

**John and Sandra Sheedy**

5th December 2019

Retirement Villages Act Review,  
Consumer Affairs Victoria,  
Online  
[www.engage.vic.gov.au/retirementvillagesact](http://www.engage.vic.gov.au/retirementvillagesact)

Dear Minister,

### **SUBMISSION ON CAV ISSUES PAPER**

The CAV Issues Paper invites views and comments in response to the Issues Paper which poses a series of questions.

We have not repeated the questions, but simply quote the question number with our comments below.

The responses provided are based on our personal experience of living in a retirement village for over 7 years, together with information gleaned from speaking to other village residents and my time as a Resident Liaison Officer for Residents of Retirement Villages Victoria (RRVV).

### **The Regulatory & Policy Framework**

#### **Question 1**

No. The payment of an ingoing contribution is only one of the factors that should be used to define a retirement village.

The RV Act should apply, to the extent relevant, to residents with a strata title (where the Owners Corporation Act applies), which should be provided for and clarified in the definition of "retirement village".

#### **Question 2**

No. The definition of a retirement village should embrace the essential elements of a retirement village, being –

- a community where the majority are retirees
- aged over 55 years of age
- seeking a relaxed lifestyle among peers
- a safe, secure environment
- opportunity to have a say in village operations

- receive and pay for accommodation and services (other than residential care services)
- wanting future financial obligations to be predictable
- able to live independently with assurance of 'ageing in place' provisions available and encouraged
- understanding exit/sales costs on eventual departure

A vital requirement for any retirement community is to have a broad age range of residents with a variety of backgrounds, who have the necessary skills, experience, fitness and energy to undertake voluntary positions on social/sporting clubs and resident committees and to provide leadership roles.

It is important that any village not meeting the definition of retirement village, but where the village is being passed off as serving a similar function, do not escape the disciplines and resident protections provided by the RV Act.

We would have to leave it to others to show how this can be achieved in legislation.

### **Question 3**

No. The current purpose sounds fine, but it has not necessarily served residents particularly well on protecting their rights. Additionally, it does not recognise resident differences and the changes in health, mobility, mental capacity and vulnerability that can occur, or the opportunity for exploitation by some operators.

The RRVV sees the solution being to include in the RV Act/Regulations a charter of resident rights, freedoms, protections and a code of ethics.

We strongly support this proposal.

The voluntary Retirement Living Code of Conduct does not adequately focus on residents and only around 50% of villages have signed up, with the remainder unlikely to do so. This code is not considered a genuine attempt to improve industry standards or respond to key concerns of residents like –

- complex and unfair contracts including excessive fees
- difficulty achieving binding resolution of disputes
- lack of mandatory training of staff and qualification standards
- maintenance problems like delays, poor quality of work and lack of clarity on responsibilities of residents and management
- poor resident consultation and limitations to participate in village decision making
- weak enforcement – code should be administered by independent body with appropriate powers
- absence of sanctions or remedies for residents for code breaches

The development of a mandatory code of conduct for village managers to sign up to would be a good idea to implement. Any such code would need input from village residents, CAV, peak bodies, RRVV, COTA, HAAG & CLAC to ensure resident rights and concerns are covered.

#### **Question 4**

The register is an informal process and villages are not required to be registered with CAV in order to operate, which is clearly inadequate. Registration should be essential, making it unlawful to operate without it.

RRVV recommends licensing, with the register to form part of licencing regime.

#### **Question 5**

Additional information required for public register of retirement villages –

- village details – number, description of units and whether lease or title
- owner's details – including directors for any company plus registered address
- village manager/operator – including directors names and registered address
- entity holding DMF rights (if not owner/operator)
- owners' corporation manager (if strata-titled village)
- accreditation if held
- if a subscriber to the Retirement Living Code of Conduct
- any other information considered relevant

#### **Entering a retirement village**

#### **Question 6**

The 21 day period is too short for prospective residents to read and absorb the high volume of information from fact sheets disclosure documents together with the long, complex contracts.

Also, the need to refer to professionals, seek legal advice and discuss the move with family members makes the 21 day timeframe inadequate. This should be changed to say 45 days to allow proper time to fully grasp the costs and ongoing financial obligations (including the complexity of DMF issues) plus upon departure the pre-sale refurbishment, exit arrangements and associated costs.

The NSW "settling in" period of 90 days to allow a resident to terminate the contract should be adopted, allowing the resident the right to leave without incurring DMF or exit charges (other than for any damage to the unit) but paying market rent for the period of occupation.

#### **Question 7**

In order to be open and transparent, when the 'price' of a retirement village is advertised it is essential that it also include full details on service fees, sinking fund/maintenance charges, DMF, refurbishment requirements, who gets capital gain/loss, departure costs etc.

The decision to enter a retirement village is essentially a lifestyle decision, but it has ongoing financial obligations. Nevertheless, the focus for prospective residents is usually to look at the initial cost to purchase, attraction of the village and the individual unit and not take

much notice of the later financial obligations imposed by complex and often hard to understand contract clauses.

RRVV recommendation to insist on use of the comparison rental rate in all marketing material is supported. ██████████ ██████████ of Macquarie University has developed a method of reducing retirement village fees to a comparison rental rate - (refer <https://rvcalculator.mq.edu.au>)

### **Question 8**

The fact sheet and disclosure statement provisions in 2014 have resulted in some modest improvement in the level of understanding to a number, but not all prospective residents. However as stated earlier, the volume of documentation, particularly the long, complex, hard to understand contracts, often containing “legalise” associated with a purchase of a retirement village unit can be overwhelming and confusing to many people – including many professional advisors who lack a detailed knowledge of this specialist area.

### **Question 9**

**Example** - *In our village there are ██████████ villas/apartments with over ██████████ different forms of leases! Each of these contains a variety of clauses which keep changing with each new version, and get added to each time the “legal eagles” find another way to impose more obligations upon residents, with many items “at the discretion of the owner”.*

*The current disclosure documents provided by our village includes –*

- *Factsheet (13 pages) – containing prescribed information*
- *Electricity supply details (6 pages)*
- *Agreement to grant residence (14 pages)*
- *Residence & Management Contract (44 pages)*

The answer to this question is easy, but not so easy to achieve. It must start by simplifying the RV Act (& Regulations) with a total re-write in plain English making it easier to understand by a layman. The current RV Act (& Regulations) leaves it to village contracts for rights and obligations which remain open to wide legal interpretation. Residents simply do not have the financial capacity (or often lack the desire) to challenge contract terms, as owners/managers can afford the best legal advice available, this leaves residents vulnerable and open to disadvantage and bullying when contentious issues arise.

While not contemplated in the Issues Paper, the best solution is a whole new Act that –

- written in plain English
- consult with residents, consumer organisations & peak bodies (COTA, HAAG, CALC, RRVV)
- leaves out ineffective terms (operators sometimes include terms they cannot enforce – just to intimidate?)
- removes unfair terms like payment of owners legal costs
- less open to interpretation than the current Act
- consistent with what residents know and understand (simple to understand contracts)
- standardised terms as much as possible

- clear definitions of words and terms (service levels, reinstatement, refurbish, renovation, upgrade, damage, fair wear and tear, long term maintenance, operating costs, capital gain/loss, recognise capital expenditure by residents in capital gain and DMF calculations)
- provide for a vote to each resident (current Act says one vote per residence)
- simplify what is now unnecessarily complicated
- define the widely used resident funded village contract – where service fees (maintenance charges) cover operating costs, sinking fund/capital replacement fund contributions for long term maintenance expenses), DMF calculated pro-rata basis, treatment of capital gain/loss
- regulates contracts much tighter than the current Act
- CAV Good Practice Protocols to be mandatory
- disclosure of standardised comparison rental rate
- other resident rights, freedoms and protections as necessary
- Ministerial Guidelines must be adopted by councils to apply a differential rate to retirement village properties (say a range of 20/25%) who are currently disadvantaged compared to other ratepayers

### **Question 10**

No. To assist in decision making, it is critical that residents should be provided with factsheet, disclosure documents plus contracts at the time of first contact when given marketing materials or verbal information.

### **Question 11**

The 2014 changes introduced have probably marginally improved the level of understanding of their contractual arrangements for many residents, the majority of whom are still overwhelmed by the extensive, complicated documentation. As RRVV states, the post-2014 contracts are arguably harder to understand than those in the pre-2014 period and the compulsory information remains quite difficult to properly comprehend by the average person.

### **Question 12**

**Example** - Our village has ■■■ villas/apartments & there are apparently over ■■■ versions of leases (contracts) all having different clauses. When we entered the village in 2012 our lease had 34 pages while the current contract known as “Residence & Management Contract” contains 44 pages.

Part of the problem of trying to simplify long, complex contracts is the high number of matters that need to be included in contracts including complex ones like -

- Resident right to occupy
- Right to use common areas
- Services provided including easy-to-understand details on insurance, pest control cover plus and facilities ‘wholesaled’ by operator such as power, telephone, internet
- Fees – including service fees, sinking/maintenance fund contributions, catering fee, personal services, deferred management fee (DMF), fixed payment
- Sinking/maintenance fund

- Repairs and maintenance
- Refurbishment arrangements
- Departure procedures
- Exit costs

### **Question 13**

Refer to answer to question 9

### **Question 14**

The DMF is generally the greatest cause of confusion for residents. As it is very not well understood by residents or the wider community, it is a frequent source of criticism and open to exploitation by unscrupulous operators.

DMF is not a fee related to management services and is often described by owners as a delayed cost for provision of resident facilities in the village (pool, gym, library, bowling green, bar, restaurant, theatre etc.). This is a much better explanation than the one given in the Issues Paper (page 29) saying it could be characterised as deferred rent.

The Parliamentary Inquiry recommended retirement village operators be required to disclose ingoing prices with and without DMF. In my view this will only create confusion for consumers, add to the length of documentation and provide unnecessary costs for operators. It would be better, simpler and clearer to prospective residents to only quote ingoing price with DMF, as per Fact Sheet requirements.

RRVV believes that the use of [REDACTED] comparison rental rate (see earlier comments) provides the best option to compare the costs of different villages.

### **Question 15**

Yes. It is outrageous that DMF is not calculated on a pro rata basis, which is the only fair way to do so. The RV Act should so stipulate.

Parliamentary Inquiry recommendation 8 supports this action.

### **Question 16**

Operators should only need to provide residents with an estimate of exit fees (including DMF) upon request – limited to once per year. There is no need for annual estimates which would be unduly onerous for operators, when residents do not need that information annually.

## **Living in a retirement village**

### **Question 17**

Current voluntary accreditation schemes lack rigour, relying too heavily on ensuring only that written policies are in place, rather than on the degree to which such policies are

rigorously applied. The voluntary schemes provide little comfort or assistance to residents and the only benefit seems to be that operators receive the kudos for being accredited and can use accreditation as a marketing tool. The new ARVAS scheme has many flaws and remains unlikely to improve things with less than 50% of villages ever likely to be involved. One standard that should be mandatory in all accreditation schemes is compliance with the CAV Good Practice Protocols, which currently are only voluntary and which very few (if any) operators apply.

The success of any mandatory accreditation scheme would require comprehensive standards and depend upon such things as –

- the extent of the standards being assessed – would need to cover all aspects of village operations and protect residents' rights
- compliance with CAV Good Practice Protocols
- frequency of assessments – any non-compliance would require follow up
- independent administration body and qualified external assessors
- heavy penalties for breaches

I support the RRVV's preference for a licencing scheme in conjunction with an ombudsman with wide enforcement powers, which would lift standards better than any mandatory accreditation scheme.

However, this would not prevent the continuation of any voluntary accreditation scheme for operators to participate in, should they elect to do so.

### **Question 18**

Any mandatory accreditation scheme would need –

- comprehensive meaningful standards
- heavy focus on resident rights, freedoms and protections
- genuinely independent scheme (developed and administered by an independent body with strong engagement with residents, RRVV and other peak organisations and be subject to regular review
- compliance with CAV Good Practice Protocols
- strong enforcement powers
- penalties for breaches

The cost would be for operators care and a preventative mechanism would be needed to ensure this was not passed onto residents.

### **Question 19**

Voluntary schemes offer few benefits to residents with the benefits to operators being mainly the kudos, plus the ability to quote it in marketing information. While the benefit to Government is that it avoids the costs of operating a mandatory scheme or licencing system.

### **Question 20**

When RRVV members are polled on this question, the answers given include –

- appointment of an ombudsman or similar with wide powers
- mandatory training for village managers and staff to Certificate level 4 plus continuing professional development
- a charter of resident rights, freedoms and protections
- a code of ethics
- establishment of minimum standards
- penalties for non-compliance

### **Question 21**

Yes.

- persons convicted of any offence involving violence (whether imprisoned or not) with periodic police checks.
- any village manager or operator with a track record of non-compliance with the RV Act
- instances of habitual bullying or harassment by village managers

An excellent side benefit to an ombudsman service is that a complaints database would enable the identification of repeat offenders.

### **Question 22**

Mandatory training benefits would include –

- set uniform standards for the industry
- provide greater professionalisation and higher standards
- better compliance with CAV Good Practice Protocols
- improve personal skills and knowledge of managers and employees
- reduce village costs from better management and controls
- improved recognition of residents' rights, freedoms and protections
- less complaints and better ability to resolve them
- improve service to residents
- encourage new entrants to the industry
- enhance employees' CV's
- provide improved career paths for employees
- improve standard of employees

Costs should be met by –

- Initial training – responsibility of operators who have a duty to provide staff able to meet job requirements
- Continuous professional development – should be for the care of each individual employee or paid for by the operator

Clearly the cost to bring all village managers up to the required standard of training will take considerable time and expense, but this should not be used as an excuse by operators not to proceed.

Independent training organisations should develop and deliver the training, in conjunction with input from industry, residents and peak bodies and be reviewed independently periodically.

Training will be a positive impact on any manager incompetence, but it will have a much more significant effect, if combined with mandatory minimum standards backed by vigorous enforcement.

### **Question 23**

The lack of skills, training and professional development of managers and employees are a key concern for residents and consumer advocates and these key elements must be included in the regulatory framework for retirement villages.

The Parliamentary Inquiry recommended appropriate minimum Certificate III or IV level apply to retirement village management courses. The Government supported this recommendation stating a dedicated, national qualification under the Australian Qualifications Framework should be available to retirement village managers – ideally at Certificate IV, Diploma or Advanced Diploma level.

The industry needs to act now to take up the challenge to establish the development and accreditation of appropriate training courses that meet current and future industry requirements. Perhaps such training could be within faculties of hospitality management (hotels, resorts etc.).

### **Question 24**

Currently retirement village managers and employees rely upon a variety of external qualifications, skills obtained outside the retirement village industry, (many come from retail, service, hospitality backgrounds) plus heavy reliance on “on the job” experience to achieve the skills and training required to undertake allocated responsibilities and establish a career pathway.

However, this is considered a poor substitute for proper formal, industry-based training and continuing professional development.

### **Question 25**

The RV Act provides at 36(4) for “the residents committee’s procedure is in its discretion” with one interpretation meaning it can establish rules dealing with the operations of the committee. While an alternative interpretation suggests the RV Act does not give power to the residents committee to enact rules governing its operation.

The RV Act to be amended to give wider powers to the residents committee along the lines of the Owners Corporation Act to remove any element of doubt, and resolve the differences in voting rights of residents.

In our village, residents have approved a set of rules covering the role and operation of the residents committee which are largely based on the Model Rules contained in the Associations Incorporation Reform Act 2012, which have not created any problems and serve the village well.

RRVV recommends giving residents improved powers, but apart from the power to enact binding by-laws, I do not see approval being given to the residents committee to set budgets and fees in consultation with operator, or approval to maintenance fund expenses.

In our village the residents committee liaises closely with and has a good working relationship with management, in normal village operations, overseeing village budget expenses plus expenditure from maintenance/capital replacement fund, this collaboration is working successfully, but concede this may not work for all other villages.

While residents generally profess wanting self-determination, a major concern in many villages is the wide reluctance for residents to nominate for committee positions or undertake leadership roles, which often makes forming and maintaining a residents committee extremely difficult.

There are some complaints that the residents committee sometimes does not properly represent the residents' interests, while a significant number of villages are unable to support a resident committee. The RV Act does not stipulate how residents in these villages might interact with management so this shortcoming needs to be addressed. One option is for the resident community to meet as a "committee of the whole" under an independent chair. However even finding an independent chair would be a problem in lots of cases.

#### **Question 26**

In our experience, resident to resident complaints have been few in number, but we accept this may be different in other villages. The concern seems to be over resident perceptions of lack of mediation experience, training, independence, conflicts of interest, personality issues of members of the residents committee.

While accepting that some of these concerns may exist in a residents committee, the real question becomes, if resident committees are to be removed from this role, who steps in to perform this role?

#### **Question 27**

No. The power to approve above-CPI increases should rest solely with the majority of residents to determine.

#### **Question 28**

Yes. The RV Act should be amended to this effect, with operators having no voting rights. This will prevent any arguments between resident committees, owners and managers on meeting attendances.

#### **Question 29**

No. The RV Act should require the Village manager to provide financial information including but not limited to –

- actual income and expenses on village account with full explanatory notes to ensure figures can be fully understood by residents

- operating surplus (or deficit)
- comparison of actual figures to budget with comments on variances
- income and expenditure for capital replacement/maintenance fund
- opening and closing balances
- comparison of actual expenses against budget with comments on variations
- increases in service fees (maintenance charges) and capital replacement fund contributions
- village and capital replacement fund budgets for the next financial year
- any planned major capital works in the village
- any proposed levies (plus reasons)
- Manager's report on village activities during the year

### Service Fee Tiers

Increases in service fees (maintenance charges) are restricted to CPI (unless otherwise approved as provided for in the RV Act), but operators get around this simply by introducing a new higher scale tier for new entrants. This can lead to multi-tier service fees over time and these differences must be clearly explained to all prospective residents.

Although it is understandable why some village operators take this course of action, the RV Act should require proper justification by the operator to guard against fee gauging and discontent among newer residents when they find out they are paying higher fees than residents of longer standing.

**Example** - *Our village now has 8 different tiers of service fees, which does generate some discontent among residents who pay higher service fees.*

### Village Surplus

Where a village shows a surplus from village operations, this should be carried forward to the next financial period & NOT under any circumstances, should the operator be allowed to take any part of such surpluses. One legal opinion from a large legal firm, claims the RV Act does not prevent an operator taking a surplus from the village account. The RV Act should be amended to specifically outlaw this practice – service fees should only ever be used to cover operating costs, with any surplus carried forward to the next financial year.

Residents should also have the right to ask questions “from the floor” at annual meetings which managers are obliged to answer at the time or undertake to provide a written answer within say 10 days of the meeting.

### **Question 30**

Yes. Recommend that the RV Act require managers to provide all financial statements and reports at least 21 days before the annual meeting, to give residents time to read and absorb the information and prepare questions.

### **Question 31**

Yes. All villages should have a 10-year maintenance plan (with professional input if required) with manager to report on spending against plan, including reasons why were items deferred or brought forward.

Complains and disputes report should have complaints categorised under standard headings, include the numbers, time taken to resolve or if unresolved, why and how long has it been going for plus a date when complaint is expected to be resolved.

Similarly, all requests for maintenance/action should be recorded under specific headings and the time taken to respond plus details of any outstanding and reasons why.

### **Question 32**

Yes. Separate meetings under the RV Act and Owners Corporation Act should also be prohibited from being combined with any other meetings, like –

- residents general meeting
- social club meeting
- meetings/forums called for specific purposes

The conflict between the RV Act and OC Act (for example voting rights) needs to be resolved by appropriate amendments to the legislation.

### **Question 33**

The term “maintenance charges” is frequently misunderstood and should be renamed to the more commonly called “service fees”, to better reflect their true purpose, which is to provide services and cover the cost of operating the village.

The RV Act is silent on who is responsible for what maintenance and leaves this to be addressed in the resident lease contract. Often, due to vague maintenance provisions, which are open to interpretation, this leads to constant confusion grievances and disputes over which repairs residents and operators are responsible for, along with exactly what do monthly service fees cover.

In line with Parliamentary Inquiry’s recommendation that the Government supports, the RV Act should be amended to –

- clearly define who is responsible to pay for what repairs and maintenance, both inside and outside units, common areas and facilities
- require all such works be undertaken to a proper standard of workmanship, in a reasonable and mutually acceptable timeframe
- require managers to report on compliance with long term maintenance plans funded by maintenance charges/sinking fund fees/capital replacement contributions
- clarify meaning of maintenance charges/sinking fund fees/capital replacement contributions and their uses
- define what items are “maintenance” and what are “capital” items (both NSW & ACT regulate on this) with operators made solely responsible for all capital works

All retirement villages should be required to have long term maintenance plans and maintenance/sinking funds to ensure villages can be maintained at an appropriate standard and remain fit for purpose.

### **Question 34**

We do not foresee any issues with more prescriptive requirements applying to all retirement villages.

### **Question 35**

The RV Act should define what constitutes maintenance, capital items etc. rather than leave it to individual contracts – which experience shows only leads to confusion and disputes. Queensland regulates in this area defining capital items, maintenance, day-to-day maintenance and repairs. This is supported by detailed guidelines developed by industry and resident bodies to assist operators and residents to classify every-day, maintenance and capital expenditure. The guidelines set out general classification principles, what is to be considered when classifying items and provides illustrative examples.

The RV Act should be amended along these lines.

### **Question 36**

Yes on both counts. Residents who are self-funded retirees are experiencing declining income in the slowing economy, while the current low interest rate environment impacts those residents on pensions or fixed income, who all need to know and plan for their future financial commitments.

Special one-off levies can cause anxiety and financial hardship on residents.

Maintenance/sinking/capital replacement funds, when properly managed, provide a predictable financial commitment, while ensuring the village standard is maintained.

### **Question 37**

The RV Act should require villages to have a 10-year plan and to maintain a maintenance/capital replacement fund based around professional advice (quantity surveyor or similar) with residents having a say in establishing annual budget and expenditure. All capital replacement fund monies are to be held in trust, for the benefit of all residents of the village, as protection in case the operator should fail.

Residents should only be responsible for maintenance leaving all capital improvements for the owners' care.

### **Question 38**

We are retirement village residents, but have not yet had the need to use privately funded care services. In our village, health consulting and privately funded care services are provided to residents who require it, by an approved external provider. Anecdotal evidence suggests that this works well for all parties. However residents are free to choose other providers of care services if required.

### **Question 39**

Yes – but with careful regulation. Residents must be given protection against pressure selling of any care services.

### **Question 40**

The recent Royal Commission into Aged Care has produced some horrible experiences of poor care and neglect. The delivery of privately funded care services should be properly regulated to ensure that this cannot happen in retirement villages.

### **Question 41**

The safety and welfare of residents should be a high priority for operators, without trampling over the resident's right to privacy, independence or a safe, secure environment.

## **Leaving a retirement village**

### **Question 42**

The RV Act needs to define “reinstatement”, “refurbishment”, “upgrade” and other similar terms to provide a clear distinction.

There is an imbalance between the interest of residents and operators in the sale or re-leasing of a retirement village unit.

Operators push for expensive refurbishment on the grounds of achieving a higher price. However, the resident does not get all the benefit of any price increase with the owner receiving a higher DMF and selling costs.

A resident's departure from a village is arguably the most contentious aspect of living in a retirement village, which is usually detailed in the residence contract.

Reselling of a retirement village unit is quite different to selling other residential property and much more complex, involving village facilities and lifestyle aspects, which are key features in marketing a village, plus the required high volume of overly complicated documentation. Village managers are normally involved in the re-sale process, which generally takes significantly longer to achieve than a normal residential property, often up to 6, 12 or even 18 months.

Extended sales times places pressure on departing residents, who may already have personal stress or elevated anxiety from health or mobility issues, to accept a lower price in order to obtain a sale.

A big issue in re-sale/re-lease is in the time taken to reinstate/refurbish the unit and the high costs associated with it, which are sometimes not recovered in higher prices. This is a major issue of concern and resident disputes.

Regarding the appropriateness of the process, whereby prescribed terms are included in non-owner residence contracts, this produces long, complicated, hard to understand,

confusing contracts which nevertheless remain open to wide interpretation by operators often to the detriment of residents.

### **Question 43**

The reinstatement and refurbishment of retirement village units is a highly contentious issue, and one that occurs at an emotional and anxious time for departing residents that frequently generates discontent and disputes.

The RV Act does not regulate reinstatement and refurbishment obligations of residents, which are set out in the contract, which can vary between individual contracts.

Reinstatement refers to work required to restore the unit to the same condition when the resident took occupancy, while refurbishment refers to work that improves the unit above that level, generally argued by operators as being necessary to meet current market expectations.

The decision over whether a unit should be reinstated or upgraded frequently creates arguments between departing resident (and their family) and the village operator, plus the concern over whether the respective works are really necessary and if the costs can be recovered from the resale. This clearly depends upon the terms of the contract and each aspect should be agreed between the resident and the operator, including whether the operator has to contribute to the cost of upgrades. However, there is an imbalance between departing residents (who when leaving a village are often in their 80's or 90's and not physically well) who as a result are not properly able to fully argue their case and operators who work to a different agenda.

Another factor at work is the negative impact of DMF (operator receives more from higher sale price) and whether the contract provides for all of the capital gain to return to the resident or village operator or is on some shared arrangement.

There is also the need to prepare a schedule of works required, obtain builders' quotes and often an extended time period for completion of works before unit can be marketed – all of which add to the stress for departing residents.

The often convoluted and lengthy contracts are open to broad interpretation making these negotiations even more problematic and difficult for outgoing residents.

Sometimes situations on one resident inadvertently has implications for the whole village, so the RV Act should provide for departing residents (family/nominated representative) to raise any unresolved issues with management and/or village residents committee.

The RVA should be improved by including definitions of terms like “reinstatement”, “refurbishment”, “renovation”, “upgrade”, “fair wear & tear” etc. and establish a process under which the decision to reinstate or refurbish can be agreed to ensure that residents are not disadvantaged by tightening up the terms of contracts on this aspect.

#### **Question 44**

Post 2006 contracts provide for residents to pay service fees (maintenance charges) up to 6 months after departure, but no such limitation applies for maintenance/sinking/capital replacement fund contributions. This situation is unfair and unsatisfactory for residents, who may be in a highly emotional state having to leave the village and possibly suffering from ill-health or disability.

The RVA should be amended to limit sinking/capital replacement funds to 6 months – this would not create any difficulties for the village, even if this non-payment extended for another 6/12 months pending sale of the unit.

#### **Question 45**

Unlike traditional real estate transactions where the owner gets capital gain (or loss), the RV Act makes no regulations on sharing of capital gains (or losses) and consideration should be given to changing this situation.

Again, the capital gain/loss sharing is contained in the contract which varies between villages. In some contracts the resident gets the benefit of any capital improvement, others provide for 50/50 sharing between resident and the village operator while some provide for the capital gain going to the operator. Generally, contracts state any capital loss is solely for the resident, making the process loaded against them which is unfair.

Sometimes part of any capital gain comes from improvements made by the resident over their time of occupation, but for the most part the cost of reinstatement/refurbishment works will also result in capital gain.

The RV Act should provide that the costs of refurbishment be deducted from the sale price before calculating DMF.

I also believe that residents should have legal protection giving them the sole right to capital gains/losses, recognising that village operators already receive substantial DMF upon all sales.

### **Dispute resolution**

#### **Question 46**

The CAV review of internal dispute resolution (IDR) procedures identified reforms to be considered as part of RVA review –

- I. Include definition of “complaint” and clarify requirements about recording complaints.

#### **Comment -**

The RVA should distinguish the difference between “complaint”, “grievance”, “dispute” and a simple “request for service”, how each should be recorded and dealt with. It should also set out the grounds for a complaint, like failure to respond to reporting a problem or request for action, bullying, neglected or poor maintenance

2. Introduce a requirement that any dispute resolution body considering any retirement village dispute takes into account the extent to which the CAV Good Practice Protocols have been followed.

Comment -

Sadly the adoption of the CAV Good Practice Protocols, that identify best practice for retirement village operators, is only voluntary and regrettably most operators ignore them.

The RVA should make CAV Good Practice Protocols mandatory.

3. Legislation should clarify the avenues for directing complaints to village managers

Comment –

Under sound dispute resolution principles, residents should try to resolve grievances using internal processes before any external dispute resolution process. Residents are sometimes reluctant, for a variety of reasons, to lodge a complaint against the village manager. The logic solution is for an ombudsman to be appointed to provide a simple, free and easy to follow procedure to address complaint issues, with the power to enforce decisions

4. Remove the role of the residents committee in resident dispute mediation

Comment –

While accepting concerns exist over the role of residents committees to address resident-to-resident disputes, due to lack of mediation skills, conflicts of interest, personality issues etc. this system works quite well in many villages, including ours. If residents committees are to be removed from this role, who steps in? The proposal to appoint an “alternative person” lacks credibility as who in a village would perform this role?

### **Question 47**

The time, personal stress, effort required and complexity, plus the high cost of taking a dispute to VCAT or the courts, prevents residents taking this action.

There is an urgent need for a simple, low-cost, one-stop-shop dispute resolution service for residents that sits between the internal system and VCAT, as in the case of complaints against the village manager there is nowhere else to go to get a binding decision.

The appointment of an ombudsman would provide a mechanism for residents to use and is supported by retirement village residents, RRVV, other peak bodies and the retirement village industry, as part of their published “Eight Point” plan.

### **Question 48**

Not necessarily. DSCV would need to be shown to be more effective than it currently is for this to be implemented.

### **Question 49**

The Parliamentary Inquiry recommended establishment of a new alternative for low-cost, timely and binding resolution of disputes in retirement housing sector and this proposal is strongly supported.

The Retirement Village Industry established an “Eight Point Plan” as a policy platform to deliver a quality resident experience. Point 7 of this plan states – “Commit to the establishment of an efficient and cost-effective government-backed independent dispute resolution process, such as an Ombudsman or Advocate, for disputes that are unable to be resolved at a village level”. However, the industry has failed to act in getting an Ombudsman appointed.

Residents, consumer organisations and peak bodies have long been calling for the appointment of an industry Ombudsman, so it reflects poorly on the industry that no progress has been made towards achieving this part of the plan.

The Issues Paper states that CAV has appointed an independent consultant to investigate this recommendation and undertake a cost-benefit analysis of potential models to establish an external dispute resolution body for the retirement village sector. The findings of this report will make interesting reading and we look forward to it being published.

### **Question 50**

The enforcement provisions of the RV Act are weak and nowhere near sufficient for village residents.

It is wrong to think that residents can take action to enforce or challenge terms of contracts against operators or seek redress for any failure to comply with the RV Act. Few residents have the emotional capacity, drive, knowledge or financial resources to take costly legal action against operators who afford top legal advice.

### **Question 51**

Definitely. Residents do not find it any easier to assert consumer rights than those under the RV Act or OC Act.

An ombudsman (or similar) would assist residents in these regards and for systemic problems a more active role for CAV with enforcement powers.

## **OTHER MATTERS NOT COVERED IN THE ISSUES PAPER**

### **1. Differential rates for retirement villages**

Retirement village residents are seriously disadvantaged compared to other ratepayers, which is neither fair nor equitable.

While council services are provided to the boundary of all other residential properties, they stop at the village gate and do not extend to the boundary of individually rated village properties. The cost of providing and maintaining these services is met by village residents, who effectively pay twice.

Firstly, in the payment of full council rates (which contain an embedded amount to cover the cost of providing council services) and secondly, by paying for village infrastructure services not provided by council.

In 2013 Ministerial Guidelines were introduced to promote good practice and provide greater conformity in the application of differential rates, in expectation of wide adoption by Councils, but regrettably this has not proven to be the case. Councils must have reference to the Guidelines but are not obliged to adopt them as part of their rating strategy.

The Government has previously argued that it did not want to interfere with finances of Councils, but with the recent decision to introduce a rate cap, this argument is no longer valid.

I strongly recommend that the Ministerial Guidelines be made mandatory so that a differential rate is applied to all retirement village properties, which could be a range of say 20-25%.

## **2. Voting Rights of Residents**

Voting rights and procedures are often a confusing to residents with differences between the RV Act and Owners Corporation Act.

The RV Act provides for voting at annual meetings to be on the basis on one vote per residence, not one vote per resident. This creates problems when residents are asked to vote at such meetings, because mostly it is done via “show of hands” which is in contravention of the RV Act.

The Parliamentary Inquiry recommendation 5, provides that the Government investigate measures to ensure that all retirement village units hold the same owners corporation voting rights.

We support this recommendation and ask that the RV Act be amended to allow voting at annual meetings by a “show of hands”, that is one vote per resident.

## **3. Independent Legal Advice**

A significant issue for most prospective residents is how to find qualified, experience legal advice to review the extensive documents involved with the purchase of a retirement village property. These include fact sheet and disclosure documents, the long, complex Agreement to Grant a Residence and Management contract, Residence and Management contract and notification of electricity supply just to name of few examples.

It is fair to say that most suburban solicitors have little or no experience in dealing with retirement village purchases or the RV Act, the convoluted fee structure (including DMF) or the complex documentation required for village purchases. An additional problem is that most large legal firms, who do have lawyers experienced in this specialist field, already act for or provide advice to village owners/managers, creating conflict of interest issues if engaged by prospective residents.

The Parliamentary Inquiry recommendation 4 states “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.

We strongly support this important recommendation, but it should go further to provide a list, available to the wider public, of all lawyers dealing in this specialist area quoting details of their qualifications and experience, so there is a proper choice of who to use.

#### 4. **Retrospectivity**

Whatever changes are made to legislation following this review, it will not be made retrospective meaning that all existing residents remain locked into a variety of long, complex, even unfair contracts.

A solution would be to provide in legislation that all existing contracts be reviewed if older than say 7/8 years and replaced with new contracts under the new legislation having regard to the financial terms of the original contract.

Yours faithfully,

John and Sandra Sheedy