

Submission to Consumer Affairs re Review of the Retirement Villages Act 1986

As a lawyer with a particular interest in issues associated with ageing, I regularly review Retirement Village contracts as well as contracts for Aged Care Facilities, on behalf of consumers.

In recent times I have noticed an increasing number of retirement village contracts which suggest to consumers that all their current and future care needs can be met if they enter the retirement village, no matter how high those care needs might be. Rather than 'fee for service', residents are asked to pay a regular monthly charge which covers whatever care they might need now or in the future. The retirement villages are 'front ending' the charge so that high monthly fees are paid by the resident from the outset. Assuming the retirement village operators do not need to provide much care for the resident when he or she first enters the village, the operator is effectively being paid for doing very little – on the promise that as a resident's care needs increase, the operator will increase the care provided to the resident. HOWEVER there is no guarantee at all, that the increasing care needs of a resident will in fact be met. The services are not subject to any regulatory standards, oversight or monitoring (unlike the care provided in aged care facilities pursuant to the Aged Care Act 1997). And there is certainly no guarantee that the retirement village can deal with more complex needs such as those associated with dementia. The only action able to be taken by a resident (or family member) to enforce a clause stating effectively that all future care needs can be met, is one for breach of contract or perhaps misleading and deceptive conduct. Such action cannot be taken in a timely manner – certainly not in time to be of any use to an elderly resident with high care needs.

A client recently asked me to review an 'aged care facility' contract on behalf of her mother who has dementia. It did not take long for me to realise that the contract was in fact a retirement unit contract rather than an aged care facility agreement - and that my client had absolutely no idea that the 'facility' she was proposing to put her mother into, was not an aged care facility. My client was shocked that she could have been so misled. She was distraught to be told that the provisions of the Aged Care Act 1997 dealing with government support were irrelevant to the retirement village contract, and that there would be no safeguards regarding the care provided to her mother.

This issue is of great concern to me. It should be made very very clear to new residents that a retirement village is NOT an aged care facility, that care provided by the village operator is NOT regulated in any manner by the provisions of the Aged Care Act 1997 (unless provided through a Home Care Package) and that residents should not assume (despite the promises being made by village operators) that in return for paying a high regular monthly charge from the time they first reside in a retirement village, that their long term care needs can be met at a retirement village.

I am very concerned that care services which a retirement village operator might provide to residents in return for the payment of a high regular monthly charge, are unregulated. Consideration should be given to the banning of such a charge and the corresponding provision of services – leaving any care services which a resident might need, to be provided pursuant to a Home Care Package or privately (rather than arranged by the retirement village operator).