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Mr Angus Abadee
Director
Building and Construction Policy
New South Wales Department of Customer Service
Better Regulation Division
via email: angus.abadee@customerservice.nsw.gov.au
cc: rvdiscussionpaper@customerservice.nsw.gov.au

Dear Mr Abadee,

FURTHER COMMENTS AND FEEDBACK - RETIREMENT VILLAGE DATA COLLECTION AND PUBLICATION REGULATION

Thank you for recently meeting and consulting with members of our retirement living committee. The Property Council of Australia welcomes the opportunity to provide further comments and feedback regarding our initial submission to the Department of Customer Service regarding the proposed changes to the *Retirement Villages Regulation 2017* (NSW).

We are pleased to provide the attached additional comments for the Department's consideration, regarding the collection and publication of data and associated information relating to Retirement Villages.

Should you have any questions regarding the content of this submission, please contact Charles Kekovich, NSW Senior Policy Adviser on ckekovich@propertycouncil.com.au or 0409 776 588.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Luke Achterstraat".

Luke Achterstraat
NSW Executive Director
Property Council of Australia

Proposal to Collect, Publish and Share Retirement Village Data:

Whilst the Property Council prides itself on working with the Government to ensure equitable access and information sharing, we must continue to balance the needs of our members and operators across the retirement living network across New South Wales. The Department of Customer Service have outlined that information and data sharing are one of the core principles and recommendations which have been committed to by the NSW Government since the Inquiry into the NSW Retirement Village Sector presented its findings in 2018 (The Greiner Report). Our additional submission aims to outline to the NSW Government what type of data our members feel appropriate to be shared as well as other matters pertaining to the commencement date, cost burdens placed on operators, transparency mechanisms and the reasoning surrounding the equitable collection of data by the Department of Customer Service. It is our hope to continue working collaboratively with the NSW Government to deliver equitable and transparent data sharing mechanism between residents and operators.

Recommendation 13 of the Greiner Report outlined the need to increase the level of collection of village operator and sector data, including a requirement that operators report certain data to Fair Trading such as key village information and contract types on offer. The NSW Government's then Minister for Innovation and Better Regulation, the Hon Matt Kean MP agreed to recommendation 13 and it is our understanding that this is the basis on which the Government has developed its discussion paper and proposed data collection regulation outline. The Property Council notes that access to information and data about the quality and history of specific villages is important to prospective residents however, retirement village operators in NSW must already register with the NSW Land Registry Services (Registrar General), if the land is being used as a retirement village.

Proposed commencement date:

The Property Council and its members share concern regarding the proposed July 2022 commencement date for any such regulation requiring operators to share data with the Department of Customer Service. The concerns stem from the need to develop, implement and undertake successful Asset Management Plans across all retirement villages in New South Wales during this same period. A significant undertaking which many operators are struggling to complete on time due to the interference by Covid-19 restrictions and associated Public Health Orders. The data which would be required to be disclosed to the Department is no small undertaking, with many small-scale operators, with limited support and administrative staff outlining their concern about being placed with the additional burden of compiling, reporting and collecting the necessary data to meet the proposed July 2022 deadline, as outlined in the Department's discussion paper.

The Property Council recommends to the NSW Government that a July 2023 commencement date be enforced on operators pertaining to their obligations, as stated in any subsequent regulation relating to reporting and sharing of data with the Department of Customer Service.

Cost considerations:

Alternative and cost-effective methods for reporting must be investigated further by the Department and reported back to industry once cost and useability benefits have been ascertained. Operators would prefer completing sets of standardised forms, to be emailed to NSW Fair Trading rather than funding the costs associated with developing an interactive digital portal. Whilst a digital solution may support a more interactive presentation of the publicly available information. For example, it could be developed so that consumers could filter, sort, and compare information based on metrics, such as prices, services, or location, the overall cost burden which would be placed on operators is unfair and entirely

impractical. If an online portal is to be developed, there would be costs involved in developing and maintaining the portal. The Property Council and its members strongly oppose any advancement by Government to pass on maintenance and development costs on operators.

Presently, costs to develop an online reporting tool have not been calculated by the Department of Customer Service, which has concerned the Property Council and will be an issue moving forwards until such a time as when costings could be provided to industry participants. It is inequitable for the industry to be responsible for all the costs when residents and Government will be also benefiting from this collection of data. Even though the Property Council strongly feels the Government should fund the establishment and maintenance of the portal, it is suggested the costs should be divided three-ways, that is, paid equally by industry, government and residents. Given the small size of the industry, that is less than 300 operators in NSW, this adds another layer to all operators who continue to be burdened with most of the costs associated with the implementation of the recommendations of the Greiner Report. Cost recovery methods are having a serious impact on operator's profitability as well as the ability to make capital improvements to aging facilities. Operators are facing challenges in supporting added administrative and associated expenses surrounding the implementation of the Greiner Reports recommendations, for instance the preparation of Asset Management Plans, 42 day cap on recurrent fees and charges for registered interest holders and new requirements for emergency and safety plans. The Property Council also notes that the Commonwealth Government is now seeking cost recovery methods for aged care applicants, and in some cases regulations. It is our hope that the NSW Government is not going down the same path and as such we would like to strongly outline the Property Council's opposition to any such arrangement, which might be considered by the NSW Government in the future. Operators must not bear the brunt of any future costs associated with the establishment of an online portal and data collection system.

Data field commentary:

The Property Council has outlined in appendix 1, a breakdown of comments and reasoning surrounding proposed data collection fields. Operators reasoning for providing data have been outlined and segmented. The majority of operators outlined concerns relating to commercial sensitivity, best practice principles and the overall benefit to current and future residents in providing such information to the Department.

Answers to questions posed in the discussion paper:

- 1. Do you agree with providing NSW Fair Trading with the additional information as detailed in Appendix 1? If not, why not, please provide reasons on the specific category of data.**

No, the data fields proposed in Annexure 1 are largely covered by the information already being provided by operators to prospective residents and their representatives as part of the General Inquiry Document and Disclosure Statements and/or to the current residents through the budget and village management processes under the *Retirement Villages Act 1999* (NSW). To provide the same data to NSW Fair Trading would be a duplication and additional regulatory compliance cost. Some of the proposed data fields include information that will continue to change as part of the sales negotiation process, e.g. pricing and village contract information. This can be fluid and changed more than once a year.

- 2. Do you agree with the proposed additional information on the public register? If not, why not? Please list and give reasons for each of the datasets proposed to be put onto the register.**

Refer to comments in appendix 1.

- 3. What other information do you think would be useful to make available on the public register? Please list and give reasons.**

Refer to comments in appendix 1.

- 4. Do you agree with publishing de-identified information about complaints? If not, why not? Do you have any suggestions?**

Yes, the Property Council supports de-identified information about complaints being published.

- 5. What additional requirements should Fair Trading adopt to enhance its approach to privacy of information collected and published?**

Refer to comments in appendix 1.

- 6. Is 'within 7 business days' a suitable period for reporting critical information? If not, please provide reasons and an alternative period.**

The Property Council recommends that the Department revise the enforcement date from 7 business days to 21 business days for operators. This will allow the necessary time and opportunity to source critical data which must pass through each individual operator's checks and balance protocols. Noting the differences in office procedures, management structures, reporting methods, administrative and office support staff, and data collection facilities. The proposed 7 business days reporting period is insufficient, especially for large operators. If introduced, it should be at least 21 business days and a longer period should be allowed where the information relates to construction, development and redevelopment of the villages, as third-party sources may be required to access that particular information (e.g. design and building practitioners).

- 7. Do you agree with the frequency of reporting and updating information on each data field in Appendix 1? If not, please provide reasons and an alternative period for each one.**

Refer to comments in appendix 1.

- 8. Do you think that having an online portal to facilitate the reporting would be beneficial?**

The Property Council only supports the use of an online portal to facilitate reporting requirements if it is determined to be the cheapest, most secure, and adequate option for operators. Whilst we acknowledge that online portals would provide good useability and ongoing serviceability for operators, if Government is to pass the cost associated with establishing and maintaining the systems on an ongoing basis to operators, then this option is not appropriate.

9. Would you still support an online portal if you had to contribute to the cost? If so, how much do you think operators should be required to contribute annually?

Refer to answer provided in question 8. The Property Council strongly opposes any such cost burden being placed on operators for the establishment, maintenance or investigatory process associated with any such online portal for data collection. Furthermore, the Greiner Report outlined no such cost being placed on operators when recommendations were presented and subsequently adopted by the NSW Government in 2018. Operators cashflow relies on stock turnover, which can be inconsistent as opposed to other industries. Additional cost burdens have already been placed on operators with recently revised regulations, smaller companies cannot continue to absorb regulatory costs. The Greiner Report did not outline in recommendation 13 for costs of establishing a data collection mechanism to be placed on operators. Operators have outlined that they cannot permit the cost to be placed on the Retirement Living sector, without this then being passed on to residents.

Appendix 1—Proposed Data Fields

Overarching comment for consideration:

Any information that is in the GIDs and DS that the Department of Customer Service wants operators to provide should be provided in the exact same manner as supplied in the GIDs and DS to avoid double handling of similar information.

The following table contains the proposed data fields. The column on the right hand-side signals information proposed to be made available on a public register. Section 197B(3).

Section 197B(3)	Frequency/Form	Public	Property Council Comments
(a) the name, address and contact details for a retirement village and operator			
Village details			
NSW Land Registry Services number	once update if it changes	yes	Agreed
village trading name	once update if it changes	yes	Agreed
village address	once update if it changes	yes	Agreed
village suburb	once	yes	Agreed
village state	once	yes	Agreed
village postcode	once	yes	Agreed
village phone	once update if it changes	yes	Agreed
village or operator website	once update if it changes	yes	Agreed
village local government area	once update if it changes	yes	Agreed

Operator details			
name, address, contact details (as above)	once update if it changes	no	Agreed
Village manager and a contact person details			
name, position, phone, email	once update if it changes	no	Agreed
(b) information about a Residents Committee of a retirement village,			
is there a Residents Committee in the village?	once update if it changes	yes	Agreed however, DCS to make the data field a simple yes or no answer.
is the Resident's Committee Secretary or any member of the Committee connected to the operator in any way?	once update if it changes	no	Agreed to however, we still question relevance here. If it's a conflict of interest, then this forum is not appropriate reporting mechanism. It is a question that also requires follow up statements to qualify the connection e.g. What is the nature of the connection; does the connection provide a conflict of interest; how is that conflict dealt with at the village. It is an unworkable question if the Department are unable to provide some further elaboration on the question.
Resident's Committee Secretary's name and contact details	once update if it changes	no	Not agreed to. If a committee is identified to exist it is then incumbent on members of the committee to

			disclose this information to DCS. This information is the responsibility of the residents committee, not the operator as a residents committee is a separate body.
(c) the number of units in a retirement village,			
total number of units	once annually	yes	Agreed

Section 197B(3)	Frequency/Form	Public	Property Council Comments
number of independent living units (ILUs)	once annually	yes	Agreed however, instead of frequency being once annually, DCS should require the data be updated 'if it changes'. This will remove significant administrative burdens and onerous reporting structures on operators.
number of serviced apartments/Assisted Care Units	once annually	yes	Same as above.
number of Single-storey	once annually	yes	Agreed to however, only if in form of GID. DCS should require the data be updated 'if it changes'. This will remove significant administrative burdens and onerous reporting structures on operators.

number of Multi-storey	once annually	yes	Agreed however, must in form of GID. DCS should require the data be updated 'if it changes'. This will remove significant administrative burdens and onerous reporting structures on operators.
number of units that have additional accessibility elements such as private lifts, stair lift	annually	yes	Not agreed, disclosed at point of sale.
number of units owned by operator or occupied by a connected person	once annually	no	Unclear what is being asked. Who is a connected person? Disagreed to on basis of more information being required by the Department in relation to this data field.
(d) the resident right types in a retirement village,			
type of arrangement: strata or community schemes, leasehold arrangement, loan or licence arrangement, rental only, company title scheme, other. (Checkboxes for each)	once update if it changes self-declaration checklist	yes	Agreed
(e) any enforcement or disciplinary action taken against the operator of a retirement village by NSW Fair Trading, 3			
number of compliance breaches under the Act	Information held by NSW Fair Trading	no	Not agreed; already held by Fair Trading.
penalties associated	Information held by NSW Fair Trading	If in public interest	As above
details of the breach	Information held by NSW Fair Trading	If in public interest	As above
data from proactive compliance programs, results, and nature of any non-compliance with the retirement villages' law and actions taken by the Department	Information held by NSW Fair Trading	If in public interest	As above, Fair Trading hold this information and so it would be more accurate than the

			operator providing this data.
(f) any complaints received by NSW Fair Trading about a retirement village or its operator, 4			
number of complaints made against a village/operator	Information held by NSW Fair Trading	no	As above
number of complaints received where they have been verified by the Department (de-identified)	Information held by NSW Fair Trading	If in public interest	As above
(g) information about complaints handled internally by the operator of a retirement village,			
does the village have an internal system for resolving disputes?	annually	no	Agreed. However, it is required by law to be provided once but operators would only need to update this data field if any changes are made, rather than proposed annual update.
number of complaints with NCAT	annually	no	Not agreed to be being provided. The data can readily be accessed by NCAT.

197B(3)	Frequency/Form	Public	Property Council Comments
type of complaints (group) with NCAT	annually		Not agreed.
NCAT complaints outcome	annually	no	Not agreed. NCAT will have a more accurate record of the matters before it as well as the resolution.
NCAT resolution rate	annually	no	As above
Number of complaints escalated to Fair Trading	annually	no	As above
(h) information concerning village contracts or pricing,			
Overarching Commentary:			
This information is largely covered in the GIDs and Disclosure Statements already. Members cannot identify a benefit in reporting it and having it displayed on a			

website, as it will need to change regularly to be accurate (i.e The most accurate is in the disclosure docs at time of sale). Members note that this information is often very specific to the contract type and so is best provided as part of the GID and Disclosure Statements at time of sale, not in a general sense submitted on a website where the information will be overwhelming and confusing to residents and non-operators.			
what is the range of prices to enter the village, including a range of prices for last two years.	annually	yes	Not agreed. This data could be misinterpreted due to different contract types impacts on contributions.
corresponding amount of recurrent charges payable to live in the village for current and prior 2 financial years	annually	yes	Not agreed. Recurrent charge information is provided in the GID and DS
do residents pay a departure fee when they leave?	annually	yes	Operators have outlined that due to various contract types, it will be extremely difficult to have a blanket yes or no question attached to this data field. Operators are not supportive of giving all of our contract information to the Department and as such we do not agree to this data field.
do residents share in any capital gains?	annually	yes	As above.
Formula for departure fee payable by incoming residents on termination	annually	yes	As above.
departure fee structures and amounts payable by outgoing residents	annually	yes	As above.
departure payment structure offered to new residents	annually	yes	Agreed, as this information is on most operators' websites already.
number of days premises are on the market	annually	no	How will the Department ask operators to formulate the

			data? Will this be an average? Please provide additional information.
number of applications made to the Secretary for exit entitlement orders and the subsequent Secretary's decision on those applications	annually	no	Not agreed to, as the Secretary of DCS will have this information already available and thus it will be more accurate than operators providing the data.
when exit entitlements will be paid out (i.e., metro/regional requirements)	annually	no	If this data relates to internal payout policy, operators do not agree to providing this data because if there is a payment order the Department should have this information available to them already.
were all payments due to outgoing or former residents in the last financial year made in full and on time?	annually	no	Not agreed to. There may be extenuating circumstances that mean a payment cannot be made on time e.g. Bank details were incorrect and such the data may be incorrect or inaccurate and not represent the original intention of the question. A lot of this information is covered off in audited financial reports. The Property Council suggests copies of audited financial

			accounts be provided annually.
number of sale cancellations	annually	no	Not agreed to. Sales are cancelled for a variety of reasons including ill health, change of circumstance and even death. These reasons are often always out of the Operators control. Reporting this information is not a good indicator of how well an operator is performing.
(i) demographic information about residents and staff of a retirement village,			
total number of residents	annually	yes	Agreed
residents age brackets, e.g., 60-69, 70-79, etc.(average age)	annually	no	Agreed
% of female/male residents/non-binary	annually	no	Agreed
number of residents that entered the village in the last financial year	annually	no	Not agreed to, this is incredibly onerous reporting and operators fail to see the benefit. The number of residents entering a village in a year is not relevant in the eyes of operators and not entirely beneficial for regulators collection strategy.
average age of residents entering the village	annually	no	Not agreed to. Property Council suggests utilizing average age of residents. This will be a better measure rather

			than the average number of residents moving in.
the average length of tenure for residents in the village – i.e., how many years on average a resident stay in the village	annually	no	Not agreed

Section 197B(3)	Frequency/Form	Public	Property Council Comments
number of residents that left the village in the last financial year	annually	no	Not agreed to, as it is considered onerous to operators. Residents leave for several reasons and reporting on the number of people who leave doesn't benefit the incoming residents.
number of staff working in the village	annually	no	Not agreed to. The Property Council questions the relevance of this particular data field. Any impact on residents due to the number of staff are captured in the recurrent charge disclosures. Also, some villages need more staff, some run well on little staff. It is just not a good indicator of cost, efficiency or service delivery.
(j) any other information about the management and operation of a retirement village.			
Business information			
entity type - Company, sole trader, partnership, non for profit, charity, etc)	once update if it changes	yes	Agreed, as already in GID.

if corporation, ABN, ACN or ARBN	once update if it changes	yes	Agreed as above
how many retirement villages does the business operate in NSW?	once update if it changes	no	Agreed as above
is the retirement village registered under the NSW Land Registry (s24A of the Act)?	once	no	Agreed
Village tenure information			
total number of NRIH contracts in use in the village	once annually	No	Not agreed to, operators consider this data field commercial in confidence.
total number of RIH contracts in use in the village	once annually		Not agreed to, operators consider this data field commercial in confidence.
Village site information			
age of the village	once	yes	Agreed to, with clarifications from the Department. The age of the village isn't a good indicator. An old village that has been refurbished can be as good as a new village. If anything, the question should be 'when was the village developed/built. Age of the village will also need to change annually and as such presents an additional burden on operators to providing the data to the Department.
average size of the land	once update if it changes	no	Queries: is this total land area of the village? DCS to provide

			additional information.
does the operator own the land?	once update if it changes	no	Not agreed, the operator may be different from the landowner (i.e. may be a different entity owned by the same parent company). The Department needs to -outline how this is relevant to consumer protection?
average size of the village	once update if it changes	yes	Not agreed. Avg size of what?
where is the village located Regional/Metropolitan?	once	no	Already provided in the address data field agreed to previously. Department to then decide if falls into regional or metro area, as classified by NSW Government. The Department should be able to put the postcodes into LGA's.
has construction /development/redevelopment of the village been completed?	once update if it changes	yes	Not agreed to. Operators provide this information in the GID/DS.
are there current unresolved building defects where rectification works would exceed \$10,000? Details of the defects.	annually	no	Not agreed. As defects have not been raised as an issue in RV's, operators tend to continue ownership of them unlike the residential sector. This could unintentionally give the wrong impression on

			the quality of the build.
is the village or part of the village under Statutory Warranty?	annually	no	Agreed
are there any planned works, i.e., DAs/CDC, Buy Backs, etc?	annually	yes	Agreed however Department to present the question in yes or no format.
how many premises were vacant as at the end of the last financial year?	annually	no	Not agreed. The level of vacancy at a point in time e.g. end of financial year is not a true indicator of occupancy. Additionally, villages go through cycles where there are a lot of move outs and move ins – it is not symptomatic of a poor operator nor necessarily the market.
how many premises were reoccupied during the last financial year?	annually	no	Not agreed
what was/is the level of occupancy in the village? i.e., % last financial year	annually	yes	Not agreed. Having this information on the public register could unnecessarily tarnish a village that is excellent but has experienced a lot of move outs. This has the potential to negatively impact the village and the residents as it could be perceived that low occupancy means poor operator which is not always the case.

Section 197B(3)	Frequency/Form	Public	Property Council Comments
<p>is there an authorised residential aged care facility onsite or attached? If yes, provide details of availability to residents.</p>	<p>Once update if it changes</p>	<p>yes</p>	<p>Operators would agree to say if there was a RAC on site or adjacent to the village however, many cannot provide details of availability, as that is very time specific and is information not held by the Operator, it is held by the RAC operator.</p>
<p>is home care provided? Details of services provided.</p>	<p>once update if it changes</p>	<p>yes</p>	<p>Not agreed because not all Operators provide Home Care. Any resident can access Home Care through a range of providers</p>
<p>does the development consent require that a particular service or facility be provided for the life of the village?</p>	<p>once update if it changes</p>	<p>no</p>	<p>Not agreed. This is very specific. Often DA's don't specify 'services'. DA's generally specify facilities.</p>
<p>are there any current proposals to reduce or withdraw a service or facility in the village?</p>	<p>annually update if it changes NOT AGREED</p>	<p>yes</p>	<p>Not agreed. Any adds/subs in Services go through a resident vote and so you couldn't accurately answer this. How can you answer what might be proposed because it's the vote that determines the outcome.</p>

			Already in the DS as a checkbox
are any facilities in the village available or proposed to be made available for use by non-residents? If yes, specify	annually update if it changes NOT AGREED	yes	Not agreed. Already in the DS as a checkbox. Presents an unnecessary double of red tape and regulation for operators.
Financial management information			
village financial year - (01 July, 01 Oct...)	once update if it changes	yes	Not agreed. This is all in the GID/DS. If the Department wants operators to provide this information, then the questions should mirror that already provided in these documents to avoid double handling.
what date was the budget presented?	annually	no	As above
Provide a copy of the budget	annually	no	As above
what period does the three-year plan cover?	annually	no	As above
in which month/s are recurrent charges usually varied?	once update if it changes self-declaration checklist	yes	As above
if the village is co-located, how is it funded?	annually	no	As above
Village information Checklist			
is the marketing material compliant?	annually	no	All of the remaining questions are a compliance checklist – all Operators will answer 'Yes'. The Property Council would argue that this is not relevant or required to be collected by the Department for this reason.

is there a compliant Standard form of contract in place?	annually	no	As above.
is there a compliant General enquiry document in place?	annually	no	As above.
is there a compliant Disclosure document in place?	annually	no	As above.
is the Waiting list fee \$200 or less?	annually	no	As above.
are legal and other expenses \$50 or less?	annually	no	As above.
is the village insured as per requirements of the Act?	annually	no	As above.
is the village compliant with the Security and safety as per requirement of the Act?	annually	no	As above.
date of the last Annual management Meeting	annually	no	As above.
the date the operator provided a compliant Agenda for the Annual meeting	annually	no	As above.

197B(3)	Frequency/Form	Public	Property Council Comments
date the annual accounts of the village were audited. Name of auditor.		annually	Agreed
does the village have a compliant asset management plan and a 3-year report in place?	annually	no	All of the remaining questions are a compliance checklist – all Operators will answer ‘Yes’. The Property Council would argue that this is not relevant or required to be collected by the Department for this reason.
have residents of the village consented to any of: <ul style="list-style-type: none"> • not receiving a proposed budget each year • not receiving quarterly accounts of income and expenditure • not having the annual accounts of the village audited. 	annually	no	As above.
have residents been given a compliant budget and Accompanying budget notice 60	annually	no	As above.

days before the start of the financial year?			
has an audit been completed in accordance with the Act?	annually	no	As above.
does the village have a Capital Works Fund (CWF)?	annually	yes	As above. Already in the DS.
did the operator comply with the rules of conduct in the last financial year?	annually	no	As above.