

Uniting's submission to the CAV review of the Retirement Villages Act 1986

Uniting Vic.Tas is the community services organisation of the Uniting Church in Victoria and Tasmania. We have worked alongside local communities across both states for over 100 years. We deliver a broad range of services in the areas of aged and carer, alcohol and other drugs, child, youth and families, crisis and homelessness, disability, early learning, employment and mental health.

We work with people experiencing, or at risk of, homelessness to access a range of crisis, transitional and longer-term accommodation. We offer long-term housing solutions for people on low incomes or living with disability and provide welcoming communities in independent living residences for people over 55.

We have more than 50 years' experience of managing Retirement Villages and currently manage 12 villages across Victoria, each ranging from 8 to 40 units. Our villages offer continuity of housing, enabling residents to live independently in a safe and affordable well maintained home whilst being supported to live a life that is meaningful

Our most recent metropolitan based residents' survey indicated that over 90% were "satisfied or very satisfied with our services provided and our staff". Our 95% occupancy levels and waiting lists in many villages reflect their affordability for members of our community unable to consider the For-Profit operators' products.

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?***

Yes, the payment of an Ingoing Contribution (IC) clearly sets out the difference between the RV Act and Residential Tenancies Act. An Ingoing Contribution payment enables operators to be able to offer residents lifetime leases. Such leases provide the security of tenure retirees require if they are to voluntarily downsize from the safety of their family home. Without this security, most would not take that step.

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

The current definition of "no longer working full time" is supported.

However, the definition also requires a resident to be "over 55 years of age". Since the introduction of the Act in 1986, life expectancy in Australia has risen from 75.9 years to 82.5 years in and is expected to continue to rise¹. This increase has been reflected elsewhere in public policy settings, such as the increase in age of eligibility for the aged pension and the abolition of a fixed retirement age. Less than 10% of our residents enter our villages under 65 years of age. Most enter between 70 and 80 years of age. The demographic data in the issues paper suggests this is typical.

¹ <https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features10Mar+2011>

As in-home support services become more widely available, the expectations are that the age at which future residents choose to enter will increase even further. We recognise that operators make their margins from turnover of residents. However, the "Federal Aging in Place" policy will mean new and existing residents will need to stay longer in RVs, accessing support services in their units as their needs dictate. Uniting understands this and is fully supportive of it. However, to remove any obligation on operators to take residents from 55 years of age, we recommend lifting the eligibility age for new residents to 60 years, with a phased increase to 65 years over the following 5 years. This change would simply reflect current and expected future demand patterns.

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?***

Yes, Uniting believes the stated purpose of the RV Act is still appropriate. It could be further refined to include:

- (a) to define and protect the rights of people who live in or wish to live in RVs;
- (b) to define the obligations and duties of RV operators;
- (c) to provide for the inexpensive and timely resolution of disputes under this Act;

The purpose and use of the current register of retirement villages

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

We believe that to contribute to raising the professionalism of the sector, CAV should require all operators of retirement villages to be listed under their register. In addition to existing requirements, the listing should include the following to ensure transparency:

- website and phone number,
- Organisational status (ie For Profit; Not for Profit),
- who the owner or holding company is.

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

- total number of units, and breakdown of 1, 2 & 3 bedrooms,
- age of construction,
- is it accredited?
- type of contract offered, eg lifetime lease or strata title.

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?***

Yes, we believe they are effective. We have not had any applicants seek to reverse their decision within or after the cooling off periods since their introduction.

Uniting is supportive of giving residents flexibility when transitioning into retirement villages and would endorse the approach now being followed in NSW of giving residents a 90-day settling-in period. This would give sufficient time to be sure they have chosen a compatible village, under the terms outlined in the issues paper.

It could also be worth considering making these arrangements reciprocal. A "probationary period" could allow operators to assess if the new resident is fitting in well with the existing residents. This would help operators meet their obligations to existing residents and would contribute to an improved experience for all residents. This proposal comes from recent experience with some new residents coming into RVs displaying more complex and challenging behaviours than in the past. Existing provisions under the Act to manage such behaviours need bolstering.

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 (DMFs) and other departure fees and charges?***

DMFs are unique to the retirement villages sector, so not understood by most looking to enter it. Advertising is by its nature designed to get attention and so is not suited to explain new concepts. Village Fact Sheets are a better channel for this information.

Advertising could be required to say, "DMFs apply, price is to purchase a lifetime lease, please see the village Fact Sheet for a full explanation, including of departure fees applicable".

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?***

Yes, Uniting has had positive feedback from some new residents and their families, that the standardised information and format introduced in 2014 has assisted with their selection process and made final decisions somewhat easier.

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?***

Easy to understand information provided in a range of formats, for example a short video. The RV Act could include a consistent standard to include charges in contractual and financial arrangements.

“Do Come Monday” media have produced simple videos for prospective residents explaining the benefits of villages, the contracts, DMFs, financial issues to consider. These are available at www.villages.com.au. The RV Act could enshrine a consistent standard for encapsulating charges in contractual and financial arrangements.

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

Having had no comments expressing concerns, we believe the existing timeframes are working well for residents and their families.

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?

Uniting supports the introduction of plain English contracts and understands that the format introduced in 2014, had that clear intention. However, our contract went from 18 pages pre-2014 to 36 pages, due to the new formatting and layout.

We always advise residents and their families to seek legal advice on the conditions outlined but feel that most lawyers don’t have a working knowledge of the sector or the RV Act. A big improvement would be for lawyers to be accredited to give advice, similar to the family law accreditation scheme. Local lawyers would struggle to add value if they are not familiar with the RV Act and standard contract construction.

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

See previous answer.

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

Our experience has been that by sign-up day, residents are fully comfortable entering into their RV contract, as they understand it. However, the families, particularly children can subsequently raise issues, due to a lack of understanding of the process/contract. This can pose challenges for the operator years later, when the residents are vacating, and the children are coming to terms with the contract clauses for the first time. Best practice for operators would be to attempt to engage with residents’ families around the content of contracts, so there are no surprises at departure. The annual residents’ meetings could be an opportunity for this to occur.

An opportunity exists for CAV to play an active role in promoting and improving the understanding of the sector, including greater transparency regarding exit fees and providing information and support to consumers and their families.

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?*

Uniting are aware that some For-profit operators offer various contract types, both with and without deferred management fees (DMF)s. Some prospective residents with significant cash reserves after the sale of their home are eager to enter a contract paying a high IC amount with no DMF. They keep enough cash in the bank to fund their lifestyle in the RV while ensuring they can qualify for the aged pension, knowing they will receive all of their IC back upon vacating. The operator makes their margin on interest earned on the huge IC. Residents who have less cash available, prefer to pay a smaller IC at entry, keeping enough money in the bank to enjoy themselves in the RV, knowing they will pay a DMF upon departure. The operator under these terms makes their margin between the interest earned on the IC and a DMF.

We believe compelling this type of prescriptive business model on RV operators would be difficult and unfair. It may work for operators offering a premium product. But would make older and smaller ILUs typically offered by the Not-for-profit sector seem far less appealing if marketed on a much more expensive "IC-only" contract model. It would add even further to the complexity and be difficult to regulate.

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

Uniting's current contracts charge DMFs on a pro-rata basis as we believe it is the fairest method. The example in the issues paper seems to be at odds with what we call pro-rata, which is to charge the DMF on the number of full years and exact number of days of the part year, as a percentage of the total year. For instance, a stay of 10 years and 183 days, would be charged as 10 full years and 183/365 % of a year or 10.5 years.

Pro-rata is fair but should not be imposed retrospectively, as existing contract terms should be respected.

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

Operators should be willing to provide residents one estimate per year of their departure entitlements, when they are considering vacating. We would be opposed to any requirement that this calculation be provided for all residents every year, however we would be open to doing this every 5 years from their contract commencement, balancing keeping residents informed of their entitlements, with making the administrative task manageable

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?

We believe that some form of sector accreditation is desirable to promote retirement villages as a safe and secure housing option. The form that accreditation takes needs to be appropriate and balanced.

We operate in other forms of service provision that are highly regulated, based on the vulnerabilities of the consumer groups, eg aged care and childcare. Through this experience, we see the essential role mandatory accreditation plays in ensuring compliance, encouraging service quality and promoting strengthened outcomes for the most vulnerable members of the community. However, retirees living in independent living units by their very definition are deemed to be capable of independent living and not vulnerable like other sectors that have mandatory accreditation.

We see that when retirement village residents do become more vulnerable and engage support services, the support providers are assessed under an aged care service delivery model, which upholds residents' rights in that area.

In respect of the built environment of a village, we therefore recommend that all operators be required to disclose in their Factsheets and Disclosure documents if they comply with the Retirement Living Councils new voluntary Code of Conduct and if they have been accredited under the new scheme developed by Leading Age Services Australia (LASA) & the Retirement Living Council, (RLC) rather than introducing mandatory accreditation backed by legislation.

If a mandatory form of accreditation were to be introduced, the higher management and monitoring costs would need to be passed onto residents. For Profit operators who typically cater for residents with greater financial means would be more easily able to recover their costs compared to not-for-profit operators who typically cater for residents with less financial means with lower margins. In many cases, costs would not be able to be recovered.

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

If introduced, we believe it ought only to focus on measurable elements such as;

- compliance with financial requirements under the act,
- compliance with paperwork required under the act,
- keeping of complaints registers,
- maintenance completed in prescribed time periods to uphold safety standards,

We would recommend that an assessor conduct regular resident satisfaction surveys. Then if serious concerns were raised, they could trigger a closer investigation.

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

Voluntary schemes would cost less and be motivated by self-interest to promote and improve a village's marketing potential.

Not for profit operators and small operators should be more able to complete them because they could be introduced in a planned and affordable way, compared to mandatory standards that would all be required to be assessed from a fixed date.

For profit operators should have no barrier to implementing all voluntary codes of conduct.

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

The introduction of a national set of retirement village standards would deliver such improvements, but federal regulation in this space is unlikely given many other more pressing national agendas. However, Uniting would look favourably and cooperate with any planning towards future national regulation in this space. As the number of citizens living in RV's increases this may become more needed.

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?*

Yes. Uniting believe that all individuals involved in promoting or operating retirement villages should be of such character that they would pass the criminal record exclusion schemes such as the Vulnerable Persons Register, Carer Check Register, or Working with Children Check (WWC) widely used to assess suitability to work in other public services sectors. None of these are currently a requirement to work in the sector, however all Uniting staff must pass a national Police check and WWC check to work in our RVs.

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

Mandatory training would see an improvement in the standard and consistency of service provision. Staff development would also lead to increased retention in the sector. As a member of LASA, Uniting is aware they endeavour to provide some training targeted to the village sector. With mandatory expectations, providers would develop suitable training and make more sessions available than are currently offered. This should also reduce sessional costs, which are currently quite prohibitive.

As the sector grows there is a real need to retain staff, who are currently leaving to develop themselves in affiliated sectors like aged and community care, or disability that have well-structured professional development and career pathways.

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

Comparison with other sectors will highlight themes applicable to the RV sector, government working group could be established to determine a criterion for a Certificate IV qualification under the Australian Qualifications Framework.

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

Retirement village managers could be required to attain a sector-prescribed professional qualification such as the LASA Leadership and Management diploma or the DCM Institute Village Manager diploma or above, by an agreed future date once approved Registered Training Organisations (RTO'S) are providing training to the sector.

In addition to face to face training, employees can benefit from webinars that would be more cost effective, but still contribute to development of front-line sector staff.

Residents committees

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

Yes.

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

Uniting believes that the responsibility for all decisions concerning dispute resolution between residents lies with village staff and managers, not residents' committees. Nevertheless, we acknowledge that committee residents may be our eyes and ears on the ground, and therefore they can play a part in assisting the manager effectively and carefully manage resident disputes. So passing on information and recommending courses of action would be the extent of a committee's role in dispute resolution.

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

Uniting believe that residents' committees who understand the financial issues in a village may assist the manager explaining particular financial matters to fellow residents. They may also recommend particular financial actions be taken by the village manager. However, responsibility for approving above CPI increases in maintenance charges should remain with all residents on the basis of a vote and not conferred onto a select few. This avoids any possibility of improper practices, bribery, or allegations of favouritism, or wielding of undue influence over fellow residents.

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

Yes – we only attend residents’ committee meetings upon invitation and don’t attend for the whole meeting. We are there for issues and discussion where the committee requires input from management for example around maintenance issues.

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?*

Yes. Uniting believes the current requirements are adequate, finding that most residents are barely interested in all the details currently provided. Residents with a background in finance occasionally request full Profit & Loss statement from operators, which the act does not require to be provided. We would support the retention of existing requirements.

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

Yes, so they can read them at their own pace and come prepared with questions for the meeting. This is our current practice. We believe a minimum of 14 days prior would suffice.

31. *Are there any other matters that should be addressed in the reporting requirements?*

Uniting believe that where an operator holds Sinking Funds (a fund formed by periodically setting aside money for the gradual repayment of a debt or replacement of a wasting asset) for a village, an annual statement of the fund transactions and balance should be provided to the residents under best practice standards. This is our current practice.

Retirement villages with an owner’s 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?*

Uniting has no retirement villages of these mixed tenure types, hence has no view on this matter.

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?*

Uniting holds the view that responsibility for all maintenance matters to be attended to lies with us under the terms of our resident contracts. Where residents request something be done that we consider is above our standards, or budget or not needed by everyone, (eg installing cable television) then we may give permission for that item/task to be funded by the resident and performed by a contractor we have approved to work in our village. This satisfies the resident's wishes, while eliminating any risk of unsafe contractors working on our sites and possibly endangering other residents.

The second issue is how promptly maintenance is attended to. We follow the Residential Tenancies Act timelines wherever possible: URGENT matters within 24 hours, PRIORITY matters within 7 days, and all other matters considered to be NORMAL within 14 days.

These timelines have been very well received by residents over many years, as reflected in very high satisfaction scores in our bi-annual satisfaction surveys. Providing residents with a definitions document describing where jobs fall under the 3 categories also assists. We would support the RV Act prescribing similar expectations on operators.

The exception to these practices would be items of a Capital replacement nature. Oftentimes capital maintenance is planned and can be completed when funds are available over an approved longer timeframe eg external painting of a village. However, at other times maintenance classed as capital needs to be performed urgently, eg replacement of a burst village hot water storage unit. We don't believe the RV Act should be prescriptive in regard to when capital maintenance occurs.

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

Problems may arise where an operator has 2 or more levels of units within a village that may relate to the age or size of different units. All units in all villages should receive the same standard of maintenance in all areas related to safety.

However, in some of our oldest villages, we were unable attract new residents willing to pay an Ingoing Contribution to receive a Lifetime lease under the RV Act, because of the size and age of the units. The solution to this was to offer a 12-month lease under the Residential Tenancy Act with tenants paying less than market rental. This has ensured the village is fully occupied, which sustains the operating income to benefit the whole village, whilst also providing affordable housing to older people, which is in extremely short supply. As these residents paid no Ingoing Contribution amount, the cost of maintenance we perform in those units is different to what we perform in units where residents paid a substantial Ingoing Contribution. For example, in one we may replace a broken stove with a stainless-steel mid-range model and the other with an entry level older style model. Any legislation would need to allow these types of variations.

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?

Regulatory definitions of maintenance and capital items are very difficult, considering these terms are open to interpretation. In addition, maintenance works are sometimes capitalised and sometimes expensed, which complicates things further if trying to define whether an item should be paid by the owner or out of the village operating maintenance budget. Owner/Operators must in any case follow what is in existing legacy contracts.

Maintenance and capital replacement funds and plans

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

Yes, best practice would support this. Residents pay for responsive maintenance from their fortnightly service fees under the annual village operating budgets. Operators/Owners generally fund capital replacements from the interest they earn on Ingoing Contributions and the DMFs they retain under contract terms. Typically Sinking funds that residents sometimes contribute to, can support capital maintenance costs.

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)?

Uniting supports minimum standards in this area through legislation. We suggest the current provisions of the Owners Corporations Act 2006 in this area could be applied. There is a threshold point of approximately 50 units under the OC Act, past which the creation and following of maintenance plans becomes mandatory. In a retirement village, we would suggest more than 30 units as a threshold point. We would not recommend the Act be prescriptive in this area for villages with fewer than 30 units because of the costs associated with the development of professional capital replacement plans.

Uniting recommends annual reporting to residents on the transactions and balance of funds held in Sinking funds. Funds are typically pooled and invested to earn maximum interest, so we would not want separate trust accounts to be required for each village. This would impose unnecessary charges on minimal balances, particularly for operators like is with a number of small villages.

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?

Not applicable

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

Uniting are open to this being allowed as it may support the wishes of residents who have established long standing trust with an operator over many years. However, the provision of care services crosses into a different standard of personal service under the Aged Care Act, with associated higher accountability and accreditation standards. Clear lines of differentiation would need to be established if providing both residential housing & care services from the one provider/operator organisation as regulated under the National Disability Insurance Scheme.

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?

Uniting work with Victoria's most vulnerable and marginalised people and as a result do not have a lot of experience with privately funded care services. Our focus is on assisting people to have access to government subsidised care packages and therefore have limited experience to comment if privately funded care services are sufficient.

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

Retirement village residents live in Independent Living Units, on the basis that at entry, they are medically assessed by their GP as capable of living independently without supervision. This means they can come and go as they please, including going on holidays, although managers usually ask to be informed prior to absences of more than a week. As residents age, some become gradually more dependent on various types of personal support and care. A village manager is typically and appropriately not involved or aware of these private arrangements.

The village manager does assume a basic duty of care, similar to a neighbour or longstanding friend, for the residents living in their village. They would be expected to notice if a resident hadn't been seen for some days and if they had been unwell and were not responding to efforts to contact them, they may contact the resident's next of kin on their behalf. If needed they may perform a welfare check on a resident using the village master key. They may assist residents in identifying support services should they need them.

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?

Yes. Uniting believe the current act and regulations strike a fair balance between the interests of both parties.

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?*

Uniting believe the current act and regulations strike a fair balance between the interests of both parties. It is a difficult area to prescriptively regulate. We feel the resident contract should continue to be the place that clearly spells out the obligations of both parties, as they can be very dependent on village and unit type.

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?*

Yes, but we believe the RV Act could explain why ongoing charges are required. The families of residents often express their dissatisfaction that operators are allowed to charge full service fees for up to 6 months after departure. This is typically very difficult for people living on pensions, who may need their full income to fund their aged care place and may not be entitled to any refund of an Ingoing Contribution, if they have been long term residents on old style contracts. In many of these cases we waive this requirement, since it simply cannot be paid.

One change to motivate operators to renovate and reoccupy vacant units as quickly as possible would be to introduce a reducing scale of service fees to be paid over the current 6 month prescribed period, from 100% payable for the first 3 months (which we feel is a reasonable time to attend to all maintenance & reletting), reducing to 75% in the 4th month, then 50% in the 5th month & finally to 25% in the 6th and final month.

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?*

Uniting has little experience in this area to comment on. However, in general we would oppose prescriptive legislation in this area. It would be a contractual and financial model issue, which impacts the pricing points being applied to contracts and as such should be able to be determined by operators offering these types of contracts.

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?*

Uniting fully supports the 4 recommendations outlined in the issues paper.

- *Introduction of a definition of 'complaint' into the RV Act, and clarify requirements around recording complaints*
- *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*
- *Clarify in legislation the avenues for directing complaints about village managers*
- *Remove the role of resident's committees in resident dispute mediation*

In addition, we recommend the RV Act adds further steps / breaches / sanctions that operator/owners could use to assist with the management of a minority of residents, who we see are developing or coming into our villages, with more complex antisocial or divisive behaviours. As residents are expected to remain in village units for longer period of time, as their health slowly deteriorates, we feel this will become more important over future years. The actions of a few difficult residents can significantly and negatively impact on the quality of life of the rest of the village residents. As one resident recently said to one of our managers, "you go home at the end of the day and you don't have to live next to them".

We feel the existing two step approach, before a resident can be asked to vacate is too punitive. Further steps before asking a resident to vacate would be of assistance, such as imposing of a financial penalty for example, which may assist in changing behaviour.

We currently use the village by-laws where possible to breach residents displaying anti-social behaviour, however as by-laws require 75% of residents' support to modify them, none of ours clearly address the behaviours we are sometimes attempting to manage in a fair and accountable way. Residents are reluctant to introduce by-laws in this space, so we believe the RV Act should address these matters. For example, the Residential Tenancies Act has a series of helpful clauses that provide managers scope to breach for various behaviours prior to asking someone to vacate.

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?*

Yes. We have seen a couple of examples where residents embarked on the intervention of the courts which divided the village and, in the end resulted in the applicant's case being largely dismissed. This resulted in significant impact on the health and finances of both parties for a considerable time and consumed considerable management time as well.

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

Yes. Having this as a prescriptive first step would be an improvement.

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

Uniting recommends a multi phased approach.

- The RV Act needs to be strengthened with the addition of steps that can be taken to breach / sanction residents who continue to breach village By-Laws as stated above. The Act should prescribe what constitutes a valid breach, including breach of village by-laws, evidence of harassment, bullying, intimidation, or threats to residents, their visitors or village staff/contractors, or non-compliance with manager's directions, to name a few.
- We also see the need to develop training for staff in the sector around mediation and negotiation of disputes and handling of people with various mental health conditions.
- Plus, we recommend that residents also need access/referral to support, from community health services, to assist them through the process, especially in relation to the prevalence of mental health which is an underlying component of many of these disputes.
- Uniting also supports the establishment of an RV Ombudsman to be the final arbitrator where required.

Enforcement (Part 7)

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

We have no experience here of any enforcement provisions by Consumer Affairs staff. However, it seems reasonable that the RV Act be updated to reflect all the current provisions and powers of the Australian Consumer Law & Fair Trading Act, as they relate to the RV Act, rather than continue having only part apply to the RV Act, as currently is the case.

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?

Uniting has no experience to comment on in this area.