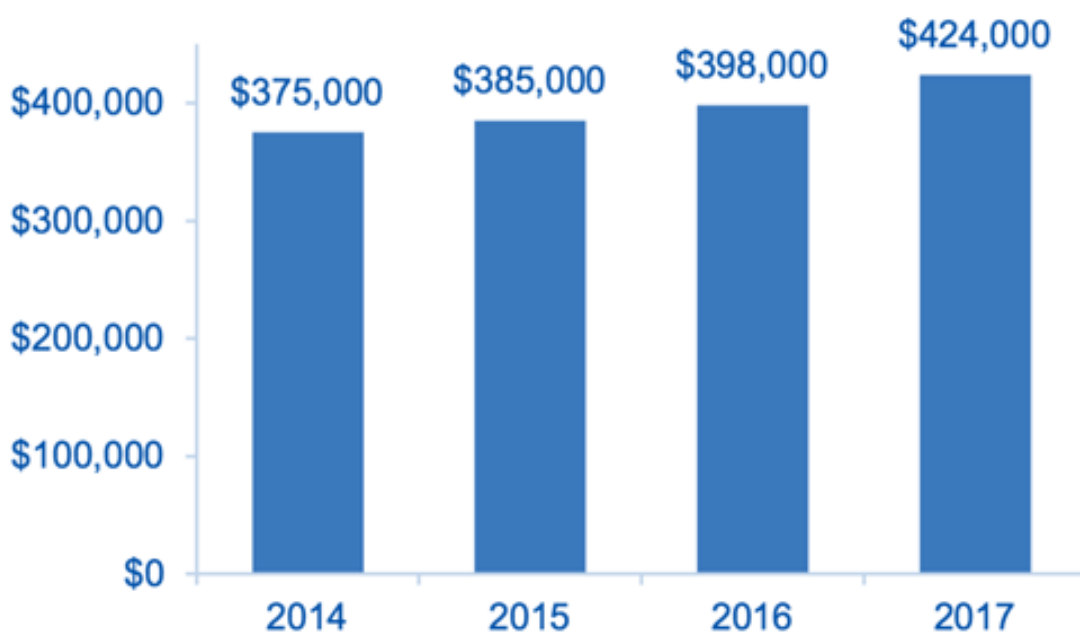
⁷ PwC/Property Council Retirement Census 2018.

1.2.1 Rising land and property values and retirement villages

Land and property values have risen dramatically in Victoria over the last decade. Across Victoria, median vacant land prices increased by 72 per cent between 2008 and 2018.⁸

The value of retirement villages and their units does not necessarily follow the market for freehold housing units. Some data suggests that more than half (63%) of retirement villages are sold for 10 per cent lower than the average cost of a comparable property in the same local government area.⁹ However, the Consumer Action Law Centre suggested in its submission to the Parliamentary Inquiry that while that may have been the case in the past, residents often pay the full value of the housing unit as if they were buying freehold.¹⁰

Figure 3: Two-bedroom Retirement Village units, National average price 2017



Source: PwC/Property Council of Australia, Retirement Village Census, 2017

1.2.2 Units of housing

There are over 33,000 units in retirement village housing in Victoria. The majority of these residences (55 per cent) are occupied by one person, with the remainder being occupied by two persons (25 per cent) or remaining unoccupied.¹¹

The structure of units of housing vary but semi-detached housing is most common.

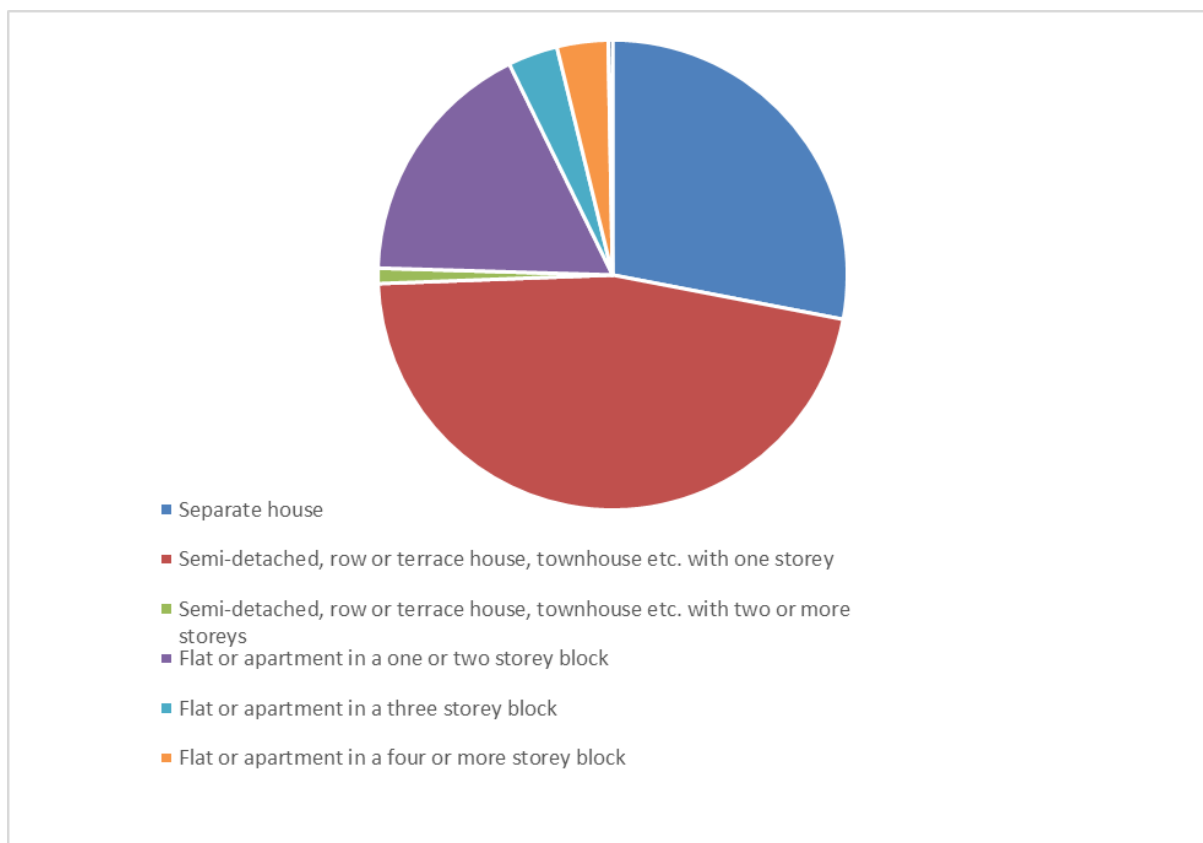
⁸ Data from the Department of Environment, Land, Water and Planning, <https://www.propertyandlandtitles.vic.gov.au/property-information/property-prices>, accessed 9 August 2019, analysis by CAV.

⁹ National overview of the retirement village sector, 2014, Property Council of Australia, p 4. <http://www.retirementliving.org.au/wp-content/uploads/2015/03/National-overview-of-the-retirement-village-sector-Grant-Thornton.pdf>.

¹⁰ Consumer Action Law Centre submission to Parliamentary Inquiry, referenced in report of the Parliamentary Inquiry, p 52.

¹¹ Source: Australian Bureau of Statistics, Census of Population and Housing, 2015. Custom data generated in Tablebuilder.

Figure 4: Dwelling type, retirement village housing units, Victoria



Source: Australian Bureau of Statistics, *Census of Population and Housing, 2015*. Custom data generated in Tablebuilder

According to the Australian Bureau of Statistics, the bulk of Victorian retirement village units are in Greater Melbourne (26,635). A smaller proportion are in inter regional areas (5,637), with a minority in outer regional areas (834).¹²

Increased land prices could be contributing to a trend in the development of multi-story or vertical retirement villages which can allow greater proximity to established communities and infrastructure.¹³

With changing expectations of retirees, there is a notable trend of new retirement villages being co-located or integrated with other forms of housing, retail and commercial businesses, and community facilities providing residents with opportunities to live within and amongst the general community.¹⁴

¹² Location classifications are generated by the ASGS (Australian Statistical Geography Standard): vol 6 (<https://www.abs.gov.au/geography>).

¹³ 'Vertical retirement villages are on the rise, and they're high-tech too', David Tuffley, *The Conversation*, 27 June 2018 (<https://theconversation.com/vertical-retirement-villages-are-on-the-rise-and-theyre-high-tech-too-96916>).

¹⁴ 'Integrated Aged Care Towers proposed in Woolloongabba', the Urban Developer.com, 12 February 2018 and 'new retirement village and aged care facility announced for Champion Lakes in WA', 2 July 2018, <https://www.villages.com.au/info-centre/post/news/new-retirement-village-and-aged-care-development-announced-for-champion-lakes-in-wa>

1.3 The impact of ageing in place policies

The Productivity Commission's 2015 study on the housing decisions of older Australians found that this group have a strong preference for ageing in place.¹⁵ It also notes that growth in retirement villages has been strong. These preferences align with the preferences of Australian Governments to provide care in the home where possible and delay entry into expensive residential aged care.

The Royal Commission into Aged Care Quality and Safety has noted the significant increase in the number of people receiving Home Care Packages over the last 10 years, from 38,573 in 2007 to 71,312 in 2017.¹⁶

The proportion of Victorians who are older is expected to increase, with the number of people aged 65 years or older projected to triple between 2011 to 2051 to 5.9 million people.¹⁷ Life expectancies for this population group are growing and this will increase the number and proportion of households made up of older Victorians.¹⁸

¹⁵ Productivity Commission Research Paper December 2015, Housing Decisions of Older Australians, p 2. Accessed 9 August 2019, <https://www.pc.gov.au/research/completed/housing-decisions-older-australians/housing-decisions-older-australians.pdf>

¹⁶ Royal Commission into Aged Care Quality and Safety, 'Medium and Long-term Pressures on the System: the Changing Demographics and Dynamics of Aged Care: Background Paper 2', May 2019, p 23.

¹⁷ Victorian in Future, 2016, The State of Victoria Department of Environment, Land, Water and Planning, p 2. Accessed 4 September 2019, https://www.planning.vic.gov.au/_data/assets/pdf_file/0014/14036/Victoria-in-Future-2016-FINAL-web.pdf

¹⁸ Victorian in Future, 2016, The State of Victoria Department of Environment, Land, Water and Planning, p 8, Accessed 4 September 2019, https://www.planning.vic.gov.au/_data/assets/pdf_file/0014/14036/Victoria-in-Future-2016-FINAL-web.pdf

Part 2: The regulatory and policy framework

This Part discusses the existing regulatory and policy settings for retirement villages and why retirement villages are regulated.

The retirement village sector is regulated in Victoria through the *Retirement Villages Act 1986* (RV Act) and through regulations made under the RV Act: the Retirement Villages (Contractual Arrangements) Regulations 2017 and the Retirement Villages (Records and Notices) Regulations 2015.

A number of provisions of the *Australian Consumer Law and Fair Trading Act 2012* (ACLFTA) containing monitoring and compliance powers, including inspection powers, enforcement options and remedies, are incorporated into the RV Act, which enable contraventions of the RV Act to be addressed through the ACLFTA.

The Australian Consumer Law (ACL), incorporated into Victorian law through the ACLFTA, also applies to the operation of retirement villages. This means that residents of retirement villages have the same consumer rights and guarantees for goods and services provided by the retirement village as any other consumer receiving goods and services.

2.1 The Retirement Villages Act 1986

The RV Act was introduced to regulate a certain type of retirement housing, defined in the RV Act as a 'retirement village'. It does not seek to regulate other types of retirement housing. While its stated purpose is to 'clarify and protect the rights of persons who live in, or wish to live in, retirement villages', the RV Act does not seek to regulate all aspects of life in a 'retirement village'.

The definition of a 'retirement village' and the rationale for its regulation is further considered in Part 2.3 below and the purpose of the RV Act is further considered in Part 2.3.1.

When the Retirement Villages Bill was introduced into Parliament in 1986, the responsible Minister stated that, in general, it sought to:

- ensure prospective residents are made aware in advance of the implications of entering a retirement village
- ensure that the rights of residents are unambiguous and enforceable
- ensure that the actions of management do not infringe the rights of residents, and
- avoid undesirable marketing practices by promoters of retirement villages.

When looking more particularly at the various provisions of the RV Act, it can be seen that it seeks to address a number of special situations of vulnerability for residents of retirement villages, including:

- the possible loss of their ingoing contribution, which typically represents all or most of a resident's capital

- trying to understand the nature and effect of complicated contracts
- potentially becoming financially trapped in a village they come to dislike, and
- handing over a measure of control of their day-to-day living arrangements to the village operator.

In seeking to address these special vulnerabilities, the RV Act:

1. protects residents' ingoing contributions: before occupation of their unit, through trust account requirements (in the same way as house deposits are protected under the Sale of Land Act 1962); after occupation, through the imposition of a statutory charge over the retirement village land; and upon departure from the village, through controls on the timing of their repayment
2. protects residents from entering into inappropriate contracts through an information-disclosure regime, controls on the content of their contracts and a cooling-off regime
3. protects residents' tenure through controls on the operator's ability to terminate their residence contracts
4. controls residents' living costs through controls on increases in their maintenance charges, on the imposition of special levies and on their post-departure charges, and
5. improves the amenity of village living by facilitating resident participation, including through the power to make the village by-laws (rules), by facilitating internal dispute resolution and by requiring basic annual financial reporting by the operator.

The RV Act otherwise leaves the operation of a village to the provisions of the applicable retirement village contract and leaves residents to the protection of general consumer protection legislation such as the Australian Consumer Law.

In particular, the RV Act does not contain the sort of 'day-to-day' protections afforded to residential renters under the *Residential Tenancies Act 1997* but, rather, focusses on regulation of pre-contract and departure issues.

A possible explanation for the difference between the focus of the Residential Tenancies Act and that of the RV Act is the difference between the relationship of landlord and tenant and that of village resident and operator, which involves actual or virtual purchase of the residential unit, actual or virtual permanent residency, the provision of services, and a mutual interest in the village's reputation and, eventually, in the quick resale of the unit at a high price.

2.2 History of the *Retirement Villages Act 1986*

The RV Act commenced operation in 1987. The RV Act was a response to the growth in the demand for specialist housing for older Victorians and the need to clarify the rights of retirement village owners, managers, promoters and residents.

The RV Act was substantially amended in 2005 to implement the outcomes of a public review of the RV Act that had identified issues relating to an imbalance of information and power between residents and operators of retirement villages.

These reforms centred on the regulation of contract terms, clearer rules around exit arrangements - including ongoing fees, resale of units and payment of exit entitlements -

limitations on village operators making decisions on behalf of residents, and improved dispute resolution processes.

The last major reform was in 2014, again as a result of a public review, responding to resident and consumer groups' concerns about the inadequacy of the disclosure requirements under the RV Act. These reforms were aimed at assisting senior Victorians and their families to better understand what is involved in retirement village living, to enable prospective residents to compare retirement villages before choosing one and to understand their rights and obligations. The reforms were also designed to reduce disputes in retirement villages.

The reforms introduced enhanced disclosure obligations for operators and required village contracts to conform to a range of requirements including regarding matters that must be included and excluded as well as prescribing a basic set of rights and obligations for operators and residents.

Supporting guidelines and information

Guidelines and information about the regulation of retirement villages are available to support residents and operators. CAV's website (www.consumer.vic.gov.au) contains information for residents, including prospective residents, on choosing, living in and leaving a retirement village (and on the fees and charges that apply at each stage); the public register of villages; and links to Residents of Retirement Villages Victoria (RRVV) and Housing for the Aged Action Group (HAAG), which provide assistance and advice to residents.

In collaboration with industry, consumer and resident groups, CAV developed a number of 'good practice protocols' for village operators to use when dealing with common issues arising in villages. This publication – *Retirement villages - good practice to address key issues* – was updated in 2018 and is accessible from CAV's website. The 'good practice protocols' are referred to in the discussion about disputes in retirement villages in this paper.

2.2.1 Parliamentary Inquiry and review of internal dispute resolution procedures

Parliamentary Inquiry into the retirement housing sector

In 2016 the Legal and Social Issues Committee of the Victorian Parliament conducted an Inquiry into the retirement housing sector (Parliamentary Inquiry). The Committee received 766 submissions and heard from 90 witnesses at seven public hearings. The Committee tabled its report in Parliament in March 2017 making 15 recommendations, 13 of which were directed at the Victorian Government.

The Victorian Government supported, supported in principle or committed to investigate 12 of those 13 recommendations.

The review of the RV Act provides an opportunity for those recommendations relevant to the regulation of retirement villages to be considered. The recommendations of the Parliamentary Inquiry are set out in **Appendix 2**.

A copy of the report of the Parliamentary Inquiry and the Government's response can be found at <https://www.parliament.vic.gov.au/432-lsic-lc/inquiry-into-the-retirement-housing-sector>.

Review of internal dispute resolution procedures under the *Retirement Villages Act 1986*

In 2017, CAV undertook a review of internal dispute resolution procedures under the RV Act and made recommendations for reform that would be considered when the RV Act was being reviewed. The recommendations are addressed in **Part 4 – Living in a retirement village** and **Part 6 - Dispute Resolution** of this Issues Paper.

2.3 What is a ‘retirement village’ and why is it regulated?

The definition of ‘retirement village’ in the RV Act explicitly sets out who it is that the RV Act seeks to protect, namely, independent-living retirees who live communally, who are provided with services and who have paid an ingoing contribution, in particular, a refundable ingoing contribution.

Retirees living in other types of retirement housing are often provided with services but it is the payment of a refundable ingoing contribution that effectively triggers the application of the RV Act. The payment of an ingoing contribution puts residents in a vulnerable position in two ways. The first arises due to the possibility of the non-repayment of the ingoing contribution on departure, through insolvency or fraud of the village operator. The second arises because of the significant fees and charges that are deducted from the ingoing contribution upon departure which can cause residents to feel financially trapped in a village, particularly given that to a large extent, they hand over control of their day-to-day living arrangements to the village operator.

As indicated earlier in this paper, in addition to the protection of the RV Act, residents who have a lease of their unit in a ‘retirement village’ (which includes a licence to occupy a unit) also have the general consumer protections under the Australian Consumer Law in relation to goods and services provided to them.

Retirees leasing in caravan parks, residential parks, any other communal setting or in stand-alone independent living units, who are supplied with services but who have not paid an ingoing contribution, do not have the protection of the RV Act but have the protection of the *Residential Tenancies Act 1997* (in relation to their tenancy rights) and the Australian Consumer Law (in relation to goods and services provided to them).

There is some uncertainty whether the definition of ‘retirement village’ in the RV Act extends to a village where all residents own the strata title to their unit (owner residents). Whether the RV Act applies in these circumstances depends on whether the up-front amount a resident pays as the purchase price for their unit constitutes an ‘ingoing contribution’ within the meaning of the RV Act.

This Review provides an opportunity to consider whether the current scope and application of the RV Act remains appropriate.

Questions for consideration

Your views are sought on the application and scope of the RV Act.

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

2.3.1 The purpose of the RV Act

The stated purpose of the RV Act is to clarify and protect the rights of persons who live in, or wish to live in, retirement villages. The stated purpose of legislation is particularly important when a court is interpreting its provisions. If a provision is capable of more than one meaning, courts will apply the meaning that most aligns with the purpose of the legislation, starting with its stated purpose.

The purpose of the RV Act has not been amended since the RV Act was first introduced in 1986. Given the growth and evolution of the retirement village sector and the introduction of a number of significant reforms to the RV Act since that time, this Review provides an opportunity to consider what is or should be the stated purpose of the RV Act today.

Questions for consideration

Your views are sought on the current purpose of the RV Act.

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?

2.3.2 Registration of a retirement village

When a retirement village is established, the operator is required to provide some basic information to enable CAV to update the public register of retirement villages. That information is: the name, address (and postal address) of the village, details of any exemption order for the village and the name and address of the village manager. The operator must also advise of any change in those details.

The purpose of the register is to enable members of the public to know which retirement communities in Victoria are 'retirement villages' subject to the RV Act. A secondary purpose is to provide a list of retirement villages for those retirees looking for a village in their area, including the contact details for the manager. The managers' details also assist CAV when it wishes to contact villages.

The register is not part of a formal registration regime for retirement villages and villages are not required to be 'registered' with CAV in order to operate a retirement village.

While penalties apply if the manager of a retirement village does not provide the information to CAV, there is a risk that retirement village managers may not comply with the requirements resulting in the register losing reliability and currency.

This Review provides an opportunity for the purpose and utility of the register of retirement villages to be considered.

Questions for consideration

Your views are sought on the purpose and use of the current register of retirement villages.

4. What improvements could be made to the register of retirement villages?
5. What other information should operators be required to include in the register?

Part 3: Entering a retirement village

This Part considers the adequacy of current information disclosure obligations and cooling off rights, whether contracts are clear enough, and the recommendations made by the Parliamentary Inquiry about the financial models operating in the retirement village sector, particularly in relation to the operation of deferred management fees.

3.1 Consideration and cooling-off periods

The RV Act requires a prospective resident be given a copy of the proposed retirement village contract at least 21 days before the resident signs in order to allow a prospective resident time to assess the contract and consider whether to proceed.¹⁹

For non-owner residents, once they have signed a contract, the RV Act provides for a 3 business day cooling-off period during which they can change their mind, terminate the contract and require the return of the ingoing contribution (the operator may retain the greater of \$100 or 0.2% of the ingoing contribution).²⁰

These measures are designed to ensure that prospective residents are, firstly, given adequate time to consider the contract (and the accompanying disclosure documents) and, perhaps, take professional and family advice, before signing, and, secondly, given a short time to change their mind after signing if they believe they might still have made the wrong decision.

The 3 day cooling-off period for non-owner residents under the RV Act mirrors that applying to purchasers of land, including owner residents who purchase the strata title to their units, under the *Sale of Land Act 1962*.

By way of comparison, the New South Wales (NSW) *Retirement Villages Act 1999* provides for a 14 day 'assessment' period prior to signing a contract, a 7 business day cooling-off period (with no right for the operator to retain any amount but which ends if the resident moves in during the cooling-off period) and a 90 day 'settling in' period, under which a resident may terminate the contract within 90 days of occupying their unit.

The NSW 'settling in' period is designed to give residents time to assess whether they have chosen the right village, including whether it has lived up to promises or expectations, and to make allowance for such eventualities as a sudden deterioration in health. Residents who terminate during this period must pay the fair market rent for any occupation period, the cost of any repairs for damage to their unit in that time, the reasonable cost of any alterations requested by the resident and a reasonable administration fee but are not required to pay any other fee or charge, including any maintenance charge or departure fee.

¹⁹ Sections 19 and 22.

²⁰ Section 24.

Questions for consideration

Your views are sought on the current consideration and cooling-off periods under the RV Act.

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?

3.2 Disclosure obligations

Over the years, the RV Act has been amended to ensure there is sufficient disclosure of information to assist prospective residents make informed decisions before entering a contract to live in a retirement village.

This Review provides an opportunity to not only consider whether the current disclosure obligations are appropriate, but whether additional disclosure obligations are required.

3.2.1 Disclosure when advertising a retirement village unit

Advertisements for retirement village units for sale or lease often only refer to the amount of the ingoing contribution, which may lead prospective residents to believe that this is the only or the total cost under the contract. There is often no reference to any other costs and charges associated with the purchase or lease of the unit such as a 'deferred management fee' or other departure fees and charges which can significantly impact on the amount of 'ingoing contribution' that a resident receives when the unit is resold or leased.

Questions for consideration

Your views are sought on whether there should be greater transparency in the advertising of retirement village units for sale or lease.

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?

3.2.2 Pre-contractual disclosure

To assist prospective residents understand the legal and financial arrangements they are entering into through a residency and management contract to reside in a retirement village, the RV Act requires that retirement village operators disclose certain information in a clear, easily understood form to prospective residents. These disclosure obligations take the form of a Factsheet and a Disclosure Statement.

Factsheet

The Factsheet contains general information on important matters about the village, including the costs of entering, living in and departing the village. The Factsheet is required to be provided to a prospective resident on request and/or as part of any targeted promotional material provided to an interested retiree. The requirement to provide a Factsheet was

introduced to ensure that prospective residents had access to information early and before becoming emotionally committed to a village or unit and to enable prospective residents to compare different retirement villages' offerings.

Disclosure Statement

At least 21 days before a resident enters into a management contract with the village manager, the manager is required to provide prospective residents with a Disclosure Statement.²¹ The Disclosure Statement includes the exact costs relating to their unit and estimates of their exit entitlements after 1, 2, 5 and 10 years. The requirement to provide prospective residents with a Disclosure Statement at least 21 days before a resident signs a contract was introduced in recognition that many prospective residents were emotionally and/or financially committed at the stage of receiving a contract. The Disclosure Statement aims to provide them with a clear picture of the costs involved and inform them that they might expect to receive less, not more, money when they departed the village.

This Review provides an opportunity to consider and assess whether and how these disclosure obligations have improved residents understanding of the financial and contractual arrangements they are entering into when deciding to live in a retirement village.

Questions for consideration

Your views are sought on the current pre-contractual disclosure obligations under the RV Act.

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

3.3 Contracts - form and complexity

The RV Act recognises that residents enter into two contracts when they enter a retirement village:

- a 'residence contract' with the owner of the village that governs their right to reside in the village, including matters such as the payment of the ingoing contribution and the fees and charges that may be deducted from any refund of the ingoing contribution, and

²¹ Section 19 of the RV Act requires that the retirement village manager must provide a prospective resident with a copy of the management contract, the disclosure statement, the by-laws of the village, and, if not already provided, a copy of the factsheet for the retirement village at least 21 days before a resident enters into a management contract.

- a 'management contract' with the village manager that governs the services that are provided to them, including the payment of maintenance charges.

A long-expressed concern has been that retirement village contracts are often long and complicated, making it difficult for prospective residents to identify the critical information they need to assess the suitability of a village, to compare villages and to know their rights and obligations after becoming a resident.

This concern was considered by the Government in 2013-14 and, following extensive public consultation, amendments to the RV Act and regulations were introduced²² requiring that all contracts:

- be in writing
- cover all relevant matters
- exclude common unfair terms
- include commonly-accepted and generic rights and obligations, and
- be set out in a common form.

These reforms also:

- prohibited certain types of unfair terms in residence or management contracts
- required certain matters be specified or addressed in residence and management contracts
- incorporated basic sets of obligations for owners, managers and residents and a basic set of rights for residents into contracts, and
- required residence and management contracts to be in a certain format so that it is possible to compare contracts.

The Government did consider the option of prescribing standard (complete) contracts for all retirement villages. However, following public consultation, it was considered to be impracticable given the wide range of village types and that it could limit the ability of the sector to innovate and diversify offerings to residents.

This Review provides an opportunity to consider the impact of these reforms and to what extent they have addressed concerns about the form and complexity of contracts.

²² Retirement Villages (Contractual Arrangements) Regulations 2006.

Questions for consideration

Your views are sought on the form and content requirements for contracts under the RV Act.

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?
12. To what extent do retirement village contracts remain unnecessarily complex?
13. What further improvements could be made to contractual requirements under the RV Act?

3.4 Financial models and the deferred management fee

There are a number of legal and financial models operating in the retirement village sector. These include:

- the **strata title** model, under which residents own their units in the sub-divided village and are members of the owners corporation that administers the common property, with the village operator usually owning one or some lots on which community facilities are located
- the **loan-lease or loan-licence** model, under which the owner retains ownership of the village land, including the land on which the community facilities are located, and leases or licenses the units to residents
- the **mixed tenure** model where some units are resident-owned and others are leased/licensed by the operator
- the **full-rental** model, under which residents lease their units from the operator and pay an 'all in' rental, and
- the **company-share** model, under which the village is owned by a company and a resident must purchase a share in the company to obtain a lease/licence of their unit from the company.

3.4.1 Loan-lease/licence model

By far the most common legal and financial model used in Australian retirement villages is the loan-lease/licence model.

The popularity of this model is due to factors that favour both owners and residents. Owners are able to retain ownership of their major assets (and the capital gains they provide), which also enables them to control the amenity and presentation of the village and to more easily redevelop it. While residents, particularly those on a full or part-pension and whose only asset is their family home, are said to prefer it because:

- they don't have to pay stamp duty (as they would on a strata title purchase)
- ingoing contributions are lower than the notional purchase price/market value of units and generally much lower than the sale price achieved on their family home, and

- it leaves them with more funds for living expenses.

The adoption of this model has been increasing over recent decades, including as operators buy back strata titled units. It is understood that this model is used by virtually all not-for-profit villages.

3.4.2 Deferred management fees

A feature of the loan-lease/licence model is a departure fee known as the 'deferred management fee' (DMF), which is commonly calculated as a yearly percentage of the resident's ingoing contribution, capped after a certain number of years and commonly totalling 30-40% of the ingoing contribution.

Despite its name, the DMF is not a fee related to management services and could be more properly characterised as deferred rent. As indicated above, the deferral of this payment leaves residents with more funds for living expenses.

While the popularity of the loan-lease/licence model rests on its advantages for both village operator and resident, the main criticism centres on the DMF.

The Parliamentary Inquiry considered the DMF and in its report stated:

*“The Committee does not believe that the DMF model per se is a problem, simply that it forms part of the financial model for retirement villages (and other forms of retirement housing). However, the Committee recognises the concern of many that the DMF model may be open to exploitation by unscrupulous operators”.*²³

The Parliamentary Inquiry effectively found that the DMF model is not well understood among retirees or the wider community.

While acknowledging the widespread acceptance of the DMF model in the retirement village market, the Parliamentary Inquiry made recommendations intended to improve the understanding, transparency and operation of the model. In particular, the Inquiry recommended that the Victorian Government require that:

- retirement village operators disclose ingoing prices with and without deferred management fees (recommendation 7)
- deferred management fees are applied on a pro rata basis [rather than on a 'full year basis', under which, for example, if a resident lives in a unit for five years and one day, the fee is calculated at six full years] (recommendation 8), and
- retirement village operators provide every resident with an estimate of their exit fees [departure fees] every financial year (recommendation 9).

In its response to the Parliamentary Inquiry, the Government committed to considering recommendation 7 further. The disclosure of ingoing prices with and without deferred management fees is relevant to issues around the adequacy of disclosure that were addressed in Part 3.1.

The Government supported recommendation 8, noting that retirement village operators approach the application of DMFs differently and that some operators may already apply DMFs on a pro rata basis.

²³ Report of the Parliamentary Inquiry, p 53.

The Government supported 'in principle' recommendation 9, committing to exploring the feasibility of introducing an obligation for retirement village operators to provide an estimate of departure fees on request from a resident. The Government considered that this could strike an appropriate balance between a resident's ability to be well informed and the administrative costs to operators that may be associated with supplying this information. The Government also recognised that not every retirement village resident will be interested in an annual estimate of their departure fees or find such an estimate useful.

Questions for consideration

Your views are sought on the Parliamentary Inquiry's recommendations to improve the understanding, transparency and operation of the DMF model.

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?
15. Should deferred management fees be calculated on a pro rata basis? If so, why? If not, why not?
16. When should retirement village operators be required to provide a resident with an estimate of their departure fees and what are your reasons?

Part 4: Living in a retirement village

This Part considers a number of issues relevant to a resident's experience of living in a retirement village. It is divided into a number of sections that address the governance of retirement villages, including resident participation in village life, the obligations of retirement village operators in relation to maintenance of the retirement village, and whether the regulatory framework for the provision of privately funded care services is appropriate.

4.1 Governance of retirement villages

4.1.1 Accreditation of retirement villages

The Parliamentary Inquiry recommended that the Government “give consideration to developing a model for mandatory accreditation for all retirement housing providers”²⁴. The Government committed to review this recommendation.

What are accreditation schemes?

Accreditation schemes can offer an organisation the opportunity to demonstrate levels of service that meet industry standards for ‘best practice’ and may go beyond legal requirements. High levels of service, and high standards of management in retirement villages can help to create a more inclusive and satisfying living environment for residents.

Accreditation schemes are generally voluntary and operated by industry. The benefits of voluntary accreditation are that it can support and recognise quality of service that goes beyond legal requirements and can help consumers identify high quality service in complex markets, or when independent information is difficult for consumers to access.

However, accreditation schemes can also be mandatory and linked to registration or licensing. Mandatory accreditation schemes are generally found in highly regulated sectors, for example, health care services, residential aged care services and early childhood education and care services.²⁵

Accreditation schemes in retirement villages

Voluntary accreditation schemes have been in place in the retirement village sector for some time. The Parliamentary Inquiry report noted that the Lifemark Village Scheme, an independent accreditation system, audited by the British Standards Institution (BSI) enabled retirement living providers to assure the quality of their services against 26 industry standards.

²⁴ Parliament of Victoria, 2017, Inquiry into the Retirement Housing Sector, Recommendation 11.

²⁵ For example, all Victorian public health services are required to maintain accreditation through the Australian Health Service Safety and Quality Accreditation Scheme (AHSSQA), residential aged care services are required to be accredited through the Aged Care Quality and Safety Commission Rules 2018 and early childhood education and care services must meet the requirements of the National Quality Framework (NQF).

More recently, the retirement village sector has launched a new accreditation scheme for retirement village operators, namely the Australian Retirement Village Accreditation Scheme (ARVAS). ARVAS replaces the Lifemark Village Scheme and International Retirement Community Accreditation Scheme. The ARVAS is comprised of seven standards. An organisation wishing to apply for accreditation under ARVAS must be an active subscriber to the Retirement Living Code of Conduct, which was launched by the industry in December 2018.

The Parliamentary Inquiry report did not convey the rationale for its recommendation that the Government consider developing a model for mandatory accreditation for retirement housing providers. However, the Parliamentary Inquiry report noted the gradual professionalisation of the retirement village workforce in Australia in recent years and considered that developments such as the Lifemark Village Scheme and the Property Council of Australia's Village Manager Diploma would lead to improvements in the sector over time.

Mandatory accreditation schemes in retirement villages

CAV is not aware of any jurisdiction that imposes a form of mandatory accreditation in relation to retirement villages. However, both South Australia and New Zealand have a Code of Conduct and Code of Practice incorporated into their regulatory frameworks for retirement villages. In the United Kingdom, industry representative bodies Associated Retirement Community Operators (ARCO) and the Association of Retirement Housing Managers (ARHM) operate voluntary codes which are given some regulatory recognition.

It is worth noting that a number of the requirements included in these 'codes' are currently included in the Victorian regulatory framework in the form of prescribed obligations (for both the operator and the resident) which are incorporated into residence and management contracts. These prescribed obligations override any inconsistent terms of the contract. In respect of the owner and manager, these include the obligation to carry out repairs and replacements to common facilities promptly for the safety or security of residents, obtain the resident's consent to enter the resident's premises unless in an emergency, and give receipts for payments made by the resident. In respect of the resident, obligations include respecting the rights of other residents and persons in the village, and respecting the rights of the manager, employees and agents to work free from harassment.

The compulsory codes in New Zealand and South Australia function as a form of negative licensing, as failure to meet the standards could constitute a breach of the code that may be investigated and enforced by the relevant regulatory authority. The cost and resourcing required to assess and enforce any possible breaches therefore falls to the regulatory authority.

In many ways the issues relevant to ensuring compliance with a mandatory Code of Conduct are analogous to the issues that would be relevant to ensuring compliance with a mandatory accreditation scheme.

Whether the standards to be met and assessment of compliance with those standards are determined by Government or by another organisation, the cost of administering and enforcing a mandatory accreditation scheme in the retirement village sector would be significant. By way of example, accurate and objective assessment of compliance with the scheme would require extensive attendance at and auditing of retirement villages, with repeated attendances required where non-compliance is identified.

In considering options for a mandatory scheme, it will be necessary to consider the implications for retirement villages and residents where a retirement village fails to achieve or maintain accreditation.

Questions for consideration

Your views are sought on the Parliamentary Inquiry's recommendation that the Government consider developing a model for mandatory accreditation for all retirement housing providers in the context of retirement villages.

17. What do you consider to be the benefits and costs of introducing a form of mandatory accreditation for retirement villages?
18. What do you consider to be the necessary elements of any mandatory accreditation scheme?
19. What do you consider to be the benefits and costs of voluntary accreditation schemes?
20. By what alternative means could the standard and quality of services provided by retirement villages be improved?

4.1.2 Qualifications and training of managers

The RV Act prohibits the following persons from being involved in the promotion or sale of residency rights for a retirement village or concerned in the management of a retirement village:

- a person who is an insolvent under administration; and
- a person who has been convicted of an offence involving fraud or dishonesty within the previous 5 years.²⁶

The RV Act does not impose any other requirements on persons involved in retirement villages.

The lack of minimum training and ongoing professional development requirements for retirement village managers and employees is often raised by consumer and resident advocates as an issue needing to be addressed in the regulatory framework for retirement villages.

The Parliamentary Inquiry's report stated that existing professional development courses for village managers could be strengthened, for example to Certificate III or IV level, and recommended that the Government 'ensures that an appropriate minimum Certificate level applies to retirement village management courses'²⁷.

In its response to the Parliamentary Inquiry, the Government supported the Inquiry's recommendation 'in principle' that there should be a dedicated, nationally-recognised qualification under the Australian Qualifications Framework (AQF) available to retirement village managers - ideally at the Certificate IV, Diploma, or Advanced Diploma level. The

²⁶ Section 17 of the *Retirement Villages Act 1986*.

²⁷ Parliament of Victoria, 2017, Inquiry into the Retirement Housing Sector, Recommendation 12.

Government noted that such a qualification would help to equip village managers with the skills and depth of knowledge needed to take on this complex role, leading to greater professionalisation and higher standards across the industry.

The Government strongly encouraged the retirement village sector to pursue the development and accreditation of an appropriate Certificate or Diploma-level qualification, which meets industry requirements.

The Government’s response also recognised that:

- training and professional development to meet industry needs can be achieved through a variety of mechanisms, including accredited and non-accredited courses
- many professional development opportunities are already available to people working in the retirement village sector, including programs offered by individual operators and industry bodies, and
- it is not feasible or necessary for every training course offered to retirement village managers, or other staff, to lead to a qualification recognised under the AQF.

This Review provides an opportunity to consider whether minimum training and ongoing professional development requirements should be introduced for retirement village managers and employees.

Questions for consideration

Your views are sought on the current regulatory requirements for persons involved in retirement villages and whether retirement village managers and employees should be required to undertake certain training and meet ongoing professional development obligations.

21. Should there be any additional limitations or requirements on persons who can be involved in promoting or operating retirement villages?
22. What do you consider to be the benefits and costs of mandating training and professional development requirements for retirement village managers and employees?
23. How should any requisite professional development requirements and training be determined?
24. Are there other ways to ensure that retirement village managers and employees have the requisite skills and professionalism to undertake their responsibilities?

4.1.3 Residents committees

The RV Act provides that residents may elect a residents committee to represent the interests of residents of the village.

In addition to representing residents’ interests, a residents committee is empowered to:

- call meetings of residents
- mediate in disputes between residents, and

- approve above-Consumer Price Index (CPI) increases in maintenance charges.

Regulations made under the RV Act prohibit terms in management or residence contracts that contain 'a restriction on the operation or membership of a residents committee'.

In 2017, CAV conducted a review of internal dispute resolution (IDR) procedures in retirement villages undertaking targeted stakeholder consultation. Concerns were raised about the role of residents committees in handling resident-to-resident disputes and, also, their ability to approve above-CPI increases for maintenance charges. It was suggested that there may be a conflict of interest for committee members, and that it can be hard for the people involved to deal with these matters objectively. The IDR review recommended the removal of the role of residents committees in resident dispute mediation and in approving above-CPI increases in maintenance charges.

Questions for consideration

Your views are sought on whether the RV Act adequately provides for resident participation in retirement villages.

25. Is the current role of the residents committee appropriate and are its powers adequate?
26. Should residents committees have a role in dispute resolution involving resident-to-resident disputes?
27. Should residents committees have the power to approve above-CPI increases in maintenance charges? If not, why not?
28. Should retirement village owners and managers involvement in meetings of the residents committee be prohibited unless invited by the committee?

4.1.4 Annual meetings/reporting

Reporting requirements

The RV Act requires the village manager to convene an annual meeting of the residents of the village.

The village *owner* is required to report to the annual meeting on:

- the payment or non-payment of ingoing contributions in the previous year, and
- details of any matter preventing the owner from meeting its debts in the following year.

The village *manager* is required to report to the annual meeting on:

- the amount of maintenance charges received in the previous year and details of proposed increases in maintenance charges for the following year
- details of expenditure on the provision of goods and services for the village in the previous year and anticipated expenditure for the following year
- provision for any extraordinary or major works in the village, and

- details of proposed special levies.

The intention of these requirements appears to be to provide enough information at the annual meeting to allow residents to see how their maintenance charges are being spent and to enable them to see whether they should agree to an increase in the maintenance charge or to a special levy.

However, these annual reporting obligations are not necessarily a complete statement of the village's financial activity. Further, the RV Act does not require this information to be presented in a particular format and the statements are not expressly required to be provided to residents prior to the annual meeting.

The following are other matters that are not required to be disclosed:

- the manager's financial position
- whether a surplus has been accumulated, including what is to be done with a surplus
- the categories of expenditure and the rationale for how expenditure items are allocated to such categories
- if an expenditure item represents an apportionment between various villages or businesses, how it has been apportioned
- if any residents are paying higher maintenance charges than other residents, how expenditure is apportioned between the categories of residents, and
- for expenditure items associated with head office or management/administration fees, a break down showing the goods and services they relate to and their approximate cost.

The manager's statement must be audited unless a special resolution of the residents decides otherwise. The RV Act is unclear about who must pay for an audit but it appears that it is intended to be a village budget item, on the basis that residents would only dispense with the requirement to save money.

Questions for consideration

Your views are sought on the adequacy of annual reporting requirements.

29. Is the level of detail about the financial activity involving the retirement village required to be included in the financial statements adequate for residents? If not, why not?
30. Should residents be provided with copies of the financial statements before the annual meeting? If so, what period is reasonable?
31. Are there any other matters that should be addressed in the reporting requirements?

4.1.5 Retirement villages with an owners corporation

In a retirement village where all or some of the residents own the strata title to their unit (owner residents), an owners corporation will exist of which those residents are members. Where there is an owners corporation in a village, the RV Act sets out that the annual

meeting of the village is the annual meeting of the owners corporation, which refers to the *Owners Corporations Act 2006* (OC Act).

In a village with no owners corporation, that is, a fully loan-licence or loan-lease village where all residents are non-owner residents, the Act sets out that the annual meeting of the retirement village is the meeting conducted according to its provisions, as outlined in the previous section.

The current regulatory framework raises several issues for mixed tenure villages, that is, those comprising owner residents and non-owner residents.

First, it appears to mean that there is no annual meeting of the village under the RV Act to consider the operation of the village business.

Second, it appears that non-owner residents, not being members of the owners corporation, cannot attend or vote at the annual meeting of the owners corporation.

Third, in a village with more than one owners corporation (with different memberships) it is unclear which owners corporation meeting becomes the village meeting.

Questions for consideration

Your views are sought on the best way to manage the obligations to hold residents meetings under both the OC Act and the RV Act in mixed tenure retirement villages.

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?

4.2 Operators' obligations

4.2.1 Maintenance and maintenance charges

Maintenance charges are a part of living in a retirement village and residents generally pay a maintenance charge monthly or quarterly. The amount of the maintenance charge is specified in the contract and covers the cost of managing the retirement village, including staff salaries, maintaining facilities and common areas used by residents and providing services to all residents.

The RV Act limits the ability of the operator to increase the maintenance charge beyond an annual CPI adjustment, unless the increase is:

- approved by a resolution of the residents committee or a resolution of a majority of the residents
- due to an increase in award salaries or wages, or
- due to an increase in taxes and other statutory charges relating to the retirement village.

Responsibility and timeframe for repairs and maintenance

The RV Act does not mandate who is responsible for carrying out what maintenance but requires that the matter be addressed in the residence contract. The report of the Parliamentary Inquiry noted that “there is often considerable confusion over which repairs residents and operators are responsible for and, by extension, what residents’ monthly service fees cover”³.

The Government supported the Parliamentary Inquiry’s recommendations (6 and 14) that the RV Act should:

- define whose responsibility it is to pay for repairs and maintenance, both inside units and in the communal areas and facilities
- require that all such works be undertaken within a reasonable and mutually acceptable timeframe, and
- require retirement villages to report on compliance with maintenance plans funded by maintenance charges paid by residents.

Related issues are whether it should be mandatory for some or all retirement villages to have maintenance plans and maintenance funds (sometimes called ‘sinking funds’) for long-term maintenance and capital replacement needs; and what items are ‘maintenance’ and what are ‘capital’ items.

Jurisdictional comparison

Only the NSW *Retirement Villages Act 1999* and the ACT *Retirement Villages Act 2012* regulate in this area. Both Acts require village operators to maintain or replace capital items for which the operator is responsible under the residence contract within a reasonable time after becoming aware of the need for their maintenance or replacement. While operators can recoup the cost of maintenance from recurrent charges paid by residents, they must fund any replacement from their own moneys. A resident may carry out urgent maintenance or replacement works and recoup the cost from the operator.

What are ‘maintenance’ and ‘capital’ items?

An issue also arises in relation to distinguishing what ‘maintenance’ items and ‘capital’ items are. The RV Act and regulations require management contracts to address the matters for which maintenance charges can be used. However, the regulatory framework does not define what a ‘maintenance’ item, as opposed to a ‘capital’ item, is.

Where residents must also contribute to a capital replacement fund, or where the operator is responsible for capital items, the contracts may or may not specify what items are to be paid for from that fund or are the responsibility of the operator or may not do so clearly or precisely.

Residents and operators can have different views about what is a ‘maintenance’ or ‘capital’ item and who is liable for the cost of a particular item causing complaints or disputes.

Jurisdictional comparison

Queensland is the only Australian jurisdiction that regulates in this area. It's *Retirement Villages Act 1999* defines capital items, maintenance, day-to-day maintenance and repairs. This is supported by detailed guidelines that have been developed by industry and resident bodies 'to assist retirement village operators and residents in the classification of everyday, maintenance and capital expenditure'. The guidelines set out general classification principles, provide information on the issues to be considered when classifying a particular item of expenditure, and provide illustrative examples.

Questions for consideration

Your views are sought on the role of the RV Act in regulating responsibility for repairs and maintenance and whether the RV Act should address all the recommendations of the Parliamentary Inquiry in relation to repairs and maintenance.

33. To what extent should the RV Act further address issues of 'responsibility' and 'timeliness' for repairs and maintenance in retirement villages?
34. What are the problems in more prescriptive requirements applying to all types of retirement villages and in all types of circumstances?
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?

4.2.2 Maintenance and capital replacement plans and funds

There is no legislative requirement for a retirement village to have a maintenance plan or capital replacement plan, and no requirement to report on the implementation of such plans, if they exist.

The RV Act requires the manager to prepare and present to the annual meeting of a retirement village a financial statement showing:

- the amount of maintenance charges received from residents in the previous 12 months
- details of expenditure on the provision of goods and services for the village in the previous 12 months
- details of anticipated expenditure on goods and services for the village in the next 12 months
- details of what provision (if any) has been made for future extraordinary or major works in the village, and
- details of any proposed increases in maintenance charges to be paid by residents or of any special levies which it is proposed to ask residents to pay.

The lack of a regulatory requirement around the establishment of maintenance and capital replacement plans and funds and reporting on these plans is a common issue raised with Government and can be a source of complaint and dispute within retirement villages.

In the context of owners corporations, these matters were canvassed in the recently completed review of the *Owners Corporations Act 2006* (OC Act), the outcome of which are amendments to the OC Act proposed by the *Owners Corporations and Other Acts Amendment Bill 2019*, under which:

- a large development (i.e. comprising 51 or more occupiable lots) must prepare and approve a maintenance plan that sets out:
 - the major capital items anticipated to require repair and replacement within the next 10 years
 - the present condition or state of repair of those items
 - when those items or components of those items will need to be repaired or replaced
 - the estimated cost of the repair and replacement of those items or components, and
 - the expected life of those items or components once repaired or replaced.
- other developments (i.e. comprising less than 51 occupiable lots) may (not must) prepare and approve such a maintenance plan
- owners corporations with a maintenance plan (whether mandated or voluntary) must:
 - establish a maintenance fund and determine the amount of the annual fees to be paid into the fund, which must be adequate to fund the maintenance plan
 - keep separate accounts for their maintenance funds, and
 - in addition to their general reporting requirements, report to the annual general meeting in relation to the implementation of their maintenance plans, and report to the lot owners on any expenditure on extraordinary payments for urgent matters as soon as possible after the expenditure is made.

Jurisdictional comparison

The *Queensland Retirement Villages Act 1999* requires village operators to:

- maintain a capital replacement fund for replacement of a village's capital items, including:
 - obtaining a quantity surveyor's 10-year report on the village's expected capital replacement costs
 - paying into the fund residents' capital replacement fund contributions and any amounts from residents' service charges payable towards capital replacement
 - adopting a capital replacement fund budget for each financial year
- maintain a maintenance reserve fund for maintaining and repairing capital items including:
 - obtaining a quantity surveyor's 10-year report on the village's expected maintenance and repair costs
 - paying into the fund residents' maintenance reserve fund contributions
 - adopting a maintenance reserve fund budget for each financial year
- report on income and expenditure from the capital replacement and maintenance reserve funds in the annual financial statement and, at the request of a resident, provide a quarterly financial statement of such income and expenditure.

The QLD Act also provides for regulations to be made prescribing rules for classifying items of expenditure; however, no rules have been prescribed.

The NSW *Retirement Villages Act 1999* provides that if a village budget allows for part of the recurrent charges paid by residents to be set aside for funding future capital maintenance, the village operator must establish and maintain a capital works fund to meet the cost of capital maintenance. The village accounts must include details of the income and expenditure of the capital works fund.

Questions for consideration

Your views are sought on whether all retirement villages should be required to have a maintenance and capital replacement plan and fund.

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

4.2.3 Regulation of care services in retirement villages

This section examines the regulatory framework for the provision of 'privately funded care services' in retirement villages and seeks views on whether it is sufficient to protect vulnerable residents that are receiving these services.²⁸

A key feature of retirement villages as a form of retirement housing is that they provide residents with a range of services. These services can form part of the operation of the village, such as management and administrative services, gardening, repair and maintenance services and recreation or entertainment services and would be subject to a monthly service or maintenance charge. However, villages can also provide discretionary services to residents referred to as 'personal services' under the RV Act, such as laundry and cleaning services, meals and 'care services', for example, nursing or medical services.

Many retirement villages offer personal or care services to their residents on a fee-for-service basis. While not all residents may want or need personal or care services, a number of residents take up these privately funded care services, including some residents who wish to supplement funded aged care services (for example, through home care packages) they receive directly into their home.

It is anticipated that demand for the provision of privately funded care services by retirement villages to residents will increase as retirees remain at home for longer.

The regulation of privately funded care services in retirement villages

While the RV Act contemplates that a retirement village may provide a range of services to residents, it does not regulate those services. The provision of these services is subject to general consumer protection legislation (i.e. the Australian Consumer Law²⁹). The ACL provides general protections to consumers against misleading and deceptive conduct, unconscionable conduct and unfair contract terms. The ACL also provides consumer guarantees relating to the supply of services, including that services must be rendered with due care and skill, be reasonably fit for purpose and supplied within a reasonable time.

Where services are provided by a health professional, as is the case with many 'care services', in addition to contractual and consumer law protections, regulatory frameworks such as the Health Practitioner National Health Law (National Law) are relevant.

The National Law regulates the registration and conduct of health professionals (such as doctors, nurses, physiotherapists, etc.), and is administered by the Australian Health Practitioner Regulation Agency (AHPRA). Offences and penalties apply to persons who practise or purport to practise in a health profession without having the appropriate registration.

Health service providers that are not required to be registered by AHPRA (for example, massage therapists, naturopaths and those providing ancillary services to 'health services') must comply with a General Code of Conduct established under the *Health Complaints Act*

²⁸ In this paper 'privately funded care services' are care services that are provided by a retirement village and which are not funded by the Commonwealth (such as 'home care packages' under the Aged Care Act 1997) or Victorian Governments and do not include services that are typically provided by a day procedure centre or private hospital as defined under the *Health Services Act 1988*.

²⁹ The Australian Consumer Law can be found in the *Competition and Consumer Act 2010 (CCA)* and is a law of Victoria through the *Australian Consumer Law and Fair Trading Act 2012 (ACL&FTA)*.

2016. Breaches of this Code can be referred to the Health Complaints Commissioner for investigation and resolution.

Aged Care Services and Retirement Villages

Care services that are 'aged care services' regulated under the *Aged Care Act 1997* (Aged Care Act) and the Aged Care Quality and Safety Commission (ACQSC) are subject to significant monitoring, investigative and enforcement powers to address any concerns with the level and standard of care and services provided to recipients.

Retirement villages interact with Commonwealth funded and regulated aged care services. An increasing number of retirement villages are co-located with an aged care facility.³⁰ There is also an increasing number of village operators who are either approved providers under the Aged Care Act or who have partnered with an approved provider so that home care services can be provided directly to residents if the resident choose the village as a home care provider.³¹

If a retirement village is an approved provider for aged care services providing funded aged care services to retirement village residents, they are subject to the regulatory framework of the Aged Care Act.

While the delivery of privately funded care services by retirement village operators to residents is subject to the ACL, the National Law and *Health Complaints Act 2016*, they are not subject to the same regulatory standards, oversight and monitoring as those delivered through Government funded schemes such as those delivered through the Aged Care Act or the *Supported Residential Services (Private Proprietors) Act 2010*.

This Review provides an opportunity to consider whether the regulatory framework for the delivery and management of privately funded care services by retirement village operators to residents is suitable to protect vulnerable or frail residents receiving care services in their home.

4.2.4 Where a resident's care needs may no longer be capable of being met in a retirement village setting

Retirement villages cater for independently living seniors. The RV Act provides for an operator to give notice to a resident to leave the village where it is certified by two medical professionals, one of whom must be nominated by the resident, that the resident needs care of a kind that is not available at the retirement village

Retirement villages are evolving to provide housing and accommodation to seniors who receive care and support services to enable them to remain in their homes longer. With this evolution, comes a greater responsibility for retirement village operators to ensure the safety and welfare of their residents. It is worth considering whether the current process under the RV Act for determining the suitability of a retirement village, as a form of housing for a resident with high care needs, remains appropriate.

³⁰ According to the Productivity Commission's December 2015 report *Housing Options for Older Australians* (PC Report), about a third of retirement villages are co-located with an aged care facility. The PC Report also noted that nearly all new retirement villages then under development were either co-located with aged care or are being built close to aged care facilities.

³¹ According to the PC Report, as at 2013, about one in five retirement village residents received some form of funded home care services.

Questions for consideration

Your views are sought on the regulation of retirement villages providing privately funded care services and the role of retirement village operators ensuring the welfare of residents.

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

Part 5: Leaving a retirement village

This Part discusses what happens when a resident leaves a village. It asks whether:

- selling or re-leasing a unit works fairly for residents and village operators
- refurbishing and reinstatement requirements work fairly for residents and village operators, and
- capital gains are shared fairly.

5.1 Selling/re-leasing a retirement village unit

The process that governs a resident's departure from a village is addressed in the residence contract, although the RV Act ensures that residents have an active role in the process.

If a contract was entered into prior to August 2006, the contract sets out the rights of the parties to control the various aspects of the sale process. Legislative reforms introduced in August 2006 mean that where the departing resident was an owner resident, retirement village managers are prevented from being or appointing the selling agent and the resident is entitled to set the price and appoint the agent. Where the departing resident is a non-owner resident, if the contract has not incorporated certain prescribed terms enabling the resident control over the sale process, the resident is entitled to a refund of the exit entitlement (i.e. the ingoing contribution less any DMF or exit fees and charges) if the unit has not been re-leased or licenced within six months of the resident departing the retirement village. It is understood that the contracts of most non-owner residents who entered a retirement village after August 2006 have incorporated these prescribed terms.

The sale of a retirement village unit is often complex and involves considerations that may differ from those associated with selling other property. In particular, the lifestyle features of the village – including its services, amenities and ambience – are a major factor in the attractiveness of a unit to prospective new residents. It can be difficult to capture these features in a conventional real estate marketing strategy, and the village is generally in a much better position to promote itself as a whole.

Village managers are likely to maintain a strong interest in the sale process, and villages commonly retain the right to approve incoming residents, which can be a source of tension or even dispute between an outgoing resident and the village manager.

Compared to the general residential property market, the sale of retirement village units can often take significantly longer. According to 2018 CoreLogic data, it takes 53 days for the average capital city to sell a home via private treaty.³² Conversely, a 2014 Property Council of Australia report acknowledged that longer sale times of “18 or even 24 months are not

³² <https://www.businessinsider.com.au/australia-housing-market-average-time-on-market-sales-period-private-treaty-2018-10>

uncommon” for retirement village units.³³ One submission to the Parliamentary Inquiry claimed an average sale time of eight months for a retirement village unit.³⁴

Residents may be faced with the prospect of a significant period of time elapsing before they are able to sell or re-lease their unit for an acceptable amount, which can in turn place pressure on residents to agree to an amount below their expectations in order to obtain the certainty of completing the sale or re-lease. While this tension is not unique to retirement villages, it can be more prevalent given the relatively small retirement village market.

5.1.1 Moving into residential aged care

Where a resident is leaving a retirement village to move into residential aged care and the unit has not been re-leased/licensed, depending on the date the resident entered into a contract with the retirement village, the RV Act requires that the village operator pay the aged care facility either the resident’s Refundable Accommodation Deposit (RAD) or Daily Accommodation Payment (DAP), with the balance of exit entitlement paid to the former resident once the unit has been re-leased.

Jurisdictional comparison		
Jurisdiction	Statutory Buyback	Control over sales process
NSW and ACT	6 months (unavoidable)	Resident sets sale price and engages agent
QLD	18 months (unavoidable)	Residents can engage agent if unit unsold after 6 months
SA	18 months (unavoidable)	n/a
WA	45 days (avoidable)	n/a
TAS	6 months (unavoidable)	n/a

Questions for consideration

Your views are sought on the role of the RV Act in the sale or re-leasing of a retirement village unit.

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?

³³ <https://www.abc.net.au/news/2017-08-17/retirees-spending-thousands-retirement-village-units-for-sale/8781790>

³⁴ Patricia Elliot, *Submission* p1, as referenced on p 49 of the Inquiry report, available at: https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Retirement_Housing/Report/LSIC_58-06_Text_WEB.pdf

5.2 Reinstatement and refurbishment of retirement village units

As with the sale of other residential property, work is generally done to improve the condition of the home prior to it going on the market.

The RV Act and regulations require residence contracts to set out what renovation or reinstatement will be required upon a resident's departure from the village and who is liable for the cost. Otherwise, the RV Act does not regulate the reinstatement or renovation obligations of a resident.

Generally, reinstatement refers to the level of work necessary to restore a unit to the condition that it was in when the resident took occupation, and renovation refers to a level of work that improves the unit beyond the initial level.

The extent to which a unit is required to be reinstated or renovated often generates issues for both the departing resident and the village operator and, as with selling or re-leasing a unit, often arises at a difficult or emotional time for the resident and/or their family.

The retirement village may have a greater interest than a departing resident in ensuring units being re-sold or re-leased are of a uniform and competitive standard in order to maintain the standard and marketability of the village.

Residents may prefer the unit to be sold with minimal work done. This is because residents tend to bear the cost of refurbishment or reinstatement. Residents may not enjoy the full financial benefits of obtaining a higher price as a result of refurbishment as DMFs tend to scale in accordance with the sale price and some contracts assign some or all capital gains to the village owner. The time taken to complete works is also relevant, because it can delay the unit being put on the market and ongoing charges may continue to be incurred during this time.

In Queensland, the cost of renovation, as opposed to reinstatement is borne by the resident and operator in the same proportion as they share in any capital gain; otherwise, it is borne entirely by the operator. In NSW, the resident is liable for the cost of reinstatement (fair wear and tear exempted) but is not liable for renovation if not sharing in any capital gain.

Questions for consideration

Your views are sought on the role of the RV Act in relation to reinstatement and refurbishment obligations when a resident leaves a retirement village.

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?

5.3 Ongoing charges after a resident leaves

Upon leaving a village, the resident may be liable for payment of other fees and charges for the period between when the resident departs a village and the sale or re-leasing of the unit.

The extent to which residents are obliged to pay ongoing fees and charges depends upon when they entered into a contract to reside in the retirement village. For contracts entered into prior to January 2006, the contract sets out the rights and obligations of the parties.

However, if a resident entered a contract after January 2006, the charging of fees for personal services is prohibited beyond the first 28 days after departure, and the charging of maintenance charges for non-owner residents is prohibited beyond the first six months after departure.

Owner residents are obliged to pay maintenance charges and owners corporation fees until their unit is sold.

Ongoing liability for fees and charges can be a source of concern and financial and emotional stress for residents. Concerns include that fees are not proportional to the value contributed by the village operator, not attributable to specific benefits or services received, and charged with inadequate explanation or restrictions on how it will be spent.

The issue for the operator is that village overheads continue to be payable and those operational costs may vary, or may vary only marginally, with the level of village occupancy. For other residents of the village, the issue can be an equitable sharing of the burden of these costs between departing residents and those remaining in the village.

5.4 Capital gains

Another potential source of contention in relation to exit entitlements is the arrangements for sharing capital gains on a unit.

Unlike ordinary real estate, where the benefit of any capital gains and burden of any capital losses would lie with the freehold owner, it is common for the residence contract to stipulate the method for sharing capital gains, for example, 50/50 split between the village and resident. In some cases, the contract may assign all capital gains to the village owner.

As the arrangements for sharing capital gains are set out in the contract from the onset, these generally do not take into account any capital improvements that the resident may make to the unit.

Currently, the RV Act does not regulate arrangements for sharing capital gains (or losses) on a unit.

Questions for consideration

Your views are sought on the role of the RV Act in relation to regulating ongoing charges after a resident leaves a 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?
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?

Part 6: Dispute resolution

This Part addresses what happens when a dispute arises between management of a retirement village and residents and when a dispute arises between residents. It asks about the best way to resolve disputes quickly and cheaply and what improvements could be made to improve dispute resolution for the sector.

A dispute can occur when parties have opposing positions about a right or obligation and seek to exercise or enforce that right or obligation.

Disputes may be resolved between the parties directly (internal dispute resolution) or may be escalated to third parties for resolution (external dispute resolution).

Dispute resolution in retirement villages has been considered recently by both the Parliamentary Inquiry in relation to external dispute resolution and by CAV in relation to internal dispute resolution. This Review provides an opportunity for recommendations for reform of dispute resolution processes in the retirement village sector to be addressed.

Regulatory framework

The RV Act requires all Victorian retirement villages to have an internal dispute resolution procedure in place to facilitate the management and resolution of disputes. A retirement village internal dispute resolution process can manage disputes between residents and management as well as disputes between residents. The RV Act provides that the residents committee may act as a mediator in any dispute between residents.

Where a dispute is unable to be resolved internally, residents, owners and managers can refer the dispute to an external agency such as the Dispute Settlement Centre of Victoria (DSCV) which provides free dispute resolution services such as mediation. If a dispute involves the enforcing of a legal right or obligation, the parties may refer the dispute to the Victorian Civil and Administrative Tribunal (VCAT) or the Courts.

6.1 Internal dispute resolution

In 2017, CAV conducted a review of IDR procedures in retirement villages. This occurred concurrently with the Parliamentary Inquiry and included targeted stakeholder consultation.

The review of IDR procedures identified the following reform proposals, to be considered as part of the review of the RV Act.³⁵

- *Introduce a definition of 'complaint' into the RV Act, and clarify requirements around recording complaints*

The RV Act does not define what constitutes a complaint and the review of IDR procedures revealed that there is often uncertainty in what constitutes a complaint as opposed to a 'request for action' and how each should be recorded.

³⁵ These are in addition to the reform proposal addressed under 'resident committees' in Part 4.1.2 of this paper.

- *Introduce a requirement that any dispute resolution body considering a retirement village dispute takes into account the extent to which the good practice protocols have been followed*

The good practice protocols identify best practice for retirement village operators to address common issues arising in retirement villages and can support reducing complaints and disputes. Requiring any external dispute resolution body to consider the extent to which the good practice protocols have been followed could encourage or ensure operators utilise the protocols in managing issues in the village.

- *Clarify in legislation the avenues for directing complaints about village managers*

Good dispute resolution principles require that residents should try to resolve complaints through internal processes before following an external dispute resolution process. However, this can be difficult if the complaint involves the village manager in some way. Including a requirement in IDR procedures that there should be an alternative person whom residents may contact if their complaint concerns the designated contact person could address this.

- *Remove the role of residents committees in resident dispute mediation*

Concerns about the role of residents committees in handling resident-to-resident disputes, including conflicts of interest, highlighted the need to address this by removing this role from residents committees.

Questions for consideration

Your views are sought on potential improvements to current internal dispute resolution procedures in retirement villages.

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?

6.2 External dispute resolution

Concerns around the current avenues and processes for external dispute resolution featured significantly in submissions to the Parliamentary Inquiry.

The Parliamentary Inquiry recommended:

“That the Victorian Government introduce a new alternative for low cost, timely and binding resolution of disputes in the retirement housing sector. This may be through a new body or by extending the powers of an existing Ombudsman”.³⁶

The Government committed to investigate this recommendation further, acknowledging concerns expressed by resident and resident advocacy groups around the time, cost, stress and complexity of seeking resolution of disputes through VCAT or the Courts.

CAV has engaged an independent consultant to consider the recommendation and undertake a cost-benefit analysis of potential models for establishing an external dispute resolution body for the retirement village sector. The findings of this report will contribute to

³⁶ Parliament of Victoria. 2017, Inquiry into the Retirement Housing Sector, March 2017, Recommendation 15.

the development of potential options for addressing dispute resolution in retirement villages, as will submissions received in response to this Issues Paper.

Questions for consideration

Your views are sought on potential improvements to the management of and mechanisms for external dispute resolution.

47. Should a party to a retirement village dispute seeking access to VCAT or the courts be first required to have followed/exhausted the internal dispute resolution procedure?
48. Should mediation of a dispute through DSCV be a pre-condition of access to VCAT or the courts?
49. What do you think is the best means to achieve low cost, timely and binding resolution of disputes in the retirement village sector?

Part 7: Enforcement

This Part addresses what happens when village operators breach rights and duties in the RV Act and asks if existing enforcement is adequate.

The RV Act sets out the rights of residents and the duties of village operators. Breaches of these rights and duties by village operators give rise to civil rights for residents and, in some cases, limited criminal responsibility for operators.

7.1 Residents' civil rights and remedies

Residents can enforce the terms of their contracts against retirement village operators as with any contractual arrangement.

The RV Act also gives residents a number of civil rights that they can seek to enforce in VCAT or the courts, for remedies such as an order for monetary compensation or an order requiring the operator to do or not to do something.

CAV does not have any role in monitoring or enforcing residents' civil rights except for the discretion that the Director of CAV has to intervene in Supreme Court actions by residents seeking to enforce the statutory charge over the village that protects the refund of their ingoing contributions³⁷

7.2 Enforcement of the offence provisions of the RV Act

CAV is responsible for monitoring compliance and enforcement of the offence provisions of the RV Act, which are punishable by pecuniary penalties.

CAV's monitoring and enforcement powers set out in section 40 of the RV Act are those powers for the monitoring and enforcement of the *Australian Consumer Law and Fair Trading Act 2012* (ACLFTA).

Not all the powers for the monitoring and enforcing the ACLFTA are incorporated into the RV Act.

The ACLFTA inspection powers are incorporated into the RV Act, to allow CAV inspectors to investigate breaches of the RV Act in the same way as breaches of the ACLFTA, but exclude:

- the power to enter and inspect any premises open to the public
- the power to enter and search any premises at any time if the inspector believes that dangerous goods are being supplied from the premises, and
- the power to take samples.

³⁷ Section 31(3) of the *Retirement Villages Act 1986*.

The power of the Director of Consumer Affairs Victoria under the ACLFTA to require suppliers to provide information and documents to enable the Director to monitor whether the ACLFTA is being complied with is incorporated into the RV Act, so that the Director can monitor compliance with the RV Act using this power.

However, the following related powers of the Director under the ACLFTA are excluded from the RV Act:

- the power to require suppliers to provide information and documents, and to give evidence relating to a suspected breach of an offence provision
- the power to inspect, make copies of, take extracts of, or seize and retain documents produced, and
- the power to enter into information-sharing arrangements with other enforcement agencies.

The provisions of the ACLFTA relating to enforcement options and civil remedies for breaches of the offence provisions of the ACLFTA are incorporated into the RV Act, so that they apply to breaches of the offence provisions of the RV Act, except that the following ACLFTA enforcement options are not available:

- cease trading orders
- corrective advertising orders, and
- adverse publicity orders.

It is unclear why certain powers and enforcement options of the Director under the ACLFTA have not, to date, been incorporated into the enforcement framework for the RV Act. This review provides an opportunity to consider whether additional powers and enforcement options should be available to the Director to ensure that the Director has sufficient regulatory tools to enforce the offence provisions of the RV Act.

Questions for consideration

Your views are sought on the adequacy of the enforcement provisions in the RV Act.

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

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?

Appendix 1: Terms of reference for the Review

The Terms of Reference for the review of the *Retirement Villages Act 1986* are to:

1. Examine the effectiveness of the Act in providing consumer protection.
2. Assess whether the regulatory framework has the flexibility to facilitate growth and evolution in the sector.
3. Consider the impact of increasingly aged and frail residents living in retirement villages, and the delivery of Commonwealth funded aged care services and privately funded home care services into retirement villages.
4. Assess the impact of recent regulatory reforms to the Act.
5. Consider recent reports, recommendations and reforms arising from reviews undertaken in other jurisdictions.
6. Report on those recommendations of the Parliamentary Inquiry into the regulation of the retirement housing sector that the Government committed to investigate further.
7. Develop options and recommendations:
 - a. to address findings arising from the examination of matters referred to in paragraphs 1-6 above
 - b. to implement those recommendations of the Inquiry that the government either supported, supported in principle or supported in part in its response to the Inquiry, and
 - c. to implement regulatory reforms identified in Consumer Affairs Victoria's review of internal dispute resolution procedures undertaken in 2017.

Appendix 2: Parliamentary Inquiry recommendations

Recommendation 1

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

Recommendation 2

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

Recommendation 3

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

Recommendation 4

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

Recommendation 5

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

Recommendation 6

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

Recommendation 7

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

Recommendation 8

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

Recommendation 9

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

Recommendation 10

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

Recommendation 11

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

Recommendation 12

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

Recommendation 13

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

Recommendation 14

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

Recommendation 15

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

Appendix 3: Glossary and key acronyms

Aged Care

A group of care services regulated and funded by the Commonwealth Government under the Aged Care Act 1997 (through the Aged Care Quality and Safety Commission) provided to those 65 or older (or younger persons with special needs) including support services delivered at home and in aged care facilities for short respite periods or long-term residences.

Australian Consumer Law (ACL)

The national consumer protection law, containing a range of general and specific consumer protections, notably, prohibitions against misleading, deceptive and unconscionable conduct, and unfair contract terms, set out in the Commonwealth's *Australian Competition and Consumer Act 2010* and also applied in each State and Territory as a State or Territory law.

Australian Consumer Law and Fair Trading Act 2012 (ACLFTA)

Victorian consumer protection legislation that, among other things, applies the Australian Consumer Law as a law of Victoria.

Australian Health Practitioner Regulation Agency (AHPRA)

Established under the Health Practitioner Regulation National Law to administer the National Registration and Accreditation Scheme, including supporting the 15 National Boards responsible for regulating the health professions, managing the registration and renewal processes for health practitioners and managing investigations into the professional conduct, performance or health of registered health practitioners.

Consumer Affairs Victoria (CAV)

An agency of the Department of Justice and Community Safety that administers the *Retirement Villages Act 1986*.

Consumer Price Index (CPI)

An economic indicator generated by the Australian Bureau of Statistics that measures price changes experienced by households. See <https://www.abs.gov.au/ausstats/abs@.nsf/mf/6440.0> for further information.

Deferred management fee (DMF)

In the retirement village context, the name often given to a departure fee payable mainly by a non-owner resident that is calculated as a percentage of the ingoing contribution paid by the resident or by the next resident and deducted from the refund of the resident's ingoing contribution, and which, despite its name, represents deferred rent.

Departure fee

A fee payable under a retirement village contract by a resident to the village operator upon departure from the village, the main one being the deferred management fee with others being administration fees, sales commission and capital fund contributions.

Disclosure Statement

A document, in a form approved by the Director of Consumer Affairs Victoria that the *Retirement Villages Act 1986* requires a village operator to provide to a prospective resident at least 21 days before signing a retirement village contract which specifies, among other things, the actual costs ('dollar amounts') to the resident of entering, living in and leaving the village, and includes a table detailing estimated exit entitlements (see below) after one, two, five and 10 years residence.

Exit entitlement

The amount a resident is entitled under their retirement village contract to receive from the village operator upon their departure from the village, normally consisting of the resident's ingoing contribution and any other entitlement, such as any share of any capital gain on their unit, minus departure fees and any other liability, such as any share of any capital loss on their unit.

Factsheet

A document in a form approved by the Director of Consumer Affairs Victoria that the *Retirement Villages Act 1986* requires a village operator to provide to a prospective resident when they express interest in a village or with the pre-contract disclosure statement, which contains a range of generic information about the village, including about the costs of entering, living in and leaving the village.

Good practice protocols

Recommended practices for a village operator to adopt in dealing with common issues that arise in a retirement village. The protocols were developed by CAV in 2012 in collaboration with industry, consumer and resident groups (updated in 2018) and are published on CAV's website under the title 'Retirement villages - good practice to address key issues'.

Health Complaints Commissioner

Established under the *Health Complaints Act 2016* to administer the *Health Records Act 2001*, resolve complaints about healthcare and the handling of health information in Victoria, investigate matters and review complaints data.

Health Practitioner Regulation National Law

A nationally agreed law adopted by separate legislation in each State and Territory under which the 16 health professions are regulated by the National Registration and Accreditation Scheme, which is administered by the Australian Health Practitioner Regulation Agency.

Home care package

Aged Care assistance for older persons (or younger persons with special needs) who need help with everyday tasks or who have complex or intensive care needs requiring the delivery of coordinated services, under which service providers are paid subsidies for the provision of care services according to four levels of assessed need: Basic care needs (approximately \$8,750 a year); Low care needs (approximately \$15,250 a year); Intermediate care needs (approximately \$33,500 a year); and High care needs (approximately \$50,750 a year).

Ingoing contribution

The up-front amount required by a village operator for a resident's entry into a retirement village, which may be non-refundable or, in the case of most commercially-operated villages, refundable upon departure from the village, in which case it constitutes an interest-free loan to the operator for the duration of residency.

Loan-lease/loan-licence

A retirement village financial model under which the village owner grants residents a lease or licence-to-occupy their unit and requires, among other things, the payment of a substantial (refundable) ingoing contribution and a deferred management fee.

Maintenance charge

An amount under a retirement village contract paid by a resident to the village operator for the provision of services (also called a 'service fee').

Management contract

An agreement between a village manager and a resident primarily governing the provision of and payment for the services provided to the resident.

Mixed tenure

A retirement village financial model under which some residents own the strata title to their units and others occupy their units under a loan-lease or loan-licence arrangement.

Non-owner resident

A resident of a retirement village who occupies their unit under a lease or licence-to-occupy from the village owner.

Owner resident

A resident of a retirement village who owns the strata title to their unit.

Owners corporation

The legal owner and administrator of the common property in a retirement village in a subdivision where all or some of the residents are owner residents who are members of the owners corporation. The operation of the owners corporation, including services provided to members by the owners corporation, is governed by the *Owners Corporation Act 2006* whereas the separate operation of the business of the retirement village, including the provision of services by the village operator under a retirement village contract, is governed by the *Retirement Villages Act 1986*.

Prospective resident

A person who has expressed interest in living in a retirement village or one who intends to sign a retirement village contract.

Rental/full rental

A 'pay-as-you-go' retirement housing financial model under which residents lease their units from the operator and pay a rental that normally includes all applicable fees and charges.

Residence contract

An agreement between a village owner and a non-owner resident that is either a lease or licence-to-occupy a residential unit and which governs the conditions of residence, the payment and refunding of the ingoing contribution and the payment of departure fees.

Retirement housing

Any housing aimed at retirees, including retirement villages, rental villages, caravan parks and residential parks (sometimes called 'lifestyle communities').

Retirement village

A form of retirement housing comprising a community where most residents are 55 years or older or retired and receive accommodation and services from the village operator, where at least one resident has paid an ingoing contribution, and which is, for those reasons, governed by the *Retirement Villages Act 1986*.

Retirement village contract

A residence contract or management contract.

Retirement Villages Act 1986 (Vic) (RV Act)

The legislation that regulates the operation of retirement villages in Victoria.

Retirement Villages (Contractual Arrangements) Regulations 2017

Regulations made under the Retirement Villages Act that specify the matters that must and must not be included in a retirement village contract and the required format of a retirement village contract, and which regulate such other matters as the timing of the refunding of a resident's exit entitlement.

Retirement Villages (Records and Notices) Regulations 2015.

Regulations made under the Retirement Villages Act that specify the documents that must be made available for inspection on request of a resident or prospective resident, the matters that must be set out in a retirement village notice (registered on the title to retirement village land), a Disclosure Statement and a Factsheet, and the procedure for dealing with complaints and disputes in a retirement village.

Service fee

See 'Maintenance charge'.

Strata title

A retirement village financial model under which the residents purchase the strata title to their units and are members of the owners corporation.

Village manager

The person who, under the management contract, provides services to the residents, including general village management services, who is normally appointed by the village owner and who in strata title or mixed tenure villages, is often also appointed by the owners corporation as the owners corporation manager.

Village operator

The village manager or the village owner.

Village owner

The person who, under the residence contract, leases or licences residential units to non-owner residents or who sells the strata title of units to owner residents and who is normally the developer of the village.

Key acronyms

ACL	The Australian Consumer Law, as set out in Schedule 2 to the <i>Competition and Consumer Act 2010</i> (Cth), which is applied as a law of Victoria by the <i>Australian Consumer Law and Fair Trading Act 2012</i>
ACLFTA	The <i>Australian Consumer Law and Fair Trading Act 2012</i>
CAV	Consumer Affairs Victoria
DAP	Daily Accommodation Payment
DMF	Deferred Management Fee
DSCV	Dispute Settlement Centre of Victoria
IDR	Internal Dispute Resolution
OC Act	<i>Owners Corporation Act 2006</i>
RAD	Refundable Accommodation Deposit
RV Act	<i>Retirement Villages Act 1986</i> (Victoria)
VCAT	Victorian Civil and Administrative Tribunal