Response to the Review of the Retirement Villages Act 1986 Issues Paper

(I will make a response to questions only where I think I can make a meaningful contribution.)

The regulatory and policy framework

Q2. If it is decided that the RV Act should apply (to the extent relevant) to residents owning strata title to their dwelling (in addition to the application of the OC Act) some clarification may be needed in the definition of "retirement village".

Q5. It is suggested that the register of retirement villages should include an indication of any accreditation held, or confirmation that the village is, or is not, a subscriber to the Retirement Living Code of Conduct. This would give some assurance to prospective residents that the retirement villages they may wish to investigate have a level of quality that may not exist for others.

Entering a retirement village

Q6. Consideration should be given to the addition of a 'settling-in' period along the lines legislated in NSW.

Q7. In any advertising about the price of a retirement village unit there should be a required statement that, on eventual departure, deferred managed fees will be payable, details of which are available from the Fact Sheet - a copy of which is available on request.

Q14. Disclosure of ingoing prices without deferred management fees would be inherently difficult - as such fees depend upon the period of occupancy. The limited disclosure noted above should be sufficient initially, as detailed figures following potential departure in 1, 2, 5 or 10 years will be available in the Disclosure Statement to be provided if the prospective resident proceeds to that stage.

Q15. Calculation of deferred management fees on a full-year basis is fundamentally unfair and should not be permitted. Such calculations should be on a pro-rata (preferably daily) basis only.

Q16. Residents should be entitled to obtain an estimate of their departure fees from the village operator on request. Providing such estimates every financial year is considered unnecessary and would be unduly onerous for owners. The need for an estimate could arise when a resident is contemplating the pros and cons of early departure due to such factors as actual or potential health issues; dissatisfaction with the village or its management; or a need to move closer to family. There may be a need to limit the frequency of such requests to ensure this right is not abused.

Living in a retirement village

Q17-20. I am in favour of voluntary accreditation for retirement villages – as opposed to a mandatory scheme. Such accreditation should provide a level of assurance to prospective residents of the quality of their chosen retirement village. Such accreditation should not just be a marketing tool - as I fear is often the case with the current voluntary schemes. My criticism of them is that they rely too heavily on ensuring only that written policies are in place, with less emphasis on the degree to which such policies are rigorously applied. There is also no assurance that the list of policies examined is necessarily comprehensive. It could be appropriate for either the Government or an independent body to have input to the existing voluntary accreditation scheme standards to ensure they are sufficiently comprehensive and that the review for renewal ensures they are applied in practice.

One particular standard that should be added is compliance with the Protocols of Best Practice issued by CAV. In my own village, there are several of these Protocols that are not followed, but the village has still obtained full accreditation under the current voluntary scheme.

Q21-24. In regard to the issue of training and qualification of retirement village managers and staff, I suggest that whatever is decided as the necessary minimum standards should be a standard that is part of the regular renewal for accreditation.

Q27. The residents committee should not have the power to approve above-CPI increases in maintenance charges. Such increases are effectively a variation of residents' contracts, and approval for change should not be delegated to the residents committee.

Q28. Village owners and managers should be prohibited from involvement in meetings of the residents committee, unless invited. Such involvement should be for the purpose of reporting only, with no voting rights.

Q30. All residents should be provided with copies of the audited financial statements before the annual meeting. I suggest 21 days is an appropriate period.

Q31. In my opinion, the following further items should be disclosed or considered in relation to the financial statements provided to residents: -

a. If a surplus of maintenance charges over operating expenses has been achieved, information should be provided about how much is to be carried forward to future years, and how much is to be retained by the owner. In my opinion, the right of the owner to retain all or part of any operating surplus should be prohibited - unless this is permitted under a provision in all residents' leases.
b. If any of the operating expenses are paid to the owner (for example, electricity charges for village assets using an embedded network) and such payments are in excess of actual cost to the owner, any margin above cost should be excluded from operating expenses. The excuse that such a margin may not be material in any one year should not be accepted, as the effect of such over-charges are not self-correcting in subsequent years, but continue to accumulate over time (to a potentially significant amount) which could have been used to provide further services to residents.

Q31. As the annual financial statements are a report to residents about the stewardship of the owner, I consider that the auditors should be appointed by the residents committee, not the owner. If the auditors are appointed by the owner, there is a potential or perceived lack of transparency and independence.

Q33-35. I support recommendation 6 of the recent Parliamentary Inquiry that the issues about responsibility for repairs and maintenance should be covered by the RV Act rather than left to voluntary codes or guidelines. In addition, in my opinion, there should be the addition of a requirement that capital expenditure (whether additional or replacement) should always be borne by the owner.

Insofar as definition difficulties are concerned: -

(i) Reference to Income Tax legislation or regulations could help to distinguish between repairs and maintenance compared with capital expenditure.
(ii) The distinction between short-term and long-term repairs and maintenance should be for the latter to be only expenditure that is incurred on a cycle of longer than one year.
(iii) The distinction between expenditure that is the responsibility of the resident, rather than the owner, should refer to work required inside the resident's dwelling.

Q36-37. I consider all retirement villages should have a long-term maintenance fund – supported by an appropriate plan. This fund should be financed by separate monthly maintenance charges payable by residents, with such charges being subject to Division 1 of Part 6A of the RV Act - in the same way as the normal maintenance charges that fund the annual operating costs of the retirement village. The unspent balance of this fund should be held in a separate trust account, with an audited financial statement presented to the annual meeting of residents each year. A budget or plan should be prepared each year, together with a comparison against actual in the same way as for normal operating expenditure. A longer-term plan covering, say, the next rolling 5 years should also be prepared and reported upon to the residents committee each year.

I do not support the need for a capital fund as, in my opinion, capital costs should be paid by the owner. However, if a capital fund is to be permitted and funded by residents, it should be separate from the long-term maintenance fund, but subject to the same requirements as noted above.

In drafting the changes to the RV Act in relation to matters covered by sections 4.2.1 and 4.2.2 of the Review papers, guidance should be available from the existing legislation of NSW, ACT and Queensland, as well as from the recent changes to the OC Act.

Leaving a retirement village

Q43. A distinction should be drawn in the RV Act between 'reinstatement' and 'refurbishment'. The cost and need of both should be subject to negotiation and agreement with the owner before work is commenced. In my own village, no distinction is drawn between the two, with all such costs lumped together as 'refurbishment' – with the resulting prospect of dispute.

The cost of 'reinstatement' should be the responsibility of the outgoing resident.

Although the cost of 'refurbishment' may result in a commensurate increase in the selling price of the unit, only a portion of that increase flows to the outgoing resident, with the balance going to the owner in higher deferred management fees and sales commission. In my own village, I have calculated that, in order for the outgoing resident to even break-even on 'refurbishment' costs, the sale price needs to increase by between 27% to 68% of the cost of such refurbishment - depending on the period of occupancy. A solution to this problem would be for the costs of 'refurbishment' to be deducted from the sale price for the purpose of calculating the DMF and sales commission.

Q44. Provided section 38B of the RV Act is applied to all fees payable by a resident that should be classified as "maintenance charges" are so treated, there should be no problem with ongoing charges payable by departing residents. In particular, it is important that any long-term maintenance and/or capital fund fees are subject to Division 1 of Part 6A of the RV Act. In my own village we have a combined fund for these purposes, and the owner holds out that it is not subject to these legislative requirements, but is instead governed solely by residents' leases. The effect has been that: -

(i) increases in monthly fees for this fund have been at the discretion of the owner (rather than at CPI with the opportunity for a special levy);

(ii) the six-month limit for payment by departing residents under section 38B has been denied;

(iii) the owner has no obligation to pay for any capital replacements ever again.

Q45. I think it is appropriate that the way in which capital gains and losses are shared should be addressed in the residence contract. Ideally, this can be achieved by providing that the DMF be based on the ingoing contribution payable by the new incoming resident, with that sum being the base for payment to the outgoing resident. Perhaps the RV Act could provide that all contracts provide for "sharing", with the capital gain being calculated only by reference to the resale price.

##########