

Dear Sir/Madam,

Five years ago my husband and I decided to enter into a lease/loan facility, and paid a \$2,000 deposit to purchase an apartment valued at \$1.716m “off the Plan”.

This week we are hoping that we will receive a refund of the ingoing contribution less outgoings from the operator, in order to finalize our departure from this facility, and return to private ownership. However our attempts to achieve this goal has been hampered by the ineptitude of the Operator’s management team, the operator’s legal team, and a general lack of understanding of the Retirement Villages Act 1986, across the board.

We submit the following document to better inform you of many of the difficulties we have faced during this period, and we still have not been informed of the amount we shall receive!

We would be happy to meet with any Committee to better inform them of these difficulties.

Pamela was a member of a Resident Committee, and a member of a Community Activity Groups Sub-Committee.

There is more that could be reported, however 6 December we believe to be the closing date for submissions.

Sincerely,

David and Pamela Barber



We currently have no fixed address as we are waiting for a refund of our ingoing contribution.

2.

The Minister for Consumer Affairs, Gaming and Liquor Regulation (Minister) has asked the Department of Justice and Community Safety (the department), through Consumer Affairs Victoria (CAV), to undertake the review and report to the Government on potential regulatory reforms to the RV Act.

Terms of Reference for the review are attached at **Appendix 1**.

Following consultation on this Issues Paper, an Options Paper outlining potential reforms will be released for public consultation. Submissions to the Options Paper will assist the Government in determining reforms.

Appendix 2: Parliamentary Inquiry recommendation.

Recommendation 1

That the Minister for Planning give consideration to planning provisions that encourage increased supply of retirement housing, such as the establishment of Retirement Housing Zones.

There is more than adequate incentive for developers to invests in Independent Retirement Villages.

- The ingoing contribution is an “interest free” loan to the operator.
- The monthly recurrent charges paid by the tenants covers the outgoings
- The deferred payment fee paid under the loan/lease agreement relates to the purchase price, and after one year amounts to far more than the Sales Tax incurred on a Titled apartment.
- The Rectification costs is covered by the departing tenant so the Operator is relieved of that expense.
- Fees and other amounts due to the operator form the Recurrent Fees
- The amount due for administration of the sale is 2.5% of the purchase price and is paid by the outgoing tenant
- All of the capital gain, or Fifty per cent of the Capital Gain is paid to the operator.

Recommendation 2

That the Victorian Government review the *Retirement Villages Act 1986*, and determine the effectiveness of the Act in providing consumer protection while allowing growth and innovation in the sector.

THE ACT HAS BEEN COMPLETELY INEFFECTIVE IN “PROTECTING” US from the misinterpretation by the operator, even after only 2 ½ years occupancy!

Since deciding to sell our lease and depart the village and return to private ownership, we have struggled to obtain a fair interpretation of all the stages and processes required to sell our tenancy. Our departure has led to an educational process for the Operator to identify and implement the many and varied steps involved, incurring delays, conflicts and misrepresentations.

We believe that the next “independent” resident who chooses to depart the Independent Village and return to private ownership will fare better than us.

We are still unsure when we will receive our refundable amount and exactly how much that will be, **but we do know that all of the \$.5m capital gain has been taken in costs and fees prescribed by the current Retirement Villages Act 1986.**

So we do not believe that there needs to be any more incentives for developers to invest in Independent Retirement Villages.

THE ACT MUST be reviewed, and in fact re-written. As a retiree couple who purchased a \$1.7m penthouse apartment in a high rise development, THE ACT did not and could not have protected us from what followed!

THE ACT is supposed to ‘PROTECT” retirees who pay an ingoing contribution on a lease agreement, and must pay a DEFERRED PAYMENT on leaving.

The Act appears to favour the OPERATOR in all areas.

Protection for the incoming resident

- Completely subjective -
- 21 days of having a contract BEFORE signing - this seems generous, however, the quality of information obtained or given is difficult to assess in accuracy.

Recommendation 11

That the Victorian Government **shall/must develop a model for mandatory accreditation** for all retirement housing providers.

There must be a set standard for training/understanding of THE ACT for -

- ❖ All Sales representatives - current levels too low.
- ❖ All managers for the Operators - no appointment of Managers or Concierges shall be made without a high level of understanding of, and interpreting THE ACT. Current levels too low.
- ❖ Legal practitioners must have an even higher level of understanding and interpreting THE ACT. Current levels too low.

Recommendation 7

That the Victorian Government require that retirement village operators disclose ingoing prices with and without deferred management fees.

Recommendation 7a.

That the Victorian Government require that village operators give an **annual report** to each Resident on the **amount of deferred management fees accrued**.

Recommendation 7b.

There is **more than adequate incentive** for developers to invest and build Independent Retirement Villages.

- They have the use of the **ingoing contribution**, INTEREST FREE, for the term of residency (leasing of an apartment).
- They claim a huge percentage of the ingoing contribution as a “**departure fees**” or “**deferred fee**”, (**in our case 3%**), when the resident leaves the village -
 - due to death,
 - transfer to a higher care facility, or
 - even when a resident chooses to leave for other reasons, as we did.
- Many claim the “departure fee” as a **percentage for a whole year** - very few claim on a pro rate basis. [REDACTED] is an exception.

This should be standardised.

- Operators mostly claim a percentage of any capital gain, (50% in our case) but any loss is borne by the resident. There may be a significant gain to the developer. (Our apartment sold for \$.5m more than we paid 2 ½ years earlier, and the operator took 50%.)
- **Rectification** is a often a cost to the Resident, so the apartments in an independent village are **well upgraded** between tenants. **Many double the cost of the quoted** figure for rectification thus making a **profit on updates**.
- Operators can claim **an Administration Fee, in our case 2.75%**, as a **percentage of the sale price**, when they generally have a legal department that is salaried, so that an outside legal firm is not instructed.
- Some operators also claim a **separate sales commission** - more profit!

Giving the retiree 21 days to assess the contract prior to signing

in no way guarantees that they will obtain or reach **a clear understanding** of what they are committing too! IT IS A FARCE!

It is said that the retiree is purchasing a “lifestyle”, but this is very subjective.

Generally the retiree sells the family home at a very considerable profit from the purchase price, having purchased the home 30 - 50 years earlier, and it appears to the retiree that they can sell their home and release a very considerable amount of funds - which will allow the purchase of the leased apartment, and free up a large amount of capital.

We purchased our home for approx. \$40,000 fifty years ago and sold it for \$3m.

We purchased a 3 b/r penthouse apartment, with 2 car space underground parking, in a high rise retirement village in [REDACTED] for \$1.716m thus freeing up \$1.3m in funds.

This seemed to be a **great option** when we were 76 and 89 years of age. **A great life style ahead!**

BUT

Doesn't protect when buying "off the plan"! Being a new development we could not have foreseen the problems associated with a new building - water leaks, noisy condensers on our rooftop, faulty power points, poor paint finish, Air conditioning not adequately controlled, passageways overheated, lift breakdowns, etc. etc. We were there only 2 ½ years, and on the day we left the operator had arranged for work to rectify the noisy condensers. **TWO AND A HALF YEARS WE HAD TO TOLERATE THE NOISE!**

OVERHEATING IN THE CORRIDORS NOT ATTENDED TO, and a high gas bill for corridors on nine floors to be paid by all residents from recurrent charges!

Socio-economic mix of residents

It is impossible for new residents to assess the "lifestyle" choice when there have been no residents occupying! After four or five years a "culture" will have developed, and a more rational assessment can be made. **THE ACT does not protect retirees in new developments, and more especially in new "high rise developments"!**

By-Laws in New Developments

Retirees purchasing in new developments believe that the By-Laws as set out in their Contract will prevail. There is no way that a new purchaser can know that there are "bully-boys" entering Independent Retirement Villages, and that their superior knowledge of Legal means can be used before Residents have "settled in" and take action through Special Resolutions to change the By-Laws.

There needs to be a **set time period BEFORE any changes** can be introduced to the By-Laws by Special Resolution vote in a new development - either ¾ occupancy or three years in operation.

Resident Committees in New Developments

A time frame to be set **BEFORE nomination and/or election** of a Resident Committee. There needs to be a set time for consolidation and development of Community BEFORE any group attempts to “manipulate” management. Early purchasers often have their own agenda and wish to impose it. This should not be allowed!

Residents need to be informed that THE OPERATOR **MANAGES!**

Resident Committees are for residents - not MANAGERS! It is very difficult for Operators to manage if the **Resident Committee does not understand their role.**

Resident Committees are better defined as “Social Committees” - with NO AUTHORITY OR CONTROL for spending from Recurrent monthly contributions, other than guidelines to Management.

Discretionary spending by Residents should be from **funds raised outside the monthly discretionary contributions**, or slush fund spending. Too many residents believe that they should decide to contribute to “clubs and other activities” which must be funded by those enrolled in the activity not funded by the total resident Community.

Many Residents seem to believe that the Village is a type of “hotel” with hotel services of bed-making, package/mail delivery to rooms, psychological support provided by Concierge staff, assistance with shopping from Concierge, phoning for cabs, rather than Management running and maintaining the building and the lighting, cooling, cleaning of public areas. In our Village the “bully-boys” created mayhem in the first three months, from which the Village nor the management have recovered!

SALES PERSONNEL need a good understanding of the ACT so that potential purchasers are not misled in what they are purchasing!

Recommendation 4

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.

dated and in whatever form it may eventually be.

No person should be allowed to occupy or be appointed to a position of MANAGEMENT within a village, or within an authorised company associated with Independent Retirement Villages (also Supported Living Villages), without a high understanding of THE ACT. Currently there are very few “managers” in Independent Villages with an adequate understanding of THE ACT or interpreting THE ACT!

LEGAL FIRMS - VERY FEW UNDERSTAND

Recommendation 4

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.

Similarly there are **very few Legal Firms** have representatives who adequately understand THE ACT!

There **must be better training** at ALL levels in this area, particularly with the increase in the number of Villages being developed and the mixture of apartments/town houses, villas being offered!

It is far to sloppy, full of motherhood statements, and convoluted statements, and generally THE OPERATORS have the advantage of being the first to interpret, and the retiree has to challenge that interpretation.

Both my husband and I are post graduate trained, and we sought the advice of a well recommended legal firm. We thought we understood what we were entering into - buying a "lifestyle" and that we would occupy for the remainder of our lives!

We soon found out that where we had purchased was not for us!

REMOVING OURSELVES FROM THIS VERY UNHAPPY CIRCUMSTANCE HAS BEEN A NIGHTMARE! We recommend that THE ACT be completely rewritten.

Why did we want to leave?

1. Incompetent management! Managers did not manage but were manipulated by vested interests, from within the retirement sector, residents demands within the village, not understanding THE ACT, (voting matters, Special Resolution formats, Resident Committee limitations, dispute resolution matters, Resident petitions, employment conditions, HR recruitment requirements for an Independent Village, Removal of incompetent staff.
2. Operator not understanding National Health Standards when hiring cleaning personnel and the need for colour coding, autoclaving equipment for infection control, Inappropriate staffing in charge of specific areas - maintenance, cleaning, privacy - a driver having access to personal files when employed by marketing, not Administration!
3. The wrong socio-economic mix. (Too many academics, too many retired psychologists.
4. Inadequate project management of a new high rise building.
5. Inability for building rectifications to be made in good time.
6. Hostile Resident Committee who felt they were "THE MANAGERS".
7. Sales ineptitude - too many persons who were not "independent" residents, but not prepared to hire adequate "carers" to enable them to be independent.
8. Management's inability to deal with conflict between residents - residents who felt that they had a better understanding of the needs of those with significant disabilities and took it upon themselves to personally provide support leading other residents feeling that they were uncaring for wanting to be independent of the significant needs of some. In an "Independent Village" it is incumbent

upon those buying in, to provide and pay for their own carers! **Sales has not made this clear** in our Independent village!

9. Unrealistic expectations of many because of over jealous manager to please and therefore providing free of cost, support services that need to be withdrawn.
10. Development of significant divisions/groups and a toxic atmosphere.

DIFFICULTY SELLING:

1. The Village Management did not understand the process or protocols.
2. Confusion regarding who or how to continue marketing after the initial thirty plus purchasers!
3. Changes in the operator's policy and marketing strategies.
4. Outsourcing Sales - separate from marketing.
5. Sales not understanding that Village marketing is quite different from housing marketing, nor the pricing mechanism within the industry. Further not understanding what is being offered in the Melbourne market as compared with the regional markets.
6. No feed back after inspections.
7. No understanding of the Deferred management fee/departure fee.
8. No understanding of timing re formulating a new contract after the initial purchases "off the plan" - incompetent legal department of the Operator!
Needs better understanding of THE ACT!
Operator also needs better understanding of the 21 Days with Contract.
Operator needs better understanding of the difference between -
 - a. Resident dying and vacating
 - b. Resident vacating and moving to higher care.
 - c. Resident vacating the facility and moving back into the wider community.

We feel that we have been **discriminated against because we are leaving the community** and wish to purchase another place of living, NOT IN A RETIREMENT VILLAGE! The timings given to us have been uncaring and very difficult to comprehend!

An offer was made for our apartment after 15 months, and we accepted it as a reasonable offer. But this was when the real challenges began!

The Selling Agent for the Operator did not put the offer in writing.

The operator did not put the offer in writing.

There was no clarity regarding what the process moving forward was to be.

THERE MUST BE MORE TRAINING OF SALES PERSONS AND OPERATOR MANAGEMENT!

1. We were told that **we had to give the Operator VACANT POSSESSION when the new tenant for our apartment signed the contract**, but there was **no guarantee of the sale finalising**, and **no indication** when we would **receive the departure refund** from the ingoing contribution.
 - We were not the beneficiaries of a deceased estate.
 - We were not transferring to another facility of the same operator.
 - We simply wanted to "out" from a toxic environment and reclaim our lives.
 - Obtaining accurate time frames for a refund of the ingoing fee was not possible.
 - What were we to do in the meantime - weeks or months?
2. When a new tenant signs the contract, there is no obligation for the purchaser to complete the contract - so we could have been put on the street and no contract was completed. As the vacating tenant, we had **no recourse to compensation or refund of monies as we are tenants** - the Operator can keep the deposit paid when the contract was signed and take action on the new purchaser for compensation for not completing the contract - while we are out on the street, vacated our apartment, no funds paid to us, and no future sale in sight! THIS SITUATION IS DEPLORABLE!

We are currently "holed up in a motel" hoping that the Contract will be completed, two weeks here already and we are told that the operator will not relinquish our refundable amount for two weeks.
3. THE ACT specifies that a Rectification Inspection MUST take place within 48 hours of vacating the apartment. **Management did not seem to understand this. However with pressure it did take place on a Friday morning, between us, (the outgoing residents), the Client Services Manager and a representative from the Selling agent, who took little part.**

The Client Services Manager made a written list allocating items for rectification to us and to the Operator. We objected to a number of items, but these were not reallocated. As the Manager's writing was unclear, we

requested a printed copy of the list and the allocations. It was agreed that we would receive this by e-mail that afternoon. This did not happen.

The following week we were anxious to discuss the unresolved items with the CS Manager, and to sign off so that the work could be carried out promptly, (most of it being painting).

We received the printed copy and sent an e-mail back to the CS Manager with our requests for reconsideration of a number of items. The following Friday, we received a completely revised allocation of the items, without any consultation with us, identifying many items as our responsibility, (most being items that should have been rectified prior to us taking occupancy 2 ½ years earlier.

This is completely outside THE ACT - the CS Manager had allocated the responsibility, and for some reason a completely new allocation had been made without our consultation. **THIS WAS A BREACH OF THE ACT!**

WHAT IS THE PENALTY?

Later in the day we were advised that the cost too us would be \$5,000. We requested an itemised account, and advised that an inspection requested by the Operator earlier in the year had indicated that the Rectification would be a maximum of \$2,000. How could the costings be so different when they pertained mainly to painting and making good areas where pictures had been hung.

After negotiations with the Operator it was agreed that \$2,000 would cover our costs and we accepted. But we have no information regarding what this covers.

THERE MUST BE A BETTER WAY TO ASSESS RECTIFICATION COSTS, PARTICULARLY IN “INDEPENDENT LIVING VILLAGES!”

SETTLEMENT:

We were told that Settlement would take place TWO WEEKS AFTER THE RECTIFICATION INSPECTION. (and we still have no funds returned to us to arrange where we might live during that period.)

We were further advised that transfer of the REFUNDABLE AMOUNT would take a FURTHER TWO WEEKS!

HOW CAN IT BE THAT IN THE COMMERCIAL WORLD, FUNDS CAN BE ELECTRONICALLY TRANSFERRED WITHIN DAYS OF SETTLEMENT

YET WHEN RETIREES ARE DEALING UNDER THE ACT IT IS GOING TO TAKE TWO WEEKS?

Surely the Operator knows -

- What the selling price is because they have prepared the contract
- The deferred payment in relation to the purchase price
- The Rectification costs because they have obtained the quotes
- Fees and amounts due to the operator from the Recurrent Fees
- The amount due for administration of the sale which is 2.5% of the purchase price
- Fifty per cent of the Capital Gain

These amounts are easily calculated and deductions can be made.

So why two weeks to transfer the Refundable amount to the departing tenant!

Recommendation 5

That the Victorian Government investigate measures to ensure that all retirement village units hold the same owners corporation voting rights.

Agree. Essential.

Recommendation 6

That the *Retirement Villages Act 1986* and related regulations define whose responsibility it is to pay for repairs and maintenance, both inside units and in the communal areas and facilities. These amendments should further require all works to be undertaken within a reasonable and mutually acceptable timeframe.

Absolutely agree. Our Rectification inspection took place two weeks ago, has been costed, but no work, mainly painting not even commenced. And all the while we are waiting for the refund of our ingoing contribution, and how much this will be. The rectification amount is \$2,000 and we have asked that the Operator withhold that amount and refund the balance so that we can purchase another residence and remove ourselves from expensive motel accommodation. The operator has not agreed to this and we are uncertain about a date for refunding \$1.6m of our ingoing contribution.

HOW CAN THIS BE FAIR! WE DO NOT FEEL PROTECTED BY THE ACT!

There has been no “REASONABLE or mutually acceptable” time frame.

All parties are to agree to act reasonably. We do not believe that our operator is acting reasonably!

Recommendation 7

That the Victorian Government require that retirement village operators disclose ingoing prices with and without deferred management fees.

Agree entirely - both with and without deferred management fees/departure fees and explain the concept clearly.

Recommendation 8

That the Victorian Government require that deferred management fees are applied on a pro rata basis.

Absolutely agree. Our operator insists that only one day into the next year that a whole year fee applies. 3% for 2 ½ years is much fairer than 3% for three whole years!

Recommendation 12

That the Victorian Government ensure that an appropriate minimum Certificate level applies to retirement village management courses.

This recommendation is vital if the Management is to MANAGE!! Currently Managers rarely understand the client base they are managing. It is not sufficient for Managers to be studying in the early stages of such a course. **They MUST HAVE COMPLETED A COURSE TO THE LEVEL OF THE FACILITY THEY ARE MANAGING.** A very different level is required for a twenty unit facility compared with a ten story high rise with all the maintenance requirements of lifts, generators, water reticulation, gardens, computers, INS health systems, food preparation areas, etc.

Recommendation 13

That the retirement housing sector engage more proactively with disability and aged care design professionals when designing villages to facilitate greater choice and an ability for people to age in place.

Discrimination is a very sensitive area in any village. However, because of poor Sales decisions, inaccurate advice given to interested purchasers in INDEPENDENT RETIREMENT VILLAGES regarding the need for individuals to provide their own carer if they have a disability, the demands of **individuals who are not prepared to provide their own carer** at their own expense to allow them to function independently, **impinges on residents who are "independent"** due to their demands for modifications or changes to the building structures and services to meet their interpreted needs.

Many residents in Independent Living Villages have Work Cover, TAC, Home Care packages, but **choose not to spend the funds on carers to assist them**, but rather **demand self-funded independent retirees to meet the costs of their disability needs.** **This is a very difficult problem in the village we have vacated, and is continuing to create a toxic environment.** **This is where a good understanding**

of THE ACT by the Operator and the Operator's management team could defuse these situations and lead to a happier environment/community.

Currently the "Independent Residents" feel a deep sense of Discrimination against them by those with disabilities who are not prepared to arrange for their own independence, and continue to be critical of the Operator.

There comes a time when residents **MUST** move to a village offering higher care to cater for their disabilities.

Management must be trained in THE ACT to manage for these situations.

Recommendation 14

That the Victorian Government require retirement villages to report on compliance with maintenance plans funded by maintenance charges paid by residents.

It is **too easy for a lazy or careless Operator** to defer maintenance - our CS Manager in our high rise village advised residents that non-functioning light globes would not be replaced until there were about ten or more as this was more efficient.

Similarly with removal of hard rubbish - the accumulation of hard rubbish encourages vermin, and must be removed regularly.

Recommendation 15

That the Victorian Government introduce a new alternative for low cost, timely and binding resolution of disputes in the retirement housing sector. This may be through a new body or by extending the powers of an existing Ombudsman.

A commissioner is inadequate, and will have political interference.

An independent OMBUDSMAN is the only solution for resolving disputes; all disputes, including -

- between resident and resident
- Operator and Resident
- Discrimination
- Legal interpretations

Discrimination is a very sensitive area in any village. However, because of poor Sales decisions, inaccurate advice given to interested purchasers in INDEPENDENT RETIREMENT VILLAGES regarding the need for individuals to provide their own carer if they have a disability, the demands of **individuals who are not prepared to provide their own carer** at their own expense to allow them to function independently, **impinges on residents who are "independent"** due to their

demands for modifications or changes to the building structures and services to meet their interpreted needs.

Many residents in Independent Living Villages have Work Cover, TAC, Home Care packages, but choose not to spend the funds on carers to assist them, but rather demand self-funded independent retirees to meet the costs of their disability needs. *This is a very difficult problem in the village we have vacated, and is continuing to create a toxic environment.* *This is where a good understanding of THE ACT by the Operator and the Operator's management team could defuse these situations and lead to a happier environment/community.*

A detailed list of disputes and action/resolution must be tabled annually at the AGM.

VCAT IS COMPLETELY INAPPROPRIATE FOR DISPUTE RESOLUTION UNDER THE RETIREMENT VILLAGES ACT!

TOO UNWEILDY.

TOO LONG A DELAY TO ALLOW FOR DEPARTING RESIDENTS TO SELL

NOT SUFFICIENTLY SPECIALISED IN UNDERSTANDING THE ACT!

AN OMBUDSMAN IS REQUIRED.

We could not have commenced selling our loan/lease apartment if we had to list on VCAT!

End of submission from David and Pamela Barber.

5 December, 2019.