

## **Review of Retirement Villages Act**

### **Issues Paper Response**

#### **Property Council of Australia (Victorian Division)**

The Property Council welcomes the opportunity to respond to the Review of the Retirement Villages Act Issues Paper. We acknowledge this paper has been developed in consultation with key stakeholders and commend the Department on its engagement with industry to date.

The review of the *Retirement Villages Act* 1986 ("the Act") is an important step in ensuring the legislation continues to service the consumer protection rights of residents while ensuring that operators can continue to provide the quality retirement living services that reflect the expectations of Victorians.

#### **The Property Council of Australia**

The Property Council is the leading advocate for Australia's property industry — the economy's largest sector and employer.

In Victoria, the property industry contributes \$45.1 billion to Gross State Product (12.4 per cent), employs more than 331,000 people and supports more than 400,000 workers in related fields. It pays more than \$21 billion in total wages and salaries per year, employs one in four of the state's workers either directly or indirectly, and accounts for 57.5 per cent of Victorian tax revenue.

The Victorian membership has more than 500 members. They are architects, urban designers, town planners, builders, investors and developers. These members conceive of, invest in, design, build and manage the places that matter most — our homes, retirement living communities, shopping centres, office buildings, education, research and health precincts, tourism and hospitality venues.

Included in our Victorian membership are over 30 retirement operators, as well as an extensive number of affiliate service providers.

This submission is informed by many of the Property Council's key member representatives and expert committee members.

## The regulatory and policy framework (Part 2)

### Application and scope of the Retirement Villages Act 1986

1. Should the payment of an ingoing contribution be the defining factor in determining whether the Retirement Villages Act applies to a retirement village? If not, what other considerations would be appropriate?
2. Is the definition of 'retirement village' under the RV Act otherwise appropriate? If not, what changes would you recommend?

The definition of 'retirement village' is appropriate for covering the villages that currently fall under the scope of the Act.

However, it is noted in the Issues Paper that *'retirees leasing in caravan parks, residential parks, any other communal settings or in standalone independent living units, who are supplied with services but who have not paid an ingoing contribution, do not have the protection of the RV Act but have the protection of the Residential Tenancies Act 1997 (in relation to their tenancy rights) and the Australian Consumer Law (in relation to goods and services provided to them)'.*

Over the last ten years, the distinction between lifestyle communities and retirement villages has narrowed despite being regulated under different legislation. For consumers, this means that the products are considered comparable despite differences in consumer protections offered. The table below indicates how lifestyle communities have evolved in how they are operating, who their residents are, what fees are charged and on what basis.

	Retirement communities	Lifestyle communities
<b>Resident cohort</b>	Average age 74 on entry; marketing aimed at over 55s	Anecdotally, the average age on entry 60-70s, marketing aimed at over 55s
<b>Built form – homes</b>	Detached or semi-detached villas and apartments	Traditionally, a 2 bedroom, 1 bathroom demountable home, however many newer communities offer 3 – 4 bedroom, 2 bathroom homes that are slab-on-ground with structure
<b>Built form – community facilities</b>	Community centres with lounges, libraries and kitchens, BBQ areas, bowling greens, pools	Historically had limited community facilities (if any) but newer communities have facilities similar to retirement villages
<b>Fees relating to accommodation</b>	Refundable ingoing contribution with a deferred fee paid on exit	Resident owns the home and pays the operator a rent for the land. Some communities charge a deferred fee.

<b><i>Fees relating to services</i></b>	Monthly charges set by resident body and without a return on margin to the operator	Rent, partly for rates and overheads and running of community facilities set by operator which may or may not include a margin for the operator
<b><i>Fee increase regimes</i></b>	CPI or taken to a vote by residents if above CPI	Typically, CPI or a set percentage (say 3%) whichever is the higher
<b><i>Timing of payment upon exit</i></b>	A resident is paid upon settlement of the resale of their retirement village villa/unit, unless the Aged Care Rule is applied. This rule provides that village residents who move to a residential aged care facility and elect to pay a bond, are entitled to an exit payment from the village owner within six months, even if their dwelling is not sold.	A resident is paid upon settlement of the resale of their home.
<b><i>Average time of stay</i></b>	7.6 years	8 years
<b><i>Regulation of community areas</i></b>	Under RV Act and management agreement	Under management agreement
<b><i>Maintenance of common areas</i></b>	By operator	By operator
<b><i>Operator acting as sales agent</i></b>	Yes	Yes

Given the range of retirement housing options, and differences in the regulatory framework that currently govern the rights, responsibilities and protections afforded to residents, the Department should consider ways to ensure consumers have access to the information needed. They need to be able to make an informed choice on which protections are provided by the various options. This may be done as a factsheet for consumers or by providing information regarding the different protections offered by each of the seniors living models on the CAV website.

Currently, in the absence of such disclosure requirements, confusion caused by the narrowing similarities of the model has led to legal action. For example, a VCAT action commenced over an operator's ability to charge a deferred fee (see *Bik v Peninsula Parklands (Residential Tenancies)* [2018] VCAT 1606). VCAT found that the deferred fee was invalidly charged due to it not falling within the Residential Tenancies Act as it was not properly rent and it had been invalidly disclosed. This matter was appealed to the Supreme Court but discontinued in April 2019 when it settled.

### The purpose of the Retirement Villages Act 1986

3. Is the current purpose of the RV Act still appropriate? If not, what do you think the legislative purpose of the RV Act should be?

The current purpose outlined in the Act is *"to clarify and protect the rights of persons who live in, or wish to live in retirement villages"*.

In Australia, retirement villages often consist of Independent Living Units (ILUs), apartments or villas within a community setting. These are private dwellings, commonly with between one and four bedrooms, developed for those who wish, and are able, to live relatively independently. Commonly, the house and land are bought, leased or licensed by individuals but the communal property – gardens, parks, roadways and community centres – are generally, managed and maintained by the village operator.

The purpose of the Act should reflect the evolving nature of the sector. The increasing age of entrants to villages has been recognised as creating new challenges. While the current purpose focuses solely on residents, which is important, we submit a revised purpose should also consider the rights of operators to respond to market conditions by providing services through a variety of models for consumers to meet their changing needs.

### The purpose and use of the current register of retirement villages

4. What improvements could be made to the register of retirement villages?

We propose that the register of retirement villages should include additional columns that disclose if a village is compliant with the industry Code of Conduct (<https://carepage.com.au/wp-content/uploads/2018/12/Retirement-Living-Code-of-Conduct-.pdf>), and if the village is accredited under the Australian Retirement Village Accreditation Scheme (ARVAS) (<https://www.qip.com.au/standards/australian-retirement-village-accreditation-scheme-arvas-standards/>).

The Retirement Living Code of Conduct, which comes into full effect from 1 January 2020, seeks to create an accepted standard to help operators provide a trustworthy and high-quality service to those living in and considering moving to, a retirement community. Each community operator that signs up to the Code of Conduct commits to standards that govern a resident's experience moving into, living in and moving out of a retirement community.

The Code is intended to co-exist with relevant state and federal legislation, including all state and territory retirement village laws and regulations, and Australian Consumer Law. The existing regulatory and legal obligations of the Code of Conduct's signatories are not replaced or restricted by this Code.

The ARVAS Standards are designed to work directly with the Retirement Living Code of Conduct.

Allowing consumers to identify if a village is a signatory to the Code of Conduct and compliant with the legislation will facilitate strong consumer confidence for persons considering approaching a village.

5. What other information should operators be required to include in the register?

The register could be extended to also display who is the owner of the village.

### Entering a retirement village (Part 3)

#### Consideration and cooling off periods

6. Are the current 21-day 'consideration' period and the 3 day 'cooling-off period' under the RV Act effective in achieving their aims? If not, what other or additional measures would be effective and fair?

The current cooling off periods outlined in the Act provide adequate protection for consumers looking to enter a retirement village. Victoria currently has the longest period of cooling off when compared to other states. By way of comparison, the New South Wales Retirement Villages Act 1999 provides for a 14 day 'assessment' period before signing a contract and a seven business day cooling-off period. In Western Australian, the Retirement Villages Act offers a cooling off period of seven days only.

In the case of a freehold villages, where the ingoing resident purchases the property from an out-going resident, an extended cooling off period would mean that funds could not be released to the out-going resident (or their estate) until the cooling off period had elapsed.

If the incoming resident elected not to proceed with the purchase, the out-going resident would be unjustly delayed and, in some cases, this could impact the distribution of the estate.

#### Disclosure obligations

7. When advertising the 'price' of a retirement village unit, should there be a requirement to include a reference to any deferred management fees and other departure fees and charges?

No. The current method of advertising the price of a retirement village unit is adequate and reflects the ingoing contribution. Details of deferred fees and other departure fees and charges are covered in extensive detail in the Disclosure Statement.

8. Has the provision of a Factsheet and Disclosure Statement to prospective residents led to an improved understanding of the financial and contractual arrangements relevant to living in a retirement village enabling prospective residents to make an informed decision?

Yes, the industry is in agreement that both the Factsheet and Disclosure Statement document have given potential residents more clarity in understanding the financial and contractual arrangements relevant to living in a retirement village, enabling prospective residents to make an informed decision.

9. What, if any, further improvements could be made to improve prospective residents' understanding of the potential financial and contractual arrangements relevant to living in a retirement village?

The current form of both the Factsheet and Disclosure Statement document provide a detailed understanding of the financial and contractual arrangements relevant to living in a retirement village enabling prospective residents to make an informed decision.

10. Are the current timeframes for provision of a Factsheet and Disclosure Statement to prospective residents appropriate?

Yes, we believe the current timeframes are appropriate and residents are given ample opportunity to consider the documents. Delaying the process in providing a Disclosure Statement would be counterintuitive and it would delay disclosures necessary to progress a sale for an outgoing resident.

There is some uncertainty as to the timeframe required for provision of a Factsheet in that it is unclear whether providing information electronically to any person on a waiting list or data base is considered as providing "targeted promotional material" and therefore requires the provision of a Factsheet. We believe that sending material to an operator's database should not trigger the requirement to provide a Factsheet.

#### Contracts - form and complexity

11. Have the form and content requirements for retirement village contracts introduced in 2014 improved residents' understanding of the contractual arrangements they have entered into?

It is the view of our members that the 2014 amendments have not achieved their purpose of simplifying contracts or making them more easily understandable by consumers. There are several concerns with the current requirements, including the following:

1. As the document comprises a set of prescribed clauses, followed by a set of prescribed headings to be included and addressed in the contract, followed by general operator terms and conditions, the terms are repetitive as one subject (for example, the exit entitlement payment and timing) is addressed in the prescribed heading section as well as the general operator terms and conditions section. This means that it is difficult to find the relevant term in the document as multiple clauses need to be considered. This has also had the impact of significantly increasing the length of residence contracts due to the repetition required to comply with the legislation.
2. The layout of the templates set out in the Regulations is not user-friendly and does not follow a logical order. For example, the sections which address payments due to residents upon exit are separated by sections which address legal costs; followed by termination provisions at the end of that section of the template.
3. The prescriptive requirement that one of the four model templates be used is unnecessarily restrictive for no apparent purpose. For example, the requirements to use different templates if one entity is the owner and manager, or separate entities are the owner and manager, is not



necessary to assist a consumer to understand the contract. The requirement in the template in Part D of the Regulations for different headings to list owner obligations and manager obligations have the effect of creating a cumbersome, illogical template which is confusing for both operators and consumers. The template assumes that the owner is the operator (rather than a passive landowner) which leads to this artificial and complex outcome.

It is recommended that there be a more logical layout for ease of understanding as set out under the answer to question 13 below.

Question 12: To what extent do retirement village contracts remain unnecessarily complex?

We refer to our answer to question 11 which sets out the complexities with the contract requirements. Although we understand the policy behind the review in 2014 was to assist in developing plain English documents which could be used to compare one village to another, in the experience of operators, this is not how contracts are used. Instead, it is common practice that once a resident is ready to review their residence contract in detail with their legal representative and family, that resident has finalised the choice of village and a comparison to other forms of contract is neither sought nor helpful. Rather, residents tend to compare one village to another during the disclosure period, so this information must be set out comparably in the Factsheet and Disclosure Statement, rather than the residence contract.

13. What further improvements could be made to contractual requirements under the RV Act?

The contract could be presented in a more logical order as follows:

- Pre-entry rights and obligation;
- Entry rights and obligations;
- Rights and obligations which apply while the resident is living in the village; and
- Post-entry rights and obligations.

The Property Council has developed a form of template residence contract for a loan/lease village, which is attached to this submission (Appendix A). The proposed template sets out the rights and obligations of the resident and the operator in plain language and in a logical order. It also includes a reference section at the front of the document to guide the prospective resident through the document.

This template should only be considered as a best practice reference, we do not support setting prescribed clauses as a mandatory requirement.

### Financial Models and Deferred Payments

Prior to responding to the questions proposed in the glossary, we do not agree with the use of the term “deferred management fee” (DMF) in any proposed reform to the legislation. As noted in the Issues Paper, ‘Despite its name, the DMF is not a fee related to management services and could be properly characterised as deferred rent.’ This term is not widely used by industry and often creates confusion for prospective residents as it misrepresents the financial model it describes.

We recommend that all references to a DMF in future issues papers and government correspondence instead use an alternative term such as “deferred payment”, to reflect the true nature of the financial arrangement. Other terms that would be appropriate substitutes include “departure fee”, “exit fee”, “deferred fee” or “outgoing payment”.

14. Should retirement village operators be required to disclose ingoing prices for entering a retirement village both with and without deferred management fees? If so, what form should this take? If not, why not?

The current disclosure documentation is effective in providing a detailed summary of the total ingoing costs and the likely outgoing costs that a resident may receive upon departing the village after one, two, five and ten years.

The information currently outlined in the document already includes all out of pocket expenses, including the method of calculation of deferred fees payable at outgoing.

Where an operator provides several different financial models within the same estate, it is common practice for that operator to provide separate disclosure for each model, thus providing a transparent guide for prospective residents to compare the benefits of each side-by-side. Industry feedback suggests that the current disclosure format is well regarded by prospective residents.

It would be inappropriate for the Act to require operators to interpret and apply a subjective growth rate and forecast performance of the general real estate market.

The Property Council recommends that, instead, operators adopt the ten-year rolling growth rate as published by the Victorian Real Estate Institute applicable to the village location, which could be reviewed annually.

15. Should deferred fees be calculated on a pro rata basis? If so, why? If not, why not?

The Property Council supports deferred fees, which are calculated according to the period of occupancy, being calculated on a pro rata basis. This is currently common practice amongst many operators.



16. When should retirement village operators be required to provide a resident with an estimate of their departure fees and what are your reasons?

We submit that a village operator should only be required to provide a resident with an estimate of their departure fees upon request. It is unnecessarily burdensome to require retirement villages to complete this request on a scheduled frequency as it would significantly add to administrative costs, which would impact all residents as they are typically paid from the residents' budget.

A better alternative would be to introduce a time limit, such as 21 days from the date of the request, by which an estimate document must be provided to the resident. We would submit that the resident should only be able to request a maximum of two such estimate documents per year.

### **Living in a retirement village (Part 4)**

#### **Accreditation of retirement villages**

17. What do you consider to be the benefits and costs of introducing a form of mandatory accreditation for retirement villages?

18. What do you consider to be the benefits and costs of voluntary accreditation schemes?

On 1st October 2019, the Retirement Living Council (part of the Property Council of Australia) announced in conjunction with LASA a new voluntary accreditation scheme for retirement villages. The accreditation was the product of fifteen months of collaboration between these two peak industry bodies and resulted in the amalgamated their previous accreditations into one scheme.

The working group responsible for the drafting of the standards used the villages.com.au National Resident Survey 2018 – the Independent Study of Today's Retirement Village Residents, conducted by Australian Online Research, as the basis for identifying what residents' value about their village, and the areas where improvements could be made.

An independent consultant was also engaged to work with residents at villages in Melbourne, Brisbane and Adelaide, to help identify what was valued about the existing accreditation schemes, and what needed changing.

The standards are broken up into seven quality areas:

- Standard 1: Community Management
- Standard 2: Human Resource Management
- Standard 3: Resident Entry and Exit
- Standard 4: Resident Engagement and Feedback
- Standard 5: Environment, Services and Facilities
- Standard 6: Safety and Security

- Standard 7: Resident Care (if applicable)

Standards 1-6 apply to all retirement communities and must be met to achieve ARVAS accreditation. Some criteria within each standard may not apply to all villages – applicability guidelines are provided with the explanatory notes. Standard 7 applies only to villages that also provide care services, where that service is provided as an included service in the resident contract, or as an additional service on a 'fee for service' basis. Approved providers of home care will be deemed to automatically meet Standard 7.

The Property Council is a strong proponent for accreditation, and we would support this review recommending the adoption of ARVAS as a compulsory accreditation for Victorian operators. If this recommendation was to be implemented, it is important that an appropriate implementation period be a component of the recommendation, so the expense of accreditation can be appropriately incorporated into the various business models.

If accreditation is to remain voluntary, we recommend accreditation be promoted through disclosure forms or using the existing Register of Villages. Either option would assist consumers to make an informed choice when selecting a village.

We believe that in a voluntary accreditation environment, consumer education around accreditation will result in more villages opting into accreditation to remain commercially competitive.

19. What do you consider to be the benefits and costs of voluntary accreditation schemes?
---

Voluntary accreditation provides a benchmark for businesses within an industry to assess their operations. From a consumer perspective, a voluntary accreditation scheme allows consumers to identify businesses who have invested and continue to invest in delivering services that ensure a common base requirement of practice.

It is not the case that a village that does not pursue accreditation is lacking in the services or protections they offer to consumers. However, voluntary industry accreditation allows consumers to identify and ask the questions as to why the village is not accredited.

For some smaller or non-for-profit villages it may be a matter of cost; for other villages it may be that compliance requires some operational changes, which bear an operational cost to implement and may be implemented over a longer period before accreditation is achieved. Some villages may extend accreditation timelines to spread out the indirect costs involved in getting villages ready, such as training and inducting staff – as these would, in some models be borne by the residents through their general services charges.

The cost of the industry accreditation which came into effect in August 2019 can be viewed below:

Retirement Village Details	Small (Up to 74 ILUs and/or SAs* GST exclusive)	Medium (75-199 ILUs and/or SAs* GST exclusive)	Large (200+ ILUs and/or SAs* GST exclusive)
HQ / Main village site	\$3,750.00	\$7,000.00	\$7,500.00
Fee for each additional village site	\$2,750.00	\$2,750.00	\$2,750.00
Fee for Standard 7 per village site	\$2,250.00	\$2,250.00	\$2,250.00
Review fee – resubmitted documents	\$500.00	\$500.00	\$500.00

20. By what alternative means could the standard and quality of services provided by retirement villages be improved?

The Code of Conduct (C3.4) requires practical training as a way of improving quality of service. The Property Council offers a broad range of practical training programs. These programs are not compulsory; however, they are widely accepted in the industry to be effective in improving the skills, knowledge and subsequent quality of service provided by employees in retirement villages.

It would be appropriate to legislate to have resident facing staff required to complete approved training. Such programs could be assessed by CAV and could include approved programs developed by operators or industry bodies. Currently, the Property Council, LASA and BCM all offer a range of retirement living training programs. The list of programs currently offered by the Property Council is attached as Appendix B.

#### Qualifications and training of retirement village managers

21. Should there be any additional limitations or requirements on persons who can be involved in promoting or operating retirement villages?

We believe that the current limitations set out in Section 17 of the Act are appropriate.

It would be appropriate for CAV to implement mandatory national police checks on all staff, this is currently required in the Accreditation.

22. What do you consider to be the benefits and costs of mandating training and professional development requirements for retirement village managers and employees?

Please refer to our response to question 20.

23. How should any requisite professional development requirements and training be determined?

Currently, there are many highly regarded training programs in the market, as outlined in question 20. We propose that requisite professional development requirements should include operator developed and industry developed training schemes that have been assessed and approved by CAV.

24. Are there other ways to ensure that retirement village managers and employees have the requisite skills and professionalism to undertake their responsibilities?

Sales professionals and village managers play a crucial role in ensuring residents have an enjoyable, safe, and enriching experience while living in a retirement community.

To ensure transparency in the high standards needed for these roles, the Property Council's Retirement Living Council has engaged Anthon Consulting to design a Capabilities & Certification Framework. The framework is aimed at identifying the attributes of good sales professionals and village managers and will allow these professionals to seek professional recognition of their high standards.

This project is being undertaken in stages:

- Stage 1: Design the Capabilities Framework
- Stage 2: Design and Implementation Strategy to determine how the Framework would operate (e.g. what evidence is needed to show a capability is met?)
- Stage 3: Implement the Framework

Stage 1 of the project has now been completed and Stage 2 has just commenced.

### Resident Committees

25. Is the current role of the residents' committee appropriate and are its powers adequate?

The Property Council believe the current role of a residents' committee is appropriate and that the powers allocated to the committee are adequate. To support consistency across villages, the Act could provide guidance around the maximum tenure of committee members and the number of residents required to form a residents' committee. The review may also consider introducing a requirement that only lease/contract holders can be on the residents' committee. Section 36 (8) of the Act needs to be reviewed to eliminate the reduction of power from the residents' committee to owners' corporation.

Representation on residents' committees should also be limited to one person per residence, to enable fair and equitable representation for the whole committee. This is particularly important in smaller villages and should be mandated legislatively.

It should be recognised that not all villages have residents' committees. We would not support an extension of powers that would require operators to mandate the existence of such groups.

26. Should residents committees have a role in dispute resolution involving resident-to-resident disputes?

We support residents' committees being able to have a role in resident to resident disputes if management is not already involved in brokering a solution for such disputes. This is consistent with the current Act.

As noted in the Stakeholder Reference Group Meeting with Nous, in some instances the involvement of a residents' committee in a dispute can exacerbate the dispute, with persons within the disagreement being victimised or isolated.

27. Should residents committees have the power to approve above-CPI increases in maintenance charges? If not, why not?

Residents should have the power to approve an above CPI budget increase, only if all residents with voting rights are given appropriate notice of the vote and it is passed as a special resolution requiring 75 per cent support. This vote should be able to be called by a residents' committee or an operator.

28. Should retirement village owners and managers involvement in meetings of the residents' committee be prohibited unless invited by the committee?

To have a well-balanced, harmonious and productive residents' committee, the village owner and managers must be allowed to be involved in residents' committee meetings to provide honest and open lines of communication.

#### Annual Meetings and reporting

29. Is the level of detail about the financial activity involving the retirement village required to be included in the financial statements adequate for residents? If not, why not?

Yes, the current level is appropriate. The operation of a retirement village is a business enterprise therefore, some financial activities such as individual salaries should not be required to be disclosed. Such information is commercial in confidence and a requirement to share additional detail would not further advance the purpose of the Act. A change to this effect could also have adverse outcomes under the Privacy Act 1988.

30. Should residents be provided with copies of the financial statements before the annual meeting? If so, what period is reasonable?

Yes. We believe 14 days in advance of an annual meeting would be appropriate unless a special resolution is required, then 21 days is required. We recommend that the Act provides for these timelines.

31. Are there any other matters that should be addressed in the reporting requirements?

No. The reporting requirement sufficiently outlines the requisite information to ensure the appropriate treatment of the fees and investment made by the resident. The need for more detailed reporting would have the unintended consequence of adding to administrative costs and in some cases make the straightforward sharing of financial information more complex and therefore more difficult for residents to review and understand.

### Retirement villages with an Owners Corporation

32. In mixed tenure retirement villages (i.e. retirement villages comprising both owner-residents and non-owner residents), should there be separate meetings for the village, according to the provisions of the RV Act, and for the owners corporation, according to the provisions of the Owners Corporation Act 2006 (OC Act)? If not, how should issues identified for mixed tenure retirement villages be addressed?

It is in the interests of residents and operators that the management of operations, including meetings, are as streamlined as possible.

We submit that in mixed tenure villages only one AGM should be held for the operation of the village as a whole. This process would enhance the likelihood that information is shared consistently. This will also ensure that all residents regardless of their tenure have the right to attend the same meeting and receive the same information.

We recognise that some items of business and governance required by legislation are different. Under the Owners Corporation Act an AGM is required to address:

- Maintenance Plan (refer to question 36 & 37)
- Valuation report (for insurance purposes)
- Details on the decision to waive (or not) the charging of interest on fees in arrears
- Election of the owners' corporation committee.

These items are not required to be covered under the Act, however, the Act does require details of any residents' disputes to be outlined.

If an owners' corporation's lot owners' fees are in arrears, they are unable to vote. We submit that a similar provision would be appropriate to be included under the Act.

If a vote is required on a matter that impacts only one tenure type, voting procedures should be clearly outlined and should reflect the proper membership base - whether that be lot owners or residents of the village.

To ensure voting rights are clearly understood before entering the village, in mixed tenure villages we would suggest that voting rights be added as a requirement in the disclosure statement.



#### Maintenance and maintenance charges

33. To what extent should the RV Act further address issues of 'responsibility' and 'timeliness' for repairs and maintenance in retirement villages?

We submit that the existing provisions are satisfactory.

Currently, residents' contracts and the compulsory disclosure document provide clear guidance regarding responsibilities in relation to repairs and maintenance for retirement village units.

34. What are the problems in more prescriptive requirements applying to all types of retirement villages and in all types of circumstances?

The current system works well in Victorian retirement villages. Being more prescriptive would be counterproductive and would create additional layers of red tape to what has been a simple and workable process.

The responsibility for maintenance, repair and replacement is linked to the financial model within the village. Some financial models provide for all maintenance, repair and replacement costs to be included on the basis that there is a higher deferred fee model with no capital gain share to the resident. Other financial models provide for a lower deferred payment and a capital gain share on the basis that the resident is responsible for repair and maintenance and replacement. These obligations cannot be considered in isolation. There is a significant risk that prescribing requirements in legislation will not take into account the variety of financial models on offer and the choice available for consumers to choose the model which most appropriately reflects their needs.

35. To what extent can or should the RV Act regulate what constitutes maintenance and capital items and to what extent should these issues be left to voluntary codes or guidelines?

The model contract (Appendix A) articulates the difference between maintenance and capital items. This is not a current issue and most villages work with the residents' committees in relation to village operation budgets and sinking fund budgets.

### Maintenance and capital replacement funds and plans

36. Should all retirement villages be required to have maintenance and/or capital replacement plans and/or funds?

37. If so, what, if any, minimum requirements should apply to the establishment and operation of such plans and funds (for example, reporting obligations and restrictions on how monies are held)?

Maintenance and capital replacement requirements are currently outlined in the factsheet and the residents' contracts.

To have a legislatively prescribed maintenance and/ or capital fund regime would be problematic for some based on their product offering. As with the deferred management fee, capital gain allocation, sales costs and refurbishment obligations (to name a few), the responsibility for funding maintenance and capital costs is a commercial term that varies between retirement villages models and can be an important point of differentiation when prospective residents are assessing and ultimately deciding which product suits their needs. For example, in a number of villages, particularly in not-for-profit villages, maintenance and capital works are funded wholly by the owner. Under this model, residents are not required to make ongoing contributions to a long-term maintenance or capital replacement funds. For many prospective residents, this can be appealing as it provides certainty around their future financial obligations. To introduce a prescriptive model could have unintended consequences for villages and their residents, who are currently operating under varying models across the sector with the aim of providing consumer choice and optionality to customers.

We need to recognise the impact of the Owners Corporation Act and the authority of the owners' corporation committee to approve maintenance and capital projects within a strata and mixed community.

We also refer to our comments under question 34 in relation to the different financial models.

38. If you are a current or former resident of a retirement village, what are your experiences with receiving privately funded care services through a retirement village?

Many operators provide a range of personal services to residents on a user-pays optional basis at the village. The services include access to hairdressing, activity classes and allied health services through a third-party provider.

Many operators also partner with an accredited approved provider of home care services to make care services available to residents within the village. These approved providers are funded by the Commonwealth Government through its Department of Health and are regulated under the Aged Care Act 1997 (Cth).

**39. Do you think retirement villages should provide privately funded care services**

In the experience of operators, there is an increasing demand from consumers to have personal care services available in villages. This is consistent with demand from consumers in the broader community to receive personal care services.

In the community, personal care services (known as home care) is provided by accredited approved providers of home care services funded through and regulated by the Aged Care Act, and by private home care operators who are not regulated by the Act. The Act only regulates providers who receive Commonwealth funding to provide services to consumers.

It is submitted that there should not be any greater impediment for retirement village operators to provide these services than there is in the general community. If private operators can provide services to consumers in the community, then it should also be the case that retirement village operators should also be permitted to provide these services without additional regulation beyond the current regulatory protections.

**40. Is the current regulatory framework for the delivery of privately funded care services sufficient to ensure that potentially vulnerable and frail residents receive safe and high-quality standards of care?**

Yes, see the answer to question 39 above.

**41. What role, if any, should retirement village operators have in ensuring the safety and welfare of their residents, taking into account a resident's right to autonomy and privacy?**

A village operator as the owner of the village land has obligations under the Occupational Health and Safety Act 2004 (Vic) to ensure the safety of residents occupying the village. It is submitted that this is the appropriate level of regulation for independent living communities.

## **Leaving a retirement village (Part 5)**

### **Selling/re-leasing a retirement village unit and reinstatement and refurbishment of retirement village units**

**42. Does the RV Act strike the right balance between the interests of residents and operators in the sale or re-leasing of a retirement village unit, including the appropriateness of the process whereby the prescribed terms are inserted into non-owner residence contracts?**

**43. Does the RV Act strike the right balance between the interests of residents and operators in the sale or re-leasing of a retirement village unit, including the appropriateness of the process whereby the prescribed terms are inserted into non-owner residence contracts?**

Victorian regulations already strike a fair balance between the interests of residents and operators in the sale or re-leasing of retirement units.

The current regulations reflect usual market practices for the sale of residential property, by giving the outgoing resident (not the village owner/operator) control over the key elements of price-setting; sale process; and acceptance or rejection of offers. These key elements, that the resident controls, are the elements that usually determine if a unit sells, or not, in a reasonable timeframe. This sensible regulatory framework places both the rights and responsibilities for the sale terms into the hands of the outgoing resident, the same as with any other home they have sold previously.

Schedule 1 of the Victorian regulations provides that:

- the outgoing resident has the right to choose, and instruct the owner to appoint, an estate agent to 'sell' their unit;
- the outgoing resident can at any time instruct the owner a price or price range in which they wish offers to be invited for their unit, and the owner must only invite offers accordingly;
- the owner must provide the resident with a written summary of inquiries received for the unit each month; and
- the resident can advise the owner the offer that they wish to have accepted, and the owner cannot re-sell the unit without first obtaining the agreement of the resident as to price.

The Victorian regulations enable normal property market practices, that all residents are accustomed, to prevail. The 'seller' (the outgoing resident) sets the reserve price and controls the sale process so as to achieve a faster or slower sale according to their needs, just like any other property transaction.

In the model contract definition of fair market value, we introduce a price review mechanism that makes this process fairer to both parties.

The unaltered nature of this system since 2006 (other than the refinements to the aged care rule) is largely due to the fact that it works effectively to achieve the interests of all parties to the transaction.

It is important to acknowledge that there is a strong alignment between the interests of departing residents and operators. Both are equally motivated to sell the retirement village unit at a price that meets the current market as expediently and effectively as possible. The issues paper describes the current regime around this process under section 5.1, particularly with respect to a resident's right to be involved in price setting.

The paper also acknowledges that the sale of a retirement village unit can often take significantly longer than general residential property. According to the 2019 PwC/ Property Council Retirement Census, the average selling days between the date of vacant possession and settlement in 2019 was 258 days. The issues paper, however, doesn't outline the reasons behind this.

Unlike general residential property, the sale process for a retirement village unit is not as straightforward for several reasons. There are multiple steps, each subject to potential delays outside the resident or operator's control. For example, upon a resident issuing a departure notice, the unit needs to be vacated. This can take many months in most cases as the focus is primarily on moving a loved one to care or dealing with a family death. It is difficult to commence the sale process (showing the unit) until the unit is vacant. In most cases, the unit then requires a refurbishment. This takes time to properly scope and, in some cases, might involve input from an incoming resident requesting specific additions. Works need to be priced. Then, refurbishment works need to be physically completed (eg. 12-16 weeks). At a point in time in this process, the unit needs to be sold/re-leased which can take significant time (depending on market conditions) to find a new resident requiring the specific unit type who is ready to make the move to a village.

Once committed to the unit, in nearly all cases, the incoming resident must then arrange the sale of their home. That involves choosing an agent, preparation, marketing, a sale period and then (usually) an auction. Once sold, there is generally a 60/90/120 day settlement period before funds are received and settlement of their retirement village unit can finally be completed.

All of the above steps are routinely encountered by operators of villages to accommodate the significant disruption to incoming residents who are often leaving a long-occupied family home while balancing the pressures from the former resident to achieve the highest and best price for their unit within the shortest possible time. Unlike all other forms of property, retirement operators sell to a legislatively restricted pool of buyers with particular requirements and with whom operators are going to have a long association. This process takes time, and artificial disruption to the process though additional legislative restrictions would be detrimental to current and future individual residents and the industry at large.

#### 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?

The current Act strikes the right balance between the interests and needs of departing residents, remaining residents and retirement village operators.

Village operators have a continuing obligation to deal with ongoing village overheads upon a resident's departure. The outgoing resident's contribution towards that is generally restricted (for non-owner residents at least) to a reasonable period (eg. maximum of six months) which, in many cases, aligns with the period in which they provide vacant possession of their unit.

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?

We contend that free-market principles based on supply and demand allow operators to meet the demands of the marketplace.

Emerging financial models demonstrate that operators are responding to the market. It is commonplace for operators to offer 100% capital growth models to residents and there are several operators now offering a non-deferred payment option as well. Many operators will offer an option based on the sharing of capital growth to facilitate a lower up-front capital cost to residents or a lower deferred payment quantum.

A rapidly ageing population will place more demands on operators to continue to innovate and offer needs-based solutions for customers. At a time when market trends favour operators able to offer an integrated care model, the industry will need to develop new financial models in support of the expectations of their customers and investors alike.

The Property Council does not believe this issue can be viewed through a single lens and strongly opposes the regulation of capital gains sharing.

### **Dispute resolution (Part 6)**

#### **Internal dispute resolution**

46. What are your views on the reform proposals identified by the review of internal dispute resolution procedures in retirement villages outlined in this Paper?

The Property Council agrees that there should be clarity about how the distinction between a complaint or a dispute will be defined under the Act. A request for an operator to take some action should not amount to a complaint – it should only be a complaint where a request has been made, and the complainant is not satisfied with the action or lack of action by the operator.

The Good Practice Protocols are a useful guide for operators and consumers. However, if they are to be used as a standard which must be met by an operator in consideration of a complaint or dispute, then the Property Council recommends that they be reviewed to ensure that they are consistent with the Act, including any amendments to the Act. Currently, there are some recommendations in the Protocols which are not supported by the legislation.

We support a process which clarifies the avenue for dealing with a complaint when that complaint is about the village manager.

There is a place for a resident committee to assist with a dispute between residents if it is a truly representative committee and there is no conflict of interest, and the operator is not dealing with the dispute at that time. If these conditions are satisfied, then we believe the committee should still have



this role. However, the complainant should be able to request that the committee not deal with a dispute if this is their wish.

#### External dispute resolution

47. Should a party to a retirement village dispute seeking access to the Victorian Civil and Administrative Tribunal (VCAT) or the Courts be first required to have followed/exhausted the internal dispute resolution procedure?

Yes, we support this.

48. Should mediation of a dispute through Dispute Resolution Centre of Victoria (DSCV) be a pre-condition of access to VCAT or the courts?

It should be a requirement that applications to VCAT provide evidence that all internal dispute resolution procedures have been exhausted, however, it should not be a requirement that mediations occur through DSCV as a pre-condition of access to VCAT. VCAT already has the right to refer a matter to mediation if it is deemed to be appropriate.

49. What do you think is the best means to achieve low-cost, timely and binding resolution of disputes in the retirement village sector?

The Property Council understands that the instances of recorded disputes are very low in Victoria, with only about ten cases proceeding to VCAT last year. However, estimates provided by residents' associations and other consumer group vary significantly, with disparity in estimates attributed to "silent complainants".

Prior to determining what would be the best means to address disputes, the review should:

- Provide a distinction between complaint and dispute.
- Consider the nature of the disputes occurring.
- Further, investigate the actual rate of disputes.
- Identify the current barriers preventing "silent complainants" from proceeding to dispute resolution.

The Property Council supports the implementation of a dispute management framework that enables both residents and operators to resolve disputes in a low-cost and timely manner.

However, we believe that without a better understanding the existing grounds and frequency of disputes, the implementation of a new system would be inefficient and likely to harm industry and resident confidence in dispute resolution systems.

We would be supportive of the implementation of specialist referral and briefing services, funded and operated by CAV to facilitate the treatment of disputes through existing channels.

We propose that this model would require specialist staff, who are able to assess complaints and determine an appropriate pathway for the complaint (eg. HAAG, ADR, VCAT).

Upon determining the appropriate pathway, this service could brief the appropriate body so that the referral service could contact the complainant without the complainant having to relay the details of the complaint for a second time.

Adopting this approach would also allow for real time tracking of complaints and assist in the collection of actual data about the nature of complaints. This would help identify recurring problems, or issues with specific villages.

The Code of Conduct will also operate a complaint management portal, which is currently still under development. This portal is aimed at upholding the standards outlined in the code and ensuring timely responses to resident complaints.

It is anticipated the portal will be operational by January 2020.

### **Enforcement (Part 7)**

50. Are the enforcement provisions incorporated into the RV Act sufficient?

It is the view of the Property Council that the existing provisions are sufficient.

51. Should the Director of Consumer Affairs Victoria be given additional power and enforcement options available under the Australian Consumer Law and Fair Trading Act 2012 (ACLFTA)? If so, why? If not, why not?

The Property Council has no objection to the inclusion of powers such as the power to inspect, make copies of documents and require the production of documents and giving evidence; as referred to in the Issues Paper; or to the power to issue a cease trading order or corrective advertising order.

We note that there does not appear to be sufficient reasons for the granting of any further powers at this time.

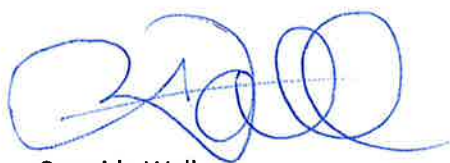
### **Next Steps**

We look forward to continuing to support the Department in this review and would like to re-iterate our availability to provide expert industry knowledge where it is required to support a better understanding of the nuances of the industry and industry operation.

---

If you require further information or clarification, please contact Emily Young, Senior Policy and Communications Advisor, on 0447 020 329 and [eyoung@propertycouncil.com.au](mailto:eyoung@propertycouncil.com.au).

Yours sincerely,



Cressida Wall  
Executive Director, Victoria

**Included documents:**

Appendix A (Model Contract)

Appendix B (Property Council Training Programs)

Code of Conduct

Australian Retirement Villages Accreditation Scheme (ARVAS)

**Submitted 6 December 2019**

