Review of the *Retirement Villages Act 1986*
Submission by Les Scobie, retirement village resident since 2007

Before moving to examine the Victorian Retirement Villages Act 1986 it is important that all parties are aware of the following primary facts when it comes to Retirement Villages.

1. **72% of retirement villages are owned by 'for-profit' operators. The days of the 'benevolent' operator discounting the entry cost by the amount of the 'deferred fee' are well past.**

2. **74% of retirement village residents do not occupy their units on a freehold basis, merely granted a lease or licence to occupy.**

3. **Retirees often pay a price commensurate with an outright purchase price for a similar unit within the general community without ever gaining ownership.**

4. **Contractually residents have all the financial responsibilities of 'property ownership' like maintenance costs, renovation costs, selling costs, administration costs.**

5. **Contractually in the order of only 1 in 2 residents have the financial rewards of 'property ownership' such as capital gain. Where granted however the retiree may not be entitled to 100% of any capital gain, it may be shared with the operator. The retiree also becomes proportionally responsible for any capital loss.**

6. **Contractually residents can lose up to 45% of their in-going payment in a so named 'deferred fee' without ever gaining ownership.**

The following statement by [redacted], [redacted], sums up the retirement village industry succinctly. It amplifies the financial impact on the capital base of both the occupants and subsequently their families.

"Families need to be aware that what we are talking about here is the transfer of inter-generational wealth, not to families, but into the pockets of large multinationals. Shame about elderly people not having enough money for aged care"

The Federal government is yet to fully realise the negative financial impact this industry has on the capacity of retirement village residents to eventually fund their own in-home care or residential aged care.

Respected journalist [redacted] also provided clarity as to the reality of the retirement village industry with his article 'Retirement villages: how grandma and grandpa become corporate financiers'.

"It would be interesting to know just how many retirees know, when they finally alight upon a leafy retirement village to while away their twilight years, that they are using their nest eggs to make a large, unsecured, interest-free loan to a property developer."

As this is a government inquiry one is also reminded at this point of the words of Barack Obama -

"If the people cannot trust their government to do the job for which it exists – to protect them and to promote their common welfare – all else is lost"

My submission to the ongoing charges & capital gains aspects of the Retirement Villages Act -
Les Scobie.

The regulatory and policy framework (Part 2)
Application and scope of the *Retirement Villages Act 1986*

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? Response -**

NO - 74% of retirement village residents do not occupy their units on a freehold basis, they are merely granted a lease or licence to occupy. Once they grant vacant possession back to the operator (the property owner) all fees should end. In the general residential tenancy market once the lease has finished, all payments for the tenant end and any ongoing costs are reverted back to the property operator. It is difficult to mount a sound argument that the relationship between a retirement village operator and a retirement village lessee/licensee should be any different, other than to provide a financial 'free kick' to the commercial 'for-profit' operator.

ACTION -

The financial obligations for the continuation of fees on the lessee/licensee should end at vacant possession. The payment of the refundable amount due to the lessee/licensee to be paid on vacant possession.

There is little to justify that an outgoing lessee/licensee retirement village resident should be treated any different to a traditional residential tenant.

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? Response -**

YES – The following tables show the differing outcomes of four different ways in the treatment of capital gains. View the differing outcomes where the resident share of any capital gain is 100% 75%, 50%, 25%, or 0%. Of particular note is the methodology used to calculate the refundable amount of the outgoing resident and the dramatic impact it can have on the refundable amount on departure.

In Scenario 1 and 2 the finanical outcomes are based on the Deferred Management Fee being calculated on the 'outgoing value' of the unit. What separates them is the methodology of the calculation, there is no legislative protection for retirees against the methodology used in Scenario 2.

In Scenario 3 and 4 outcomes are based on the Deferred Management Fee being calculated on the 'ingoing value' of the unit. 41% of the retirement village industry is outlined in Scenario 4, the main feature being the operator granting zero access to any capital gain in the value of the unit being occupied. Scenario 3 produces the best outcomes for departing residents as the calculation methodology grants true access to the capital gain % as stated in the Fact Sheet.

The different calculations are summarised in the table below.
Note both the differing financial outcomes for retirees and the difficulty retirees would have in foreseeing these impacts prior to be required to execute a contract of occupancy.

SUMMARY

Departing Retiree Financial Outcomes					
Outgoing Unit Value $	$1,600,000.00				
Ingoing Unit Value $	$800,000.00	$800,000.00	$800,000.00	$800,000.00	$800,000.00
Capital Gain Share to Resident %	100%	75%	50%	25%	0%
Scenario 1 – DMF 40% of the Ingoing $ and Capital Gain $.	$960,000.00	$840,000.00	$720,000.00	$600,000.00	$480,000.00
Scenario 2 – DMF 40% of Outgoing Value of Unit	$960,000.00	$760,000.00	$560,000.00	$360,000.00	$160,000.00
There is no legislated protection against the financial outcomes from the calculation methodology in Scenario 2.					
Scenario 3 – DMF 40% of Ingoing $ + 100% of Capital Gain % Value in $	$1,280,000.00	$1,080,000.00	$880,000.00	$680,000.00	$480,000.00
Scenario 4 – DMF 40% of Ingoing $, with zero Capital Gain access	This is the outcome for 41% of the retirement village industry				$480,000.00

The individual calculation methodology for each scenario is explained in the following tables -

Scenario 1. Table A.

Calculation of the Refundable Amount $ = The in-going Amount $ ($800,000) plus a % share of any Capital Gain $ minus a Deferred Management Fee of 40% calculated on a total of both the in-going amount and the $ share of any capital gain %.

Table A

SCENARIO 1 - Deferred Management Fee (DMF) @ 40% of the Ingoing $ Value of Unit and Capital Gain %.					
NOTE - 41% of all Retirement Village residents DO NOT have access to any share of capital gain.					
Outgoing Unit Value $	$1,600,000.00				
Ingoing Unit Value $	$800,000.00	$800,000.00	$800,000.00	$800,000.00	$800,000.00
Capital Gain Share to Resident %	100%	75%	50%	25%	0%
Capital Gain $	$800,000.00	$600,000.00	$400,000.00	$200,000.00	$0.00
Ingoing $ + % Capital Gain $	$1,600,000.00	$1,400,000.00	$1,200,000.00	$1,000,000.00	$800,000.00
Deferred Management Fee %	40%	40%	40%	40%	40%
Deferred Management Fee $	$640,000.00	$560,000.00	$480,000.00	$400,000.00	$320,000.00
Refundable Amount $ to Resident	$960,000.00	$840,000.00	$720,000.00	$600,000.00	$480,000.00
Ingoing Capital Gain / Loss	$160,000.00	$40,000.00	-$80,000.00	-$200,000.00	-$320,000.00

Scenario 2. Table B.

Calculation of the Refundable Amount $ = The in-going amount $ ($800,000) plus a % share of any Capital Gain $ minus a Deferred Management Fee of 40% calculated on the Outgoing Value of the Unit ($1,6m).

Table B

SCENARIO 2 - Deferred Management Fee (DMF) @ 40% of the Outgoing $ Value of the Unit.					
NOTE - 41% of all Retirement Village residents DO NOT have access to any share of capital gain.					
Outgoing Unit Value $	$1,600,000.00	$1,600,000.00	$1,600,000.00	$1,600,000.00	$1,600,000.00
Ingoing Unit Value $	$800,000.00	$800,000.00	$800,000.00	$800,000.00	$800,000.00
Capital Gain Share to Resident %	100%	75%	50%	25%	0%
Capital Gain $	$800,000.00	$600,000.00	$400,000.00	$200,000.00	$0.00
Deferred Management Fee %	40%	40%	40%	40%	40%
Deferred Management Fee $	$640,000.00	$640,000.00	$640,000.00	$640,000.00	$640,000.00
Refundable Amount $ to Resident	$960,000.00	$760,000.00	$560,000.00	$360,000.00	$160,000.00
Ingoing Capital Gain / Loss	$160,000.00	-$40,000.00	-$240,000.00	-$440,000.00	-$640,000.00

There is no legislative protection for retirees against the above methodology.

NOTE:- In Scenario 1 and 2 there is an inherent deception in the Fact Sheet which can state 'the resident will be entitled to 100% of any increase in capital value of the unit". Deceptive because in those calculations the deferred management fee (DMF) of 40% is calculated on the total of the in-going value of the unit and any % share of a capital gain (Scenario 1) or the outgoing value of the unit (Scenario 2). In these calculations the resident actually only receives 60% not 100% of the actual capital gain $ amount, 40% is taken by the DMF.

Scenario 3 - Table C

Calculation of the Refundable Amount $ = The in-going $ ($800,000) minus a Deferred Management Fee of 40% calculated on the in-going amount. On top of the result of this calculation the departing resident then receives 100% percent of their % percentage share of any capital gain. *(as per the statement in the fact sheet)*

Note the benefit to the retiree in Table C of this calculation methodology as opposed to Table A. The refundable amount due to a departing resident where the deferred management fee is calculated on the in-going amount and the payment of any agreed capital gain percentage is addition to this initial calculation.

Table C.

SCENARIO 3 - Deferred Management Fee (DMF) @ 40% of the Ingoing $ Value of Unit.					
NOTE - 41% of all Retirement Village residents DO NOT have access to any share of capital gain.					
Outgoing Unit Value $	$1,600,000.00				
Ingoing Unit Value $	$800,000.00	$800,000.00	$800,000.00	$800,000.00	$800,000.00
Capital Gain Share to Resident %	100%	75%	50%	25%	0%
Capital Gain $	$800,000.00	$600,000.00	$400,000.00	$200,000.00	$0.00
Ingoing $ + % Capital Gain $	$1,600,000.00	$1,400,000.00	$1,200,000.00	$1,000,000.00	$800,000.00
Deferred Management Fee %	40%	40%	40%	40%	40%
Deferred Management Fee $	$320,000.00	$320,000.00	$320,000.00	$320,000.00	$320,000.00
Refundable Amount $ to Resident	$1,280,000.00	$1,080,000.00	$880,000.00	$680,000.00	$480,000.00
Ingoing Capital Gain / Loss	$480,000.00	$280,000.00	$80,000.00	-$120,000.00	-$320,000.00

Scenario 4 - Table D

Calculation of the Refundable Amount $ = The in-going $ ($800,000) minus a Deferred Management Fee of 40% calculated on the in-going Value of the Unit. *There is no access to any share of capital gain.* ***This is applicable to 41% of the retirement village industry.***

Table D

SCENARIO 4 - Deferred Management Fee (DMF) @ 40% of the Ingoing $ Value of Unit. 100% of Capital Gain to Operator					
Scenario 4 is applicable for 41% of the Retirement Village industry					
Outgoing Unit Value $	$1,600,000.00				
Ingoing Unit Value $	$800,000.00	$800,000.00	$800,000.00	$800,000.00	$800,000.00
Capital Gain Share to Resident %	0%	0%	0%	0%	0%
Capital Gain $	$0.00	$0.00	$0.00	$0.00	$0.00
Ingoing $ + % Capital Gain $	$800,000.00	$800,000.00	$800,000.00	$800,000.00	$800,000.00
Deferred Management Fee %	40%	40%	40%	40%	40%
Deferred Management Fee $	$320,000.00	$320,000.00	$320,000.00	$320,000.00	$320,000.00
Refundable Amount $ to Resident	$480,000.00	$480,000.00	$480,000.00	$480,000.00	$480,000.00
Ingoing Capital Loss	-$320,000.00	-$320,000.00	-$320,000.00	-$320,000.00	-$320,000.00

Note the vast difference in financial outcomes for retirees between Table D and Table C where a reasonable % percentage of any capital gain is granted to the resident.

The value of the stagnant refundable amount in Scenario 4 ($480,000) is further negatively impacted by the devaluing effect of inflation over the period of occupancy.

For example – In Scenario 4 a retiree would suffer an inflationary devaluation on their projected refundable amount of $480,000 at 3% inflation over a 10 year occupancy period of $122,834.92. The future present day value of their refundable amount would on departure be not $480,000.00 but only $367,165.08.

For those retirement village residents that are granted access to all or a share of any capital increase in value of the unit they occupy, a flatter property market could lead them also to this retirement village 'poverty trap'.

Refer Table D -

Table D

[redacted]

There is a basis for consideration of Capital Gain percentages below 50% to be prohibited by statute given the excessive negative impact on the refundable amount to the retiree on departure from the village.

This negative impact is difficult to foresee in monetary terms at the time of executing a lease or licence to occupy.

Where retirees accept access to a % share of any capital gain in the unit they are to occupy, they also accept responsibility for the payment of a proportional share in any capital loss.

The Retirement Village Financial/Poverty Trap

41% of retirement village residents can be exposed to this financial / poverty trap as contracturally they have no access to any capital increase in the value of the unit they occupy on a lease/licence basis. A flatter property market or low % percentage levels of access can also expose thoses village residents granted some or total access to capital gains.

The higher the level of life savings spent on the cost to enter a retirement village the higher the likelihood a resident will enter this trap. **It will not be a matter of financially they will 'feel trapped' they become 'actually trapped'.**

Many retirement village residents do not feel or realise they are trapped until they have a desire to leave the village, re-enter the property market or have the need to pay for a home care package or enter residential Aged Care. It is difficult for retirees to foresee this trap at the time of executing a contract of occupancy.

There can be a dramatic impact over time on the $ value of the refundable amount (in-going payment minus the deferred management fee) repayable to the resident on departure :-

This impact arises from -

- Inflation
- Rising Property Prices
- Rising Aged Care Entry Costs
- Rising Interest Rates
- Costs associated with a lease/licence to occupy a unit in a retirement village not generally associated with a standard residential lease such as -
- Village/Unit maintenance costs,
- Village/Unit refurbishment costs,
- Unit selling costs,
- Village/Unit administration costs.
- The value of the stagnant refundable amount is further negatively impacted by the inflationary devaluing effect over the period of occupancy.

Refer Table C.

Table C.

[redacted]

Not to Scale

LEGISLATIVE ACTION.

1. If the government wishes to act in the best interest of retirees then the calculation methodology used in Scenario 3 should be enshrined in legislation.

Calculation of the Refundable Amount $ = The in-going or outgoing amount $ minus a Deferred Management Fee calculated on the in-going amount. On top of the result of this calculation the departing resident then receives 100% percent of their % percentage share of any capital gain. (as per the statement in the fact sheet)

2. Where there is a share of capital gain granted to the outgoing resident, and the deferred management fee is to be calculated on the outgoing value of the unit, the % percentage share of any capital gain granted to the outgoing resident be restricted by statute to 100%.

3. Where there is no share of any capital gain granted, the calculation of the Deferred Management Fee should be restricted by statute to be calculated on the in-going amount.

Submission by -

Les Scobie,

[redacted]

[redacted]