



SUBJECT: RESPONSE TO CONSULTATION PAPER 2 - SOCIAL HOUSING REGULATION REVIEW

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KEY POINTS

- Social housing and retirement village residents, despite their apparent differences, face a surprising number of common challenges.
- A few retirement village operators do offer a limited number of social housing places, some regulated by the Retirement Villages Act and some uncertain
- Social housing and retirement village residents have very similar dispute resolution needs
- There is an opportunity to develop an ombudsman service to offer specialised dispute resolution services to each of the social housing and retirement village sectors (and perhaps others) and thus achieve economies of scale that would make the service cost-competitive.

ABOUT RRVV

Residents of Retirement Villages Victoria (RRVV) is a volunteer organisation of around 6,000 members supporting and representing retirement villages' residents.

RRVV works to support the lives of residents of retirement villages by:

- Helping prospective residents' decision making
- Helping resolve residents' problems
- Helping the families of residents leaving a village
- Encouraging innovative industry development programs

A committee of up to nine members supported by 160 resident liaison officers (village level coordinators) administers the Association's affairs.

RRVV has four primary activity streams:

- Member support
- Government relations
- Industry relations
- Research

RRVV devotes most of its resources to member support. This function includes:

- Responding to telephone and e-mail queries and requests for help with problems (around 600 queries a year)
- Publishing four newsletters a year
- Holding two primary member events a year
- Visiting villages
- Advocating on behalf of residents making complaints
- Provision of the website www.rrvv.org.au as a service to members and a source of information for people interested in retirement villages.

RRVV research explores retirement village satisfaction, interactions with management, problems encountered, disputes, access to information, and participation in decision-making.

RRVV meets regularly with retirement village operators and various arms of government to explore areas of mutual interest and resolve differences. We are currently deeply involved in the Review of the Retirement Villages Act.

COMMENTS – RETIREMENT VILLAGES AND SOCIAL HOUSING

Most people entering retirement villages pay a refundable lump sum to secure a residence right. During their time in the village, they pay a monthly service fee to recover the direct costs of maintenance of the communal property and the exteriors of their units and the cost of lifestyle services provided to the resident body by the village operator. On leaving, they pay the operator a lump sum, deducted from the refund of the ingoing lump sum, for managing the village. This fee is known as a deferred management fee or exit fee. Residents bear the cost of maintaining the interior of their units and the repair and replacement of operator supplied appliances.

The Retirement Villages Act allows operators wide latitude in the offers they make to residents. There are many variations on the bare-bones arrangements outlined above, and the residence contracts are unfamiliar, except to people who have experience of commercial leases, complicated and harsh.

This is not a business model designed to attract people who might otherwise look for social housing. However, the future of the sector is unclear given pending reform in age-related policy.

Most retirement villages operators are unclear whether they are running a property or service business. The Property Council of Australia is the dominant peak body representing owners and operators of retirement villages, suggesting a property focus. Operators' contracts tend to be property-focused, and village managers tend to focus on protecting the asset value of the village. Nevertheless, operators stress the advantages of living in a

supportive community of like-aged people in their marketing material. In RRVV's opinion, housing is a necessary but nowhere near sufficient part of the offer. Most people entering a village are looking for much more than an apartment.

Despite all the above, some village operators offer a limited number of people a subsidised place in a village. Typically, those that do are charitable trusts that run villages with lower-priced apartments. The subsidy usually takes the form of a reduced or waived ingoing amount, a reduced or waived exit fee and a waived requirement to pay for the rectification of fair wear and tear. After the subsidies, the resident only pays the service fee. Thus, it is usually possible to live comfortably on a pension with rent assistance in lower-priced villages.

The waiting list for subsidised places is several years long. The front edge of the baby boomer demographic bulge is already forcing change on retirement villages, and a considerable proportion of this cohort does not have adequate financial resources for an independent retirement. Waiting lists will lengthen.

It is essential to distinguish those operators offering subsidised places from others in the not-for-profit sector who run their villages solely as cash cows supporting their separate charitable operations.

RRVV believes a significant slice of retirement village operators who offer subsidised places are unclear about the relevant regulator of their subsidised operations. A few operators have taken care to follow the Retirement Villages Act, but others have taken a less formal approach. Recently an operator with a solid commitment to social housing who believed one of their establishments was a retirement village discovered that no current resident had paid an ingoing contribution as required by the definition of a retirement village. The residents with Retirement Villages Act contracts are now in regulatory limbo.

We know that in some villages, subsidised residents do not always have the same participation rights as other residents. We are also aware of complaints by full fee-paying residents that their operator is using their money to subsidise concessional fee residents.

Retirement villages sometimes fail. The ideal outcome is for a white knight to buy the village. During the global financial crisis, opportunistic buyers did acquire most troubled villages. When there is no buyer, most displaced residents end up joining the social housing queue.

CONSULTATION QUESTIONS

Question 3. Do you agree that people who are eligible for social housing renting in the private or non-social rental market should be afforded the same protections and benefits as those renting from a social housing provider?

RRVV argues that, as far as possible, residents' rights, responsibilities, freedoms and protections should reflect their needs rather than who owns the property, the form of housing or the regulating Act.

Question 34. Would a set of standards and protections that apply to certain provider types such as caravan parks and rooming houses benefit other tenants in the private sector?

Most prospective residents find it hard to distinguish between leasehold communities (i.e., communities built around relocatable housing) for over 55's from retirement villages or independent living units. RRVV asks why a person who stumbles into a leasehold community should live under different standards and protections from someone who stumbles into a retirement village or another like a regulated community? The needs of the residents rather than the provider type should shape the standards and protections in the first instance.

Question 39. Do the current dispute resolution processes available to current and prospective social housing tenants offer fair, fast, low cost, accessible and consistent decision making? If not, where are the shortcomings?

RRVV's relevant ability is in dispute resolution processes for older people. The issues given on page 30 are uncannily like those experienced by residents of retirement villages.

As we age, we become conflict-averse. This strong tendency helps us in our relationships, particularly within our families. On the other hand, it puts us at a disadvantage when dealing with landlords and businesses on whom we rely.

Adversarial dispute resolution processes can put older people at a severe disadvantage because they are inclined to give in rather than assert their rights. Even sitting informally across a table from someone with whom we are in dispute can be a problem. Thus, to a considerable proportion of older people, mediation can be an adversarial process, especially if it involves negotiation or descends into haggling.

Similarly, as we age, some of our cognitive processes slow down. We are not as good at thinking on our feet as we once were. This impairment, too, puts us at a disadvantage in adversarial dispute resolution processes.

Most adversarial processes require the complainant to develop and present a case. RRVV has seen very few older people, even those whose education and career would suggest they were once proficient, can do this.

Older people can define the problem of which they complain well.

Dispute resolution systems with multiple layers that require older people to tell their stories over and over are problematic because they induce dispute fatigue and cause complainants to withdraw.

Given all the above, it seems clear that older people need a one-stop dispute resolution system that allows them to hand over their problem to an independent expert with the powers to investigate both individual and systemic issues, negotiate with the parties, and, if necessary, make binding determinations.

Retirement villages are complex entities, and many operators facing a complaint push back aggressively. As a result, the legal issues can be complex. Retirement villages need expert adjudicators.

Retirement villages are close communities that generate a considerable number of disputes between residents. Mediation helps repair the relationship between the disputing parties. Unfortunately, few village operators employ skilled mediators. Ham-fisted intervention by operators in disputes between residents often produces an added complaint against the operator. Resolving these triangular complaints is a challenge.

Question 40. Are there possible alternative models for dispute resolution that would offer greater benefits than the current approach? Could the dispute resolution process introduced during the pandemic offer any insights?

The reform options given on pages 30 and 40 align closely with those RRVV has proposed to the Department of Justice and Community Safety's Review of the Retirement Villages Act.

We are aware of resistance to our proposal.

First, the use of the term Ombudsman. Our proposal is straightforward. It's the powers, functions and processes that are of critical importance. We believe naming the office as an Ombudsman would enhance its acceptance and credibility. Naming it something else would not destroy it.

The second is the cost. We estimate a Retirement Village Ombudsman would handle around 1,800 disputed complaints a year in the early years. A disputed complaint is one the operator has not dealt with to the complainant's satisfaction. Not all village operators can offer competent internal dispute resolution. These operators' villages would add another 1000 complaints a year. We would expect complaints would decline by around 10% a year as standards improved across the sector through the discipline of effective dispute resolution. The core of the resistance is that a retirement villages ombudsman would be an expensive solution for a small number of complaints. The primary concern seems to be the cost of establishment and maintenance of the necessary infrastructure rather than the staff dealing with complaints.

The third is existing agencies could, collectively, expand to deal with retirement village complaints. Proposals relying on existing agencies do not offer a one-stop dispute resolution service.



The fourth is that residents need the aid of advocates to help resolve disputes in the early stages rather than a new dispute resolution system. RRVV disagrees with the presumption. Residents need a system that will both resolve disputes using binding orders where necessary and deliver system-wide improvements. Residents with access to a system designed around their needs would not need a separate advocate.

RRVV suggests there is an opportunity to develop an ombudsman service to offer specialised dispute resolution services to each of the social housing and retirement village sectors (and others) and thus achieve economies