

Review of Retirement Villages Act

Tigcorp P/L Issues Paper Response

Tigcorp supports and endorses the Property Council response to the Retirement Village Issues Paper. Tigcorp would like the opportunity of making several other comments in relation to the Issues Paper. We acknowledge this paper has been developed in consultation with our villages key stakeholders and commend the Department on their engagement with industry to date. Headings and numbers relate to the headings and numbers in the Issues Paper.

Tigcorp have been committed to the Retirement industry for over 20 years. The combined experience of Dr David Thurin AM, Executive Chairman & CEO and Jennifer Clancy GM is over 40 years in the Retirement industry. This encompasses extensive experience in Retirement development, construction, management, sales, marketing and operations. Jennifer Clancy sits both on the Victorian Retirement Living Committee and the National Retirement Living Committee.

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 of the Act has to consider not only the rights of residents which are obviously important but also the rights, viability and profitability of operators to encourage investment into the industry and offer more choice to residents. Even Appendix 1 on page 54 of the Issues Paper states that one of the terms of reference (number 2) is to assess whether the regulatory framework has the flexibility to facilitate growth and evolution in the sector. The purpose of the Act has to also allow that operators have the flexibility to

provide services and accommodation through a variety of models and allow residents to have more and better choice. The Act needs to find the right balance to protect the rights of residents and operators alike, be fair to all stakeholders and treat all stakeholders with respect. If successful in doing this then the result will be a “win - win” for residents and operators.

The purpose and use of the current register of retirement villages

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

The question asks what operators should be required to include in the register. Tigcorps point here is that sometimes the legal owner will be different to the recognised brand and therefore there should be an ability to state the recognised brand as well if required by the operator.

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?

Industry feedback suggests that the current disclosure and Fact Sheet formats are well regarded by prospective residents. Most villages do not currently offer an ingoing price without a deferred management fee as it would increase the ingoing price. One industry consultant interviewed in the Parliamentary enquiry was pushing for an ingoing price without a deferred management fee but it is not commonplace and should not be forced upon operators as a financial model.

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

The Parliamentary enquiry and Government position was only with respect to one estimate per year. We would submit that the resident should only be able to request a maximum of one such estimate document per year.

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 benefits and costs of voluntary accreditation schemes?

Currently there is no compulsory ARVS Accreditation for villages in other states of Australia. The approach should be that best practice is to have village accreditation in Victoria. Tigcorp are strong components for accreditation, and we would support this review recommending the adoption of ARVAS as accreditation for Victorian operators. If there is a mandatory accreditation scheme then it begs the question of what would happen to villages and their residents if the village was not accredited or lost their accreditation? What would also happen to the prices of the resident dwellings while the village was not accredited? For this reason Tigcorp supports the principle of a mandatory accreditation scheme but until the answers to the above questions are sorted out then a voluntary scheme is preferred by Tigcorp.

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

Tigcorp supports concept of the **Capabilities & Certification Framework**. The framework is aimed at identifying the attributes of good sales professionals and village managers and will allow these professionals to seek professional recognition of their high standards. The Property Council also supports the framework and this is just an example of how serious industry takes ongoing training. It should be noted however that as the industry has not had any experience with the implementation of

this particular framework that there may be other frameworks moving forward or alternatively this framework will require alterations until industry is comfortable with it.

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

The Act states that the resident committee can't mediate a resident to resident dispute while being dealt with by the manager. We support residents' committees being able to have a role in resident to resident disputes if management is not already involved in brokering a solution for such disputes or after management has dealt unsuccessfully with the dispute. Ultimately residents' committees can choose themselves whether they want to assist in solving the dispute and management cannot and should not be able to force the resident committee to be involved. This is consistent with the current Act.

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, the current level is appropriate. The operation of a retirement village is a business enterprise therefore, some financial activities such as individual salaries should not be required to and in fact cannot be disclosed. Also, where the owner is also the manager there may be commercial arrangements that can't be legally disclosed. Such information is commercial in confidence and a requirement to share additional detail would not further advance the purpose

of the Act. A change to this effect could also have adverse outcomes under the Privacy Act 1988. Also, where the management entity is the manager of multiple villages there is information that is not relevant to the running of the village in question, again does not further advance the purpose of the Act and may in fact confuse residents in understanding the financials of their village. Residents can see from the facts sheet that all residents are not charged the same management fee and increases in the management fees are made annually and shown in the village accounts. As this already occurs no changes are required to be made.

How villages handle any surplus depends on the financial model of the village in totality and may be dependent on historical agreements made with residents and therefore should not be legislated.

The make-up of head office management fees will often include confidential information such as individual salaries. Therefore the fact that these fees are audited should suffice and good practice would determine that the methodology of the make-up of the fee should also suffice and hence no change is required.

Maintenance and maintenance charges

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?

The Act does not need to regulate what constitutes maintenance and capital items. This is not a current issue and most villages work with the residents' committees in relation to village operation budgets and sinking fund budgets. Being too prescriptive may actually be to the disadvantage of residents and operators in having flexibility to run the village. Also, any need to differentiate between long term maintenance and capital replacement items and then

decide when to repair and when to replace will add extra complexity and potential for dispute.

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

There is an increasing demand from consumers to have personal care services available in villages. However there should not be legislation that retirement villages have to provide certain services. The services provided by operators are in the fact sheet and residents have the right to choose a retirement village armed with the necessary information. There should not be any greater obligation or impediment for retirement village operators to provide these services than there is in the general community.

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?

If services are provided to residents under the Aged Care Act or in fact any other Act or regulations then the operator, whether it is a retirement village operator or a third party operator, should be responsible for themselves under the various provisions of the Acts and regulations required in the delivery of those services.

Leaving a retirement village (Part 5)

Selling/re-leasing a retirement village unit and reinstatement and refurbishment of retirement village units

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?

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?

Question 42.

The framework since 2006, including the refinements to the aged care rule in 2017, is largely due to the fact that it works effectively to achieve the interests of all parties to the transaction. Changes to the Aged Care Rule in 2017 were appropriate and struck the right balance between the operator and the resident. These changes required the operator to pay the Daily Accommodation Payment on behalf of a resident when moving to aged care that is reimbursed when the resident's unit is sold. The changes meant that an operator was not required to pay a Refundable Accommodation Deposit that could potentially put too much financial burden on the operator.

Question 43 –

The Issues paper quotes Queensland whereby the resident and operator pay for the renovation as opposed to reinstatement in the same proportion as they share the capital gain; otherwise it is borne by the operator. The Issues paper also quotes NSW whereby the resident is liable for the cost of reinstatement (fair wear and tear exempted) but not liable for reinstatement if not sharing in any capital gain. It should be that the legal contract is the guiding document that determines who pays for the reinstatement and renovation of a resident's unit and as all financial models are different then the reinstatement and renovation should not be singled out in isolation. Residents can easily compare financial models through the various fact sheets and make an informed choice. However in principle, Tigcorp believes that the resident should pay for the cost of reinstatement and should not pay for the renovation if not participating in any capital gain.

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?

The outgoing resident's contribution towards the ongoing village overheads is generally restricted (for non-owner residents at least) to a reasonable period (eg maximum of six months from vacant possession for maintenance fees). This seems fair as village operators have a continuing obligation to deal with ongoing village overheads upon a residents' departure. With respect to sinking fund contributions, these should be ongoing until the sale and settlement of the residents unit. These fees tend to be a lot less than maintenance fees anyhow and the charging of sinking fund fees until settlement is consistent with up keeping a home outside a retirement village until the sale and settlement of that home.

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?

The Good Practice Protocols are a useful guide for operators and consumers. However, if they are to be used as a standard which must be met by an operator in consideration of a complaint or a dispute, then Tigcorp recommend that they be reviewed including to ensure that they are consistent with the Act and including any amendments to the Act. Currently, there are some recommendations in the Protocols which are not supported by legislation.

We support a process which clarifies the avenue for dealing with a complaint when the complaint is about the village manager. This is particularly important for smaller operators, especially where the owner is the villager manager, who may find it difficult to have an alternative for the village manager.

Enforcement (Part 7)

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

Tigcorp has no objection to the inclusion of powers such as the power to inspect, make copies of documents and require the production of documents and giving evidence; as referred to in the Issues Paper; or to the power to issue a corrective advertising order.”