



Australia's property industry
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14 May 2021

Ms Bree Oliver
Director Regulation Policy
Department of Justice and Community Safety
121 Exhibition St
MELBOURNE VIC 3000

By email: rvreview@justice.vic.gov.au

Dear Ms Oliver,

Property Council Response to Retirement Villages Act Options Paper

The Property Council of Australia welcomes the opportunity to provide the retirement living sector's official response to the Options Paper released as part of the review of the *Retirement Villages Act 1986* (the RV Act).

The retirement living sector forms a crucial part of the housing, community and services mix for senior Victorians, and the importance of the sector will only continue to grow with population ageing patterns and increasing life expectancy. The review of the RV Act is timely and provides a terrific opportunity to ensure the legislative framework is geared for the future. We congratulate the Victorian Government on the commitment to the review and the deep consultation with the industry and community.

About the Property Council

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

AEC Group's report for the Property Council, 'Economic Significance of the Property Industry to the Victorian Economy', shows that the property industry makes up 13.8 per cent of the Victorian economy, employs more than 390,000 people and supports more than 471,000 workers in related fields, pays 59 per cent or \$17.9 billion in tax revenue and pays more than \$21 billion in total wages salaries per year, which is approximately 27.9 per cent of wages and salaries paid to Victorian workers.

The Property Council's Victorian membership has over 500 member organisations. They are architects, urban designers, town planners, builders, investors and developers who develop, invest in, design, build and manage the places that matter most to Victorians — our homes, office and

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industrial buildings, retirement living communities, shopping centres, education precincts, research and health precincts, tourism and hospitality venues.

The Property Council's members own and/or operate more than 250 retirement living communities in Victoria. Our members are a diverse mix of companies with small, medium and large village portfolios, across Melbourne and regional Victoria, and include not-for-profit operators, commercial for-profit operators, listed and private companies, and church and charitable operators.

The Retirement Living Council, a division of the Property Council, is the national leadership group of the retirement living sector, advocating policies that deliver more senior Australians age-friendly homes and services in retirement communities.

Suggested principles for reform

The Property Council supports sensible reform of the RV Act and is committed to working with our members to ensure the reputation of retirement living is strengthened through the adoption and implementation of high standards. On behalf of the industry, we are committed to advocating for effective regulatory arrangements that balance the rights and responsibilities of operators and residents, to ensure the ongoing viability and attractiveness of retirement living.

The following principles underpin the Property Council's response to the Victorian Government's Options Paper:

- Retirement villages should be enabled to accommodate and support the ageing population and the diversity in housing and services options they will increasingly seek. Any reform to the RV Act should **ensure that consumer choice remains** and that the legislative settings encourage potential investors to the sector who will provide much needed purpose-built housing for Australia's growing ageing population;
- The RV Act should **encourage and empower innovation** in retirement living models which generate greater consumer choice and cater for an increasingly diverse range of consumer preferences;
- **Resident rights should be supported** and accompanied by related responsibilities;
- The legislative framework for retirement villages **should not further differ from similar housing options** currently operating under different legislation and regulations, and if significant reform is proposed, it should be examined by the Red Tape Commissioner before implementation; and
- Future amendments to the RV Act should **not impact existing contractual relationships** between operators and residents, but only apply to new residents.

The Property Council's members are committed to creating and ensuring positive and supportive experiences for retirement village residents. Over the last few years, the sector has committed to and implemented an industry improvement agenda by creating a suite of tools and resources designed to enhance the service offering within retirement villages, including an Industry Code of Conduct, a redesigned accreditation scheme, simplified, plain English resident contract guidelines

and a village management capability framework for current and incoming retirement village managers.

Further, the sector's commitment to its residents and communities is evident in the overwhelmingly successful response to the COVID-19 pandemic in Melbourne last year, with no outbreaks within retirement villages.

Our response to the Options Paper addresses the merits of each option for reform from an industry perspective. Our position, where possible, is backed up by data, anecdotes, and industry case studies. We would welcome the opportunity to provide more information on any of the below responses on request.

If you require further information or clarification on our response, please contact Andrew Lowcock, Senior Policy Advisor, on 0447 666 902 or alowcock@propertycouncil.com.au. We welcome further engagement as you progress with the review.

Yours faithfully,



Danni Hunter
Executive Director, Victoria
Property Council of Australia

Property Council of Australia Submission | Retirement Villages Act Options Paper May 2021

Overview

Retirement villages are more than just a housing option for older people. The World Health Organisation has identified the value of housing that allows older people to age comfortably and safely within their own community but notes that dedicated and affordable seniors' housing is in short supply.¹ To direct more focus on this issue, the WHO has developed a global strategy and action plan on ageing and health with a vision of a world in which everyone can live a long and healthy life.²

Despite the short-term disruption of COVID-19, Victoria will soon resume its path of strong population growth in all segments, especially in the 65+ category, with this proportion of the population set to increase from 15.3 per cent in 2018 to 21.2 per cent in 2056.³ In raw numbers, more than 3 million Victorians will be over the age of 65 by 2056.

In the Commissioner for Senior Victorians' report last year, *Ageing Well in a Changing World*,⁴ the Commissioner identified that secure housing or accommodation and feeling safe in the community were the two most important factors for maintaining independence as people age. Ageing in place, with the right supports, was seen as a crucial element of ageing well, as well as maintaining a strong connection to community.

Retirement villages are ideal environments to facilitate all these factors for senior Victorians and the retirement living sector has a strong commitment to provide purpose-built, age-friendly housing and services solutions, that meet the needs and desires of this important part of the population and form part of a wider housing mix. As the retirement village industry does not receive any government funding to build this much needed purpose-built housing, it is critical that any legislative changes proactively encourage, rather than inhibit, the investment required to meet future demand.

The final report of the Royal Commission into Aged Care and Quality, due to its consumer focus related to ageing in place, outlines the important role retirement communities will be required to

¹ World Health Organisation, *Global Age-friendly Cities: A guide*, (2017).

² World Health Organisation, *Global Age-friendly Cities: A guide*, (2017).

³ DELWP, *Victoria in Future*, (2019).

⁴ Commissioner for Senior Victorians, *Ageing Well in a Changing World*, (2020).

fill, as policy shifts to supporting older Victorians to receive care and support in homes of their choice.⁵

The industry has also been innovative in catering for an increasingly diverse cohort with different needs and financial requirements. It is important that any reforms recommended proactively encourage, rather than prohibit the industry's ability to deliver innovation and choice for the consumer, and that affordability and housing accessibility is promoted rather than threatened.

Data published in the 2020 PwC/Property Council Retirement Census shows that two-bedroom independent retirement village units in Victoria sold for an average of 65 per cent of a median priced home in the same postcode.⁶ The relative affordability of retirement villages on entry is primarily a consequence of tenure arrangements (more weighted toward lease and licence arrangements) and the deferred payment model.

From a demographic perspective, an average of 62 per cent of all retirement village residents are female, of which it is estimated 68 per cent are single.⁷ Housing affordability is a primary determining factor for this cohort. Collectively, this data points to the essential role that Victorian retirement villages play in providing safe and secure age-friendly communities for older Victorians, and in particular single, older women. It follows, that without retirement villages many older women would be forced to live in less safe and less supportive environments, which would have a direct and significant health and social impact on those individuals.

Despite the important role retirement villages play in the provision of age-friendly communities, the operators receive no direct government funding and are generally required to make long-term investment decisions, which are highly susceptible to the risk of changing government regulation and tax arrangements.

While demand for downsizing options continues to grow in Victoria, investment uncertainty, the risk of regulatory change and low financial returns have collectively contributed to very limited growth in the number of new retirement villages across the state. The outcome of this situation is that older citizens are downsizing into homes that are not purpose-built for older residents, and that are not located in well-designed, age-friendly, environments. Consequently, the very clear economic and social benefits of retirement villages cannot be realised by many individuals or the community at large.

Research commissioned by the Property Council uses official government data to demonstrate that retirement villages are directly responsible for saving Australian governments at least \$2.16 billion each year through delayed entry of residents to aged care and through residents requiring fewer hospital and GP visits and shorter hospital stays. This research specifically identifies Australian

⁵ Royal Commission into Aged Care Quality and Safety, Final Report: Care, Dignity and Respect, (February 2021).

⁶ PwC, Property Council of Australia, *Retirement Census*, (2020).

⁷ Ibid.

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Institute of Health and Welfare data, which has been backed by independent analysis, showing retirement village residents enter aged care on average five years later than those going from a family home.⁸

These significant health outcomes are achieved because retirement villages are designed and operated to mitigate the two main factors that lead to the hospitalisation of older Australians: falls and depression.

Furthermore, continued investment into retirement living housing ensures many construction jobs in metropolitan and regional areas. An operational retirement village provides economic benefit through ongoing employment to support residents and the procurement of local goods and services.

⁸ Property Council of Australia, *National Overview of Retirement Village Sector*, (2014).

Option 1: Amend the RV Act to explicitly clarify types of housing which fall outside its scope, and/or more clearly define types of tenure.

Housing Types / Financial Models covered by the RV Act

It is important to recognise that there are other models of seniors housing or retirement living communities that fall outside of the scope of the RV Act – most commonly 'land lease communities' (LLCs) or residential parks.

RVs and LLCs address similar consumer markets and provide similar offerings in terms of:

- Housing types and community facilities and services: They frequently have the same housing product and lifestyle facilities, including two- and three-bedroom dwellings for independent living; common gardens; a central community clubhouse with spaces including communal lounges, dining, swimming pools, gyms, bars and cafés, and administration offices; and many LLCs and RVs are gated with a secured entry;
- Financial models: They both frequently charge an ingoing amount (for the dwelling ownership in an LLC; and for a lifetime lease / licence to occupy and use the dwelling in an RV). They both frequently charge ongoing fees, albeit in different structures and for different services, and, in many cases, they both charge a deferred fee upon exit from the community.

Additionally:

- RVs do not just house retired persons. Industry surveys show that many RV residents still work either full or part time;
- RV developers and operators are in direct competition with LLCs for new development sites and there is an overlap in the audience segment they appeal to;
- In practice, as with LLCs, RV residents are attracted to affordable community living where they feel safe and secure, and the cost of home and garden maintenance and other services can be shared (and reduced).

Consumers see RV and LLC housing types, facilities and financial models as similar products. However, at least at a first glance, it can be difficult for prospective residents to consider and compare these two housing types on a like-for-like basis because there are two regulatory regimes (RVs are governed by the RV Act; and LLCs are governed by the Residential Tenancies Act), each with a separate framework for consumer protection.

The Property Council supports general efforts to provide greater clarity to consumers about different seniors housing products to enable people to identify simply which ones are covered by the RV Act as opposed to other forms of legislation, so people can be made aware of their respective consumer rights. But we do not support inserting lines into the RV Act to explicitly exclude other models, given new models may emerge in the future.

Types of tenure covered by the RV Act

The various tenure (or contract) types in existence in retirement villages today are mostly a function of past innovation and evolution responding to changing consumer and industry growth needs. The Options Paper highlights operator feedback that 84 per cent of contracts are loan-lease or loan-license (commercially these two are very similar), which is reflective of new contracts being written in the current market today. Resident feedback indicating 43 per cent of resident respondents live in a strata unit is reflective of all existing contracts which were largely strata historically – the Property Council is aware of many cases of member organisations which have gradually turned strata title units in their villages into loan-lease or loan-license units upon turnover from one resident to another. The “disparity” does not indicate lack of clarity, but rather simply reflects the different base assumption upon which the survey question has been interpreted.

From a lived experience point of view, residents in a retirement village have the same rights, responsibilities and protections, particularly where multiple contract types may exist in a single village due to historical contract evolution and innovation. The recently introduced industry Retirement Living Code of Conduct directly addresses the lived experiences of residents in these circumstances and is the best tool by which to ensure well-functioning retirement villages.

The Property Council contends that simply “prescribing” different types of tenure (contracts) in the RV Act will not improve the lived experiences of RV residents and may have the effect of inhibiting innovation of new tenure types designed to better meet customer and operator needs.

For these reasons, the Property Council does not support defining and prescribing different tenure types in the RV Act. Rather, the Property Council recommends that the Retirement Living Code of Conduct be used to improve the lived experiences of residents where various tenures exist because of historical contract evolution.

Option 2: Amend the Act to provide an expanded set of purposes or objectives.

Purposes and Objectives of the RV Act

The NSW and Queensland Acts’ objectives and purposes essentially summarise certain provisions of those Acts. Whereas the existing “purpose” of the RV Act in Victoria is broad and, in very succinct plain English, covers the fundamental consumer protection objective of the RV Act.

The Property Council does not therefore support changing the purpose of the RV Act.

Option 3: Amend the RV Act to improve disclosure obligations.

Disclosure in advertising materials

In considering disclosure obligations, as acknowledged in the options paper, it is important to recognise retirement village products are not conventional property purchases or investments. They are not standard across the market, with varying features/benefits, offerings, financial

structures and tenures, providing choice to meet customer needs. Importantly, the time horizon for assessing a retirement village offering, and making a decision, can be a lengthy one. Prospective residents generally visit a village on multiple occasions, review disclosure materials, discuss details with sales/management, involve family, seek legal advice, meet other residents and attend onsite events (such as open days) before fully committing to a move to a village.

The current disclosure regime is tailored specifically to cover this unique customer 'journey' and does so very effectively. From initial advertising, to a Fact Sheet (as residents are starting to compare and assess villages), to a Disclosure Statement (when residents are more settled on a village preference and are investigating how the particular village offering applies to their unique situation/choice), to a Resident Contract (once their decision has been made and parties are formalising the already disclosed arrangement), with a further 21 days to properly review and assess the contract before finalising arrangements to settle and move to their new home.

The Property Council considers the current disclosure regime a very effective, structured, tailored, efficient and (where appropriate) standardised means of communicating what can be complex and differentiated retirement village offerings to prospective residents. It is for this reason that Victoria's current disclosure regime has been the leader and benchmark standard across all state jurisdictions.

The Property Council is strongly opposed to mandating that all applicable fees and charges (such as deferred payments) must be included as part of the accommodation price in advertising materials.

The various financial components comprising the overall 'cost' of retirement village offerings mirror the unique nature of the long-term arrangement residents and operators are entering, which includes both an accommodation aspect as well as, importantly, a lifestyle and community engagement overlay. That cost can be determined relative to different times along that lifecycle (e.g. when residents move into, live in and/or leave a village). It generally includes financial components (in some cases in the form of fees, in other cases not and incorporated in lump sum payments) such as:

- an ingoing contribution (price);
- deferred payments;
- ongoing maintenance fees (for village operations);
- refundable outgoing payments;
- sales costs;
- refurbishment obligations; and
- long-term maintenance requirements.

How each product and village packages these components and allocates responsibility for each (i.e. resident or operator) can be different and requires detailed description that is beyond the scope of simple advertising. To mandate inclusion of all this information in general advertising would result in potentially misleading, confusing and overly detailed (prohibitive) advertising in the market. It

would also have the consequence of rendering most forms of traditional advertising - e.g. radio, press and print media, television, outdoor advertising etc - which have limited time/space requirements, as no longer usable by village operators.

The Property Council believes the most appropriate and effective means of disclosing the detailed financial information of village offerings is via the Fact Sheet (see sections 9 - 13) - at initial village consideration phase - and then via a personalised and tailored Disclosure Statement once a potential resident is more settled on a village choice. Consideration should be given to potential enhancements to the public presentation of the Fact Sheet, especially where an operator provides more than one contract type within a village for a customer to choose from.

The Property Council also believes the current Victorian legislative framework governing advertising generally, particularly consumer protection laws in respect of false or misleading representations, provides sufficient regulatory safeguards for all parties involved.

In terms of responding to the two examples provided:

1. Discouraging 'large fees at the bottom of contracts' would help consumers understand costs - the Property Council does not believe this is a relevant concern as the format of retirement village contracts is currently prescribed and standardised under the RV Act with any fees or costs set out by all operators under the prescribed sections. It is not permitted to include fees (of whatever size) in other sections, such as at the end of the contract. In addition, prior to the contract being provided, fees and charges are clearly set out in prescribed sections of both the Fact Sheet and Disclosure Statement.
2. Promoting 'available tools' for residents to calculate total costs and compare villages - The 'available tool' for village comparison is the Fact Sheet (and, where required, a Disclosure Statement). This is one of the very purposes for which it was implemented by government under the 2014 RV Act amendments. The Property Council is supportive of, and in fact operators are currently required to, provide prospective residents with a copy of village Fact Sheets (and, where required, Disclosure Statements) and promote prospective residents to review, question and, when considering more than one village, compare, these important documents to help determine what product best suits them.

Furthermore, the statement in the Options Paper, that "operators should publish comparative rental rates" is not supported by the Property Council. The ingoing contribution is reflective of the market value of the property; it is **not** a rental payment. Therefore, attempting to distill the various components of an RV transaction into a theoretical rental arrangement is misleading.

Attempting to derive such a theoretical "rent" would require forecasts and projections of selling prices; future property prices; discounted rates (estimated rates of return) applied to estimated cashflows; and other assumptions. Estimating and projecting such assumptions will always result in misleading outcomes for residents and operators alike because they can never be known in

advance, particularly for the necessary projected 10+ years required. The current disclosure statement template also already provides for incoming residents to receive their Estimated Departure Entitlements after one, two, five and 10 years.

Material fact provisions

The Property Council does not support introducing material fact provisions into the RV Act. Such provisions are not appropriate for, nor would they provide additional consumer protections beyond those already embedded in, retirement village arrangements.

As acknowledged in the Options Paper, retirement village products are not a conventional property purchase or investment. They are not purely transactional - i.e. a one-off sale/purchase - but involve a long-term, ongoing relationship between resident and village operator where it is in the vested interest of all parties that the village offering (whether that be the RV unit, the community facilities, the lifestyle, the amenities, the sense of community and inclusiveness, the security, the access to care in some cases, to name a few) meets and hopefully exceeds residents' expectations.

The concept of a material fact was only recently introduced to the Sale of Land Act 1962 and has proven to be problematic in the general property market. It was introduced in the context of the limited disclosure obligations imposed upon a vendor under that Act, which are restricted to purely property issues. This is quite distinct from a retirement village, where an owner already has significant disclosure obligations which go far beyond those required under the Sale of Land Act.

The current material fact provisions are not clear and have caused significant difficulties for vendors in terms of attempting to determine what a purchaser would consider to be a material fact. It has led to inconsistent disclosure by vendors as different vendors have different views as to what a material fact is and whether it should be disclosed. It is submitted that this type of uncertainty and inconsistency in disclosure would not assist consumers in making an informed choice as to their decision to move into a retirement village.

As noted earlier in our response, the assessment process and disclosure regime for residents deciding to move to a village is already comprehensive and requires more ongoing involvement than a traditional property sale and purchase. This unique combination - of comprehensive assessment plus ongoing mutual relationship (i.e. delivering on what has been 'sold') - provides a much more effective and practical safeguard than incorporating a material fact regime.

Factsheets online

The Property Council is supportive of requiring village operators to make their Fact Sheets available online (e.g. via the village website) as a means of improving disclosure generally across the industry. Fact Sheets are the primary disclosure and comparison tool for retirement village products and hence their broader availability and access would be a positive.

However, the Property Council does not agree that it is appropriate nor practicable to require individual Disclosure Statements to be published online. By their very nature, Disclosure Statements are drafted and tailored on a transaction-by-transaction basis for each prospective resident, depending on the unit, price and specific departure entitlements of that resident arrangement. It would also be in breach of current privacy laws to publish resident information in this way.

Option 4: Improve understanding of retirement village payment models.

In the first instance, we need be clear on the various costs (and gains) when residents move into, live in, and leave a village. Once understood, it becomes apparent that a single focus on defining deferred fees to improve the understanding of retirement village payment models is profoundly misleading to incoming residents.

When entering a village, there is an ingoing contribution payable by the resident. This sum is often thought of as the market value of the unit, but that is not always the case as various operational models exist which vary the ingoing contribution either up or down. It is however a capital sum which allows the resident to occupy the unit.

The retirement village concept provided (and still provides) an opportunity for these incoming residents to sell their often-large family home, downsize and purchase a new retirement living unit, and release significant equity to supplement their pension and/or superannuation. In order to enable the release of significant home equity, the retirement village industry innovated the "Deferred Payment" financial model (often described as "deferred management fee"). Put simply, incoming residents pay part of the retirement villa purchase price up front (ingoing contribution) and part of the purchase price when they leave the village (the "Deferred Payment", sometimes described as deferred management fee). The 2020 PwC/Property Council Retirement Census shows that two-bedroom independent retirement village units in Victoria sold for an average of 65 per cent of a median priced home in the same postcode, demonstrating the nature and benefits of the deferred payment model.

This deferral of payment of part of the purchase price makes the villa affordable upfront relative to equivalent surrounding house prices and enables significant equity to be released to supplement retiree living costs. According to the Australian Bureau of Statistics, the average 75-year-old today holds \$330,000 in investable assets outside the family home, and two-thirds of people post-retirement rely on a government pension as their main source of income, so the ability for village operators to provide incoming residents the option of an affordable entry price is critical to the business model, resident quality of life and reduced government pension costs (with most incoming residents entering as part-pensioners due to the release of equity from the family home).^{9 10}

⁹ ABS, *Household Income and Wealth, Australia*, (12 July 2019).

¹⁰ AIHW, *Income support payments for older people*, (11 September 2019).

When living in the village, residents incur two different costs: monthly levies and a Long-Term Maintenance Fund (LTMF), alternatively called a Capital Replacement Fund or Sinking Fund.

Monthly levies cover the costs of staff, the operation, insurance and maintenance of the community infrastructure and can contribute to rates and utilities. It is little understood that various operational models exist where a "risk pooling" effect can be provided (like community rating in health insurance) and what would ordinarily be resident costs for repairs and maintenance within units, such as replacing light-globes, hot water services and appliances, can be covered by the monthly levies. Dependent upon services provided, levies can be often in the range of \$300 to \$1000 per month for independent living residents and up to \$2000 per month for Serviced Apartment residents.

The LTMF is utilised for the irregular but important upkeep of the village such as preventative maintenance (painting), replacing plant and equipment, and replacing or upgrading community facilities (e.g., re-tiling a swimming pool). The LTMF is funded through either a capital sum upon entry or departure of the village (e.g., 3 per cent of the ingoing contribution) or a monthly fee (e.g., 8% of the monthly levies), or a combination of the two. Not always do the resident-funded capital replacement funds solely provide for replacement costs as, in many instances, village owners also provide capital for such items and improvements.

The responsibility for maintenance, repairs and replacement of capital items is linked to the financial model applicable to individual villages.

The range of financial models vary widely providing residents with a choice of accepting higher or lower risk and responsibility for such costs, in return for lower or higher other charges applicable to living in a village. Some residents prefer a more 'user pay' model where they control and are responsible for most repair, maintenance and replacement of capital items, in return for lower other charges. Other residents prefer more certainty and do not want to worry about any repair, maintenance or capital items, and are prepared to pay higher recurrent fees or LTMF fees, or not participate in any capital gain when departing the village, for this certainty.

In order to enable this degree of resident choice, some village financial models provide for all maintenance, repairs and capital items to be paid directly by the resident, usually coupled with lower recurrent charges, lower sinking fund fees, and/or higher capital gain share to the resident. In other villages, the owner/operator may pay for most or all maintenance, repairs and capital items, however this is typically coupled with higher other fees and a lower capital gain share.

When departing a village, residents are required to pay the owner/operator any deferred payments, which are typically 20 per cent to 35 per cent of the ingoing contribution or outgoing price (next ingoing contribution), which can be offset in part (or even in full) by a share of capital gains. The sharing of capital gains and losses is only one of the key financial elements that provide choices for RV residents, and that also provide levers that determine the financial viability of retirement village owners and/or operators.

Who pays (resident or operator) for renovation or villa upgrade costs is usually linked to capital gain sharing. By way of example:

A resident pays a \$500,000 ingoing contribution and enters into a contract which has a deferred fee of 30 per cent of the new ingoing contribution. The results in the outgoing resident receiving 70 per cent of the capital gains and incurring 70 per cent of the renovation costs. With a length of stay of 15 years and property growth rate of 5 per cent p.a., a \$100,000 renovation realises \$1,050,000 upon re-sale. In this example, the outgoing resident has an exit entitlement of \$735,000, less \$70,000 share of renovation costs, being a net payment to the outgoing resident of \$665,000, an increase of \$155,000 over their ingoing contribution.

Given the above-described resident journey and total consumer transaction applicable to buying into, the cost of living in, and the costs associated with leaving a retirement village, it would be misleading to focus only on defining the deferred payment component (which only addresses the 'buying in' element and is only one part of the actual consumer transaction).

Due to the desire of operators to match the financial model to the needs of prospective residents, the Property Council strongly recommends enhanced pre-contract disclosure to assist incoming residents. The Property Council does **not** support alternatives such as:

1. Creating uniform or standardised fee structures, which in simplifying may aid understanding but deny the opportunity for many residents a choice of contract form to suit their financial and personal circumstances. The over-simplification through standardised fee structures is in essence is a form of age discrimination - infantilising older people by assuming that a 70-year-old no longer has the capacity to make financial and quality of life choices or even select financial and other advisers to assist them in decision-making.
2. Expanding educational materials: while in principle this is a meritorious proposition, their utility may be moderated by the delay in their development will always lag the innovation of the sector.
3. Introducing mandated yearly contract check-ups, which will add significant cost to operators to implement if it is to avoid misleading residents. Operators will be required to undertake property inspections to assess the required reinstatement and refurbishment costs for those residents that share in such costs, in addition to making assumptions on property prices by unit type, even where some unit types may not have transacted during the last 12 months. Even if this additional cost was deemed acceptable, the resident benefit is likely to be immaterial compared with the current process whereby existing residents can be provided with an exit entitlement estimate upon request for those who actively seek it, which the industry does and will continue to support.

Please note also that the "Issue analysis" under Option 4 is factually incorrect in the following areas:

Loan-lease or loan-license model: The first sentence states that *"Operators retain....any capital gains"*. In fact, most operators share capital gains with residents and in many cases, residents receive 100 per cent of capital gains, not operators.

Deferred Management Fee (DMF): The second sentence states that the DMF *"...is used to fund village expenses that cannot be recouped through other charges"*. The reference to a DMF is factually incorrect and misleading. Also, the definition of DMF in the Options Paper is factually incorrect (and potentially misleading) where it states in the last sentence of the definition that *"despite its name, represents deferred rent"*. DMF has never been a rental amount, neither deferred or otherwise; it is part of the purchase price that reflects the market value of the dwelling. Payment of this component is deferred to when the resident leaves the village to improve affordability upfront.

Option 5: Reform the contract process.

We note in the options paper the reference to the 2014 reforms to contracts and the comments in the options paper that there was consensus amongst residents, operators and other organisations that contracts remain too complex.

The Property Council agrees that despite the intention of the 2014 amendments to assist in developing simpler contracts, they have in fact led to more complexities and voluminous contract terms. In particular, as the contract templates comprise 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. Terms are repetitive as one subject (e.g., the exit entitlement payment and timing) are addressed in the prescribed heading section, as well as the general operator terms and conditions section. The existence of repetitive terms means it is difficult to find the relevant term in the document as multiple clauses need to be considered. Repetitive terms also increase the length of resident contracts. Lengthy resident contracts have subsequently increased in volume, while not necessarily being any simpler or easier to understand for consumers.

The Property Council has developed a model contract with a summary page at the front of the document, and with the balance of the document set out in the order in which a resident's experience of engaging with a village community takes place. It deals with pre-entry and entry matters, rights and obligations applying while the resident is living in the village, and those rights and obligations that apply after the resident has vacated the village. We enclose a copy of the model contract for your reference (**Appendix 1**), as well as the accompanying contract guidelines (**Appendix 2**). We believe that this provides a more logical, simple layout for the contract, and has been written in plain English with the consumer at the forefront of our thinking, to assist in simply understanding the contract's contents.

It is also important that any regulation of contracts recognises that it is important for consumer choice that village operators are still able to offer a variety of financial models as part of their village offering, that can be tailored to a resident's financial circumstances. There is an increasing trend in

village communities, including those operated by not-for-profit operators and small and large corporate operators, to provide a variety of financial models that can be chosen to suit the resident's circumstances. An ability to innovate and provide a choice of financial models must be preserved.

Attached to this submission is a case study template we have provided to a wide selection of our retirement living members, where they outline the details of their respective models, which we enclose to demonstrate the variety of options available to current and potential residents (**Appendix 3**).

Response to suggested contract reforms

a) requiring contracts to be in plain English

We support an option to require contracts to be in plain English, but we do not believe this alone will resolve the issue around complexity of contracts. Of those residents who found additional information requirements in contracts unhelpful, only 30 per cent expressed a preference for simpler language, as noted on page 36 of the Options Paper.

While we believe it would be of assistance to use plain English and support developing tools to assist with this, we do not support development of prescribed contract clauses, given the difficulties with the prescribed contract clauses as they currently exist in the standard form contract.

b) working with advocacy and legal assistance services to improve knowledge of contracts

We support the option of working with legal and advocacy stakeholder groups to improve the knowledge of retirement village contracts, in order that legal and other services can be more readily available to residents with respect to advice on these contracts. Our members recommend that residents obtain legal advice before signing any retirement village contract, including certifying that they have understood the terms of their contract in the event they have not sought legal advice.

There is a significant amount of work required in order to develop the skills required for the services to be more readily available to residents. The Parliamentary Inquiry into Retirement Housing in 2017 made a recommendation to develop professional accreditation for specialists in retirement housing and provide training to general law practitioners to improve their understanding in this area of law. However, we are unaware of any advancements in this area in the four years since, and the Property Council's own efforts to engage the Law Institute of Victoria previously have been unsuccessful.

The Property Council is keen to assist in programs and initiatives to improve the skills and knowledge in this area. We recommend the Department, the Property Council and Residents of Retirement Villages Victoria work together to examine ways to increase the number of lawyers and financial planners that understand retirement villages, to ensure potential residents have access to accurate and affordable advice.

c) introducing a requirement that residents must get legal advice before signing contracts

The industry strongly supports incoming residents obtaining independent legal advice before signing a contract and agree that this would increase the extent of understanding for consumers prior to entering into a contract. However, there can be issues with obtaining the necessary legal expertise in retirement living law (as noted above) and there are associated cost implications with this. We would support further work being done to ensure this advice is more accessible to incoming residents before legal advice is mandated. We recommend that any reform in this area at least include an 'opt out' option for incoming residents to actively declare that they did not seek legal advice before signing a contract.

Option 6: Amend the RV Act to clarify all maintenance and repair requirements.

The responsibility for maintenance, repairs and replacement of capital items is linked to the financial model applicable to individual villages. It can be a common misconception that residents are responsible for maintenance and owners are responsible for capital replacement. This is not the case in reality.

As explained in our response to Option 4, the range of financial models vary widely providing residents with a choice of accepting higher or lower risk and responsibility for such costs, in return for lower or higher other charges applicable to living in a village.

Accordingly, defining or clarifying maintenance, repairs and capital items is only relevant to the specific village, and therefore should be dealt with in the contract that residents enter into for a specific village of their choice. To prescribe and/or define these items (and who is responsible for them) in the legislation, would remove resident choice as to which model they prefer.

However, it may well be appropriate that each village should better disclose the details of who is responsible for maintenance, repairs and capital works in the Fact Sheets and Disclosure Statements applicable to their individual village. With better disclosure through these existing mechanisms, prospective residents will be more informed before they exercise their choice of village.

Clarifying responsibility for repairs and maintenance

In relation to repairs, maintenance, and capital items, village operators offer a range of contracts and financial models addressing the wide range of consumer needs and choices. Therefore, "clarifying responsibility" by defining or prescribing just one approach would remove consumer choice and stifle operator innovation. For example, there is currently a spectrum of offers / choices including:

- Some operators retain full responsibility for all repair, maintenance, capital items replacement, upgrades, etc., and in return the residents typically pay higher amounts to sinking funds or monthly levies for this certainty; and
- Other residents prefer to choose villages with lower fees and levies where operators directly link responsibility for repairs and maintenance, etc. to who uses and benefits from

enjoyment of the relevant asset. For example, inside the resident's unit where only the resident of that unit benefits from use, the cost of all repair and maintenance is the responsibility of the relevant resident and paid directly by them. Similarly, repairs and maintenance of communal areas or assets that are enjoyed and used by all residents, is the responsibility of the community as a whole and therefore paid from the monthly charges or sinking funds paid by residents.

Clarifying the boundary between common property and a resident's unit will only be useful depending on where in the above spectrum their village sits. It would make sense for these boundaries to be clarified and disclosed in the Disclosure Statement where the village contract allocates different responsibilities for each. Such disclosure would inform prospective residents prior to committing to a particular village.

Asset management plans, maintenance and capital replacement timeframes, and reporting on progress

Many village owners/operators already prepare short, medium, and long-term asset maintenance and replacement plans, particularly in relation to larger communal assets. The plans do tend to be general in nature, either as an expectation of a dollar figure to be spent approximately each year spread across the various assets or alternately identifying larger capital items that are likely to need major repair or replacement based on current age.

These plans are often discussed with residents' committees, however we do not support a more formal legislative approach to this area, and there are a number of reasons for this.

Firstly, as has been demonstrated elsewhere, the ultimate responsibility for the funding of repairs, maintenance and replacement in a village can vary widely based on the village financial model and the residents' preferred choice to suit their needs. As a result, such funding may be from village funds or owner funds, and formal reporting on these items may or may not be appropriate for a given village financial situation.

Secondly, the current plans tend to be general in nature, and should a legislative framework be put in place, some residents may perceive such general plans to be set in stone, leading to expenses or costs that are not warranted and potentially lead to inefficient and wasteful spending of either resident or owner funds. For instance, if a published plan indicates that a given item has a life expectancy of 10 years, some may interpret this to mean it must be replaced after 10 years, even if it is still perfectly serviceable, as capital life expectancies are based on averages, not absolutes.

Lastly, there needs to be recognition of the costs involved in any formal system of reporting. The current asset management reporting obligations introduced in NSW in February this year require operators to provide information that is not readily attainable, such as the costs of proposed capital replacement, and the recently introduced asset threshold puts a huge reporting burden on village staff and operators. These recent NSW changes are currently under review.

Development of industry guidelines

The Retirement Living Council has engaged Rider Levett Bucknall, an experienced retirement living quantity surveyor, who has undertaken work with our members to review and develop an updated draft retirement village expenditure guideline for Queensland. Rider Levett Bucknall is also assisting the RLC in developing draft guidelines for other jurisdictions, including NSW. The Queensland guideline has been positively viewed by both the industry and the Queensland residents association.

The aim of this project is to:

- a. Bring clarity and transparency to the issue of village expenditure to reduce disputes between village operators and residents;
- b. Codify the existing law and caselaw about retirement village expenditure into one document; and
- c. Produce a publicly available, voluntary document which assists both retirement village operators and residents understand their responsibilities and obligations.

This guideline is currently under development and we would be pleased to offer a briefing to provide more detail on its contents and timeline to assist the review.

Distinguishing between maintenance and capital expenditure

Maintenance comprises annual expenses to maintain existing facilities and services. Capital expenditure items, however, arise through residents' longer-term use of either their unit or communal capital assets (e.g., the clubhouse). The longer-term use and enjoyment by residents cause depreciation over time and, eventually, requires one-off replacement when the capital item is depreciated beyond its useful life (e.g., replacement of clubhouse air-conditioning infrastructure, or repainting of the clubhouse every 8 years).

Again, there is a spectrum of contractual and financial models to allocate responsibility for maintaining and replacing capital items. This range of approaches has been innovated by operators over time to provide consumer choice to meet the range of resident financial positions and needs, for example:

- Some operators absorb fully the cost of replacing capital items in the village and, in return for this certainty, residents typically pay higher amounts to their LTMF (or a part of the deferred fee may be apportioned to capital replacement); and
- In other villages, residents may contribute lower amounts to such capital funds but may pay directly for replacement of certain capital items used mostly by them individually (e.g., their hot water service). Importantly, in this more user pay model, it is the resident use and enjoyment that gives rise to the responsibility to replace capital items when fully depreciated.

The Property Council does not agree that distinguishing between maintenance and capital expenditure should be used for the purpose of prescribing responsibility for such costs, because this will stifle innovation and reduce the range of consumer choices that we have highlighted above. A better approach is to enhance the disclosure of the particular allocation of responsibility for maintenance and capital replacement in the Fact Sheets and Disclosure Statements. This will enable continuing innovation and will enhance (informed) consumer choice to meet individual resident financial needs.

Clarifying maintenance charge increases above Consumer Price Index

The Property Council supports clarifying when and how maintenance charges can increase by more than Consumer Price Index (CPI). The guiding principle must be that where the owner/operator has limited or no control over cost increases of certain items covered by the monthly services and maintenance charge, then it should not be constrained by the CPI increase limit. The regulations already correctly exclude (from the CPI increase limit) wages and salary increases imposed by Awards.

The Property Council recommends that annual insurance premium expenses also be excluded from the CPI increase limit because the insurance market has forced villages to become price takers of insurance in recent years. Village operators have incurred recent annual increases in premiums of up to 70 per cent when CPI has only increased by 1 per cent to 2 per cent. These significant increases are having a detrimental effect on village operating viability and on the ability for villages to raise sufficient services and maintenance funds to operate the village in a sustainable manner.

The Property Council recommends that the current CPI increase limit should only apply to village operating costs that are within the control of the operator / manager. The principle of reasonable cost recovery should apply when setting annual village budgets and the related service and maintenance charges paid by residents. This principle applies to strata title villages that operate through an owner's corporation and should equally apply in loan-lease and loan-license villages. It is unreasonable for operators to absorb significant increases in expense items they have no control over. Residents should pay for the reasonable cost of running the village they enjoy.

Option 7: Amend the Act to extend the cooling-off period and/or introduce a settling-in period.

The decision to move into a retirement village is a significant one for residents and those closest to them. The decision also has material implications for operators as well as outgoing residents in terms of certainty, time, cost and financial assurance. Accordingly, a level of certainty and fairness for all parties involved is required. The Property Council believes that current regime provides just that.

The Property Council does not believe an extension of the current 3-day cooling off period is warranted. Unlike other products and services, retirement village contracts include a 21-day consideration period in addition to the 3-day cooling off period, which is a significant period for a

prospective resident to seek independent legal advice and consider their position prior to entering the formal contract. In practice, residents are likely to take a far greater period than the mandated minimum 21-days to fully consider their decision (as outlined in our response to Option 3).

The Property Council is firmly of the view that offering settling-in periods (and if so for how long) should remain a commercial choice for operators as part of their overall product offering rather than being mandated.

For village operators, mandating settling-in periods will create significant contractual, business, operational and financial uncertainty for many villages in addition to further material costs and business disruption. We would also be concerned about the impact of a mandated settling-in period on the previous resident of the unit, as such a move would change the timeframe on their receipt of funds from the sale of the unit.

The sales process for a retirement village unit is an extensive, comprehensive and generally lengthy process of disclosure, interaction, village due diligence, meeting the community, selecting a unit, making resident changes and adaptations to that unit, legal documentation, the incoming resident selling their premises and then settling into village life. The sales process provides a significant period and ample opportunities to seek advice, review information and make any additional enquiries needed to make an informed decision about moving to a village.

In addition, the costs and broader impacts to 'unwind' this decision once a resident has moved into a village can be significant for many villages. For example:

1. reinstatement costs to the unit particularly where residents have customised features, finishes, fittings and additions (including pergolas, landscaping, reconfiguration of layouts etc);
2. resales and marketing costs;
3. costs to the outgoing resident, due to delays in settling their payout as the new resident reneges their decision;
4. holding and associated costs resulting from working through the extended sales process again (6-12 months), including funding vacant unit costs and village resident maintenance charges); and
5. balance sheet impacts on village asset value (as valuers assess village businesses on a discounted cashflow basis so extended turnover times for units (due to reneged sales and reselling) decreases real value), village financing and village capacity to attract further investment.

For those operators electing to offer settling-in periods under their commercial terms, they generally do so by mitigating, passing on and/or absorbing these costs as part of their overall product and financial offering (e.g. permitting standardised refurbishments only upon entry as opposed to resident choice, requiring residents to pay sales costs as opposed to the operator, etc).

Settling-in periods form part of the individual village offering and are a point of differentiation between villages, it also provides prospective residents with further choice when assessing different village models.

Option 8: Amend the timeframe in which ongoing fees can be charged to residents leaving a retirement village.

The outgoing resident's contribution towards the ongoing village overheads is generally restricted (for non-owner residents at least) to a reasonable period (e.g., maximum of six months from vacant possession for maintenance fees). As village operators have a continuing obligation to deal with ongoing village overheads upon a resident's departure, this seems fair. This is different from a person living in a residential strata unit where the former resident or their estate are liable for strata levies, water and local council rates until the sale and settlement of the property.

Operators are not able to make a profit from recurrent charges therefore it is unfair and financially onerous that they are liable for any recurrent fees and charges prior to the six months that is currently in the legislation. If an operator has multiple long term empty ILUs this can be financially onerous for the operator.

With respect to LTMF contributions, these should be ongoing until the sale and settlement of the resident's unit. These fees tend to be a lot less than maintenance fees, and the charging of sinking fund fees until settlement is consistent with up keeping a home outside a retirement village, until the sale and settlement of that home.

Option 9: Clarify reinstatement and renovation requirements for RV residents and operators.

Residents can easily compare financial models through the fact sheet and Disclosure Statement and then make an informed choice. However, in principle, Property Council believes that the resident should pay for the cost of reinstatement and should not pay for the renovation or upgrade if not participating in any capital gain. 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.

Currently in Queensland, the resident and operator pay for the renovation (as opposed to reinstatement) in the same proportion as they share the capital gain; otherwise, it is borne by the operator. In NSW, the resident is liable for the cost of reinstatement (fair wear and tear exempted) but not liable for reinstatement if not sharing in any capital gain. It should be that the legal contract is the guiding document that determines who pays for the reinstatement and renovation of a resident's unit, and as all financial models are different, then the reinstatement and renovation should not be singled out in isolation.

The Property Council recommends that the appropriate way to retain consumer choice and encourage continual innovation, is to require enhanced disclosure of village-specific requirements and responsibilities for reinstatement and/or renovation in the Fact Sheet and Disclosure Statement.

Option 10: Clarify residents' rights in the sale or re-lease of retirement village units.

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

Victorian regulations reflect usual market practices for the sale of residential property generally, by giving the outgoing resident (not the village owner) control over the key elements of price setting, sales process and acceptance or rejection of offers. These key elements, that the resident controls, are the elements that usually determine if a dwelling sells in a reasonable timeframe. The Victorian regulatory framework is sensible and places both the rights and responsibilities for the sales terms into the hands of the resident, the same as with any other home in the community.

An owner resident has full control to appoint an agent, set the sale price and engage with that agent in relation to the sale process in the same way that an owner has this control and engagement in selling a residential property in the general property market.

A non-owner resident has the benefit of the provisions set out in the Regulations. Schedule 1 of the Regulations provides that:

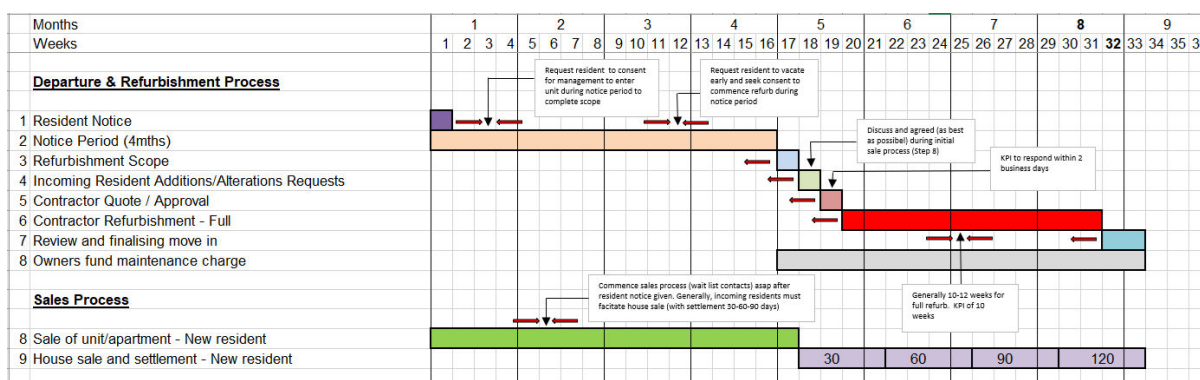
1. the outgoing resident has the right to choose and instruct the owner to appoint, an estate agent to 'sell' their dwelling;
2. the outgoing resident can at any time instruct the owner a price or price range in which they wish offers to be invited for their dwelling and the owner must only invite offers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

If the resident goes into aged care, the operator may have to pay a Daily Accommodation Payment (DAP) to assist the resident in financing their move to aged care but is reimbursed when the dwelling is sold and settled. This Regulation in relation to funding the resident's move to aged care was considered by Consumer Affairs Victoria when it went through a comprehensive review in 2017, and has achieved a fair balance between the operator and the resident.

With respect to the sales process itself, the selling of a retirement village dwelling is much more complicated and takes much longer than the sale of a normal residential dwelling. This is a by-product of the need to educate prospective residents and is not under normal circumstances a result of the operator delaying the sale. Prospective residents (and often their family) often seek education

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about village living and the associated rights and obligations of living in a community. The sales staff need to understand their obligations under the Retirement Villages Act and are required to be up to date with their knowledge of the RV Act. Sales staff also need to be patient in answering all queries from prospective residents. We have many examples of the sales journey taking several years from initial enquiry. We have enclosed a diagram of a typical sales journey that is representative of many village operators' practices (also included as **Appendix 4**).



A retirement village sales journey

Though the resident has the right to use an external agent, it is our experience that the village operator is still required to have significant involvement even if an external agent is used. The pivotal role that operators play in the sale stems from the fact that external agent requires education about the RV Act (including disclosure obligations) and sales process, so that the incoming resident is well informed. The external agent can also lack the experience to sell the retirement village product to senior Australians and does not often have the patience required to sell to senior Australians. Therefore, to ensure prospective residents are well informed, the operator should always be involved in the sales process notwithstanding the fact that an exiting resident can choose to involve an external agent as well.

The Property Council does not support a requirement that there be a sharing of costs or any restriction upon the operator charging a fee for sales and marketing services upon the resale of the unit. An estate agent is entitled to charge a commission for their services in the sale of a unit and usually also passes on the full marketing costs for the sale of the property. A village operator should not be disadvantaged by imposing restrictions on the costs they can charge, other than as currently set out in the Schedule 1 provisions.

Option 11: Regulate share of capital losses.

Capital gains and losses

The sharing of capital gains and losses is only one of the key financial elements that provide choices for RV residents, and that also provide levers that determine the financial viability of owners/operators. The other key financial elements and levers that must also be considered include:

- who sets the re-lease asking price (i.e., the unit selling price) and at what level;
- the deferred payment terms in the contract, and whether it is applied to the incoming price (contribution) or the outgoing price (next incoming contribution);
- who pays (resident or operator) for renovation or villa upgrade costs, i.e., costs over and above 'make good' or 'bring to marketable condition' clauses; and
- the existence of any guaranteed buy-back contract terms.

All these financial elements must be considered in combination together, rather than addressing just one element (capital gain and loss sharing) in isolation, in order for a stable and viable RV industry to exist and grow.

Operators offer choices of different combinations of the above financial elements to residents, and some operators offer a range of such contract choices within a single village. It is incorrect to say that "the operator therefore determines how capital gains and losses are distributed". The range of financial models offered by operators is evidence of innovation over recent years to provide choice to residents in the context of their individual financial position and needs. It is this market interaction between prospective residents and operators that determines the range and combination of financial elements offered, including capital gain and loss sharing.

The Property Council recommends that allocation of capital gains and losses should **not** be regulated. To do so, particularly in isolation, does not consider all of the key financial elements in a RV transaction, could jeopardise operator viability, would stifle contract and financial model innovation, and would reduce choice for residents. The retirement village model continues to evolve and change and has attracted significant institutional investment over the last decade. However, this capital needs a return, and it is difficult to continue to invest in a product where consistent legislative change causes destabilisation and uncertainty. The retirement village model is made up of multiple parts and is vulnerable to a change where a part of the model is subject to new legislative requirements without consideration of the other parts.

The Property Council supports optimal disclosure of information to prospective residents, but this must include disclosure of the full range of the actual financial elements noted above. Currently, all these elements are disclosed in the Fact Sheets and Disclosure Statements issued to residents under the RV Act.

The Property Council does **not** support these financial elements being used in a "Calculator" that attempts to distill the outcomes into a theoretical equivalent 'rent' amount. The NSW Calculator tool depends on forecasts and projections of selling prices, future property prices, discounted rates (estimated rates of return) applied to estimated cashflows, and other assumptions. Estimating and projecting such assumptions will always result in misleading outcomes for residents and operators alike because they can never be known in advance, particularly for the necessary projected 10+ years required. Also, importantly, the transaction underlying a RV contract is akin to purchasing a house and is not a rental transaction. The ingoing contribution is reflective of the market value of the property. Therefore, attempting to distill the transaction into a theoretical rental arrangement is of itself misleading.

Option 12: Introduce a requirement to repay a resident's exit entitlement for RV units not re-sold within a specified timeframe.

The statement on the bottom of page 54 in the Options Paper does not fully outline the current Victorian legislative requirements on this issue. On contracts entered after 2006 on a loan-lease or loan-license arrangement, operators are required to repay a resident within 6 months of departure as a general rule, when certain regulations are not followed. If the dwelling is not sold, operators are required to pay within 6 months if operators do not allow the exiting resident to set the sales price (acting reasonably) and choose the sales agent. This current framework protects residents by treating residents like owners and allows them to have control over the sale. The industry has found this operates effectively particularly in conjunction with the Aged Care Rule.

The Aged Care Rule provides additional protection for residents, one that is not given to other seniors in other forms of housing, which require retirement village owners, for contracts entered from August 2017, to pay the Daily Accommodation Payment (DAP) for residents that have moved into an aged care facility before their dwelling has been re-leased. The amount that can be paid is up to 85 per cent of the value of the dwelling minus contractual obligations to pay certain fees.

Contracts entered prior to August 2017 the retirement village operators were required to pay a lump sum Refundable Accommodation Deposit (RAD). In 2017, CAV in consultation with industry, acknowledged that this placed unreasonable financial pressure on operators by requiring them to fund residents' RAD payments before their retirement unit had sold and while the resident's family still controlled the selling price.

The framework since the amendments to the Aged Care Rule in 2017 works effectively to achieve the right balance between the operator and the resident and resulted in senior Australians being able to enter residential aged care without financial hardship.

It should be noted in a Victorian parliamentary inquiry completed in 2017, mandatory exit entitlements were not identified as an issue that needed to be addressed. In fact, the inquiry acknowledges the impacts a mandatory payment would have on the industry and investment by

diverting cash flow and noting that making operators financially vulnerable harms both operators and the residents living in a community.

Because in Victoria residents (or their estates) can control the sale process for their unit (i.e., setting selling price and appointing the selling agent), the Property Council believes the current Victorian legislation in this policy provides adequate and appropriate protection for residents, and as such, the current settings should be retained.

If there are any proposed amendments to these provisions, proper economic modelling needs to occur to ensure any legislative changes are based on a clear and quantified understanding of the economic and social costs to residents, operators, the health system and the wider Victorian community, as is being undertaken by the Western Australian Treasury as part of the WA RV Act review.

Background on unintended effects of exit entitlement reform proposals

Experience in other jurisdictions demonstrates the importance of clearly articulating policy issues that need resolution, and then working with industry to find the most effective solution. Any reforms that seek to unilaterally alter contractual arrangements lawfully agreed between an operator and resident would have detrimental financial impacts on operators. Retirement village operators have entered lawful contracts with residents in good faith, and over many decades the industry has structured commercial and financial arrangements on this basis. Furthermore, the unplanned strain imposed on operators through mandatory buy backs could lead to financial collapse which would be highly disadvantageous to all residents in such villages.

Queensland and South Australia

There is a substantial body of evidence from Queensland and South Australia to demonstrate that the introduction of mandatory timeframes for the repayment of exit entitlements and the unilateral legislative amendment of existing resident contracts has significant implications and a negative impact on investment in retirement villages. The Property Council understands as of the end of 2020 there have been no redevelopment plans submitted to the Queensland Government, in accordance with legislative provisions enacted alongside the statutory exit entitlement arrangements in 2017.

In South Australia, where the regulator keeps detailed records of the number of retirement villages and residences, there has been a net decrease in the number of retirement villages since mandatory exit entitlement arrangements were legislated. Through this same period, the over-65 population in South Australia has grown by 14 per cent.

Before any change to exit entitlement timeframes is considered, proper economic modelling needs to occur to ensure any legislative changes are based on a clear and quantified understanding of the economic and social costs to residents, operators, the health system, and the wider Victorian community.

It should also be noted that mandatory exit entitlement payments will likely have an immediate adverse impact on continuing residents, including:

- Anxiety caused by being in a village operated by a financially distressed operator, or managed by a voluntary or government appointed administrator;
- Capital being diverted from incomplete building projects and village upgrades, which would benefit residents, to fund mandatory exit entitlements; and,
- Loss of capital value as operators discount ILUs to generate liquidity.

NSW

The Options Paper indicates that mandatory exit entitlements are common in NSW. This is not the case. Only residents who are entitled to receive less than 50 per cent of any capital gain are entitled to receive an exit entitlement payment six months after providing vacant possession. These contracts are mainly seen in the church and charitable retirement living organisations.

However, most contracts held in NSW are registered interest holders, and where they are entitled to greater than 50 per cent of any capital gain and have control over the sale and the setting of the sale price of their ILU, they are not entitled to receive a mandatory exit entitlement payment within six months after vacant possession.

In NSW, once the prescribed timeframes are reached and the property remains unsold, former residents have the right to apply to the Secretary of the Department for an order requiring the operator to pay the exit entitlement if they believe the operator unreasonably delayed the sale of the property.

To ensure retirement living operators can financially support these new reforms, the NSW policy is resident focused, meaning estates and beneficiaries are not entitled to apply for an exit entitlement payment.

Victoria

The industry is aware that a few residents have claimed that operators are delaying the sale of units and preferencing the sale of new units over the existing units. To date, these claims have been based on anecdotal evidence and are not supported by actual data. There are two key reasons that can cause delays in achieving a re-sale of existing units, both of which are controlled by the outgoing resident or their estate. These are:

- setting the selling or reserve price too high; and
- delays (particularly with deceased estates) in delivering up vacant possession so that pre-sale refurbishment can commence.

The fact is Victorian retirement village operators are more incentivised to resell existing units. Various provisions in the RV Act were specifically designed to ensure operators are as equally motivated as former residents to sell an existing unit. This includes the ability for a resident or their

estate to employ the services of an external real estate agent and the operator only being entitled to recover six months of recurrent charges: after this time if the premises is vacant, the operator is liable for the cost until it is relicensed.

In relation to owner-occupier contracts, neither South Australia or New South Wales exit entitlement policies apply to strata title, freehold or trust arrangements, as it recognises the choice made by those residents to maintain full ownership of the form of tenure. An exiting freehold resident's payment comes directly from the incoming resident purchaser.

Note: we have consolidated our response to the following options into this section due to the overlapping themes contained within them.

Option 13: Clarify and enhance internal dispute resolution procedures.

Option 15: Amend the Act to prescribe rights and responsibilities for RV operators and residents, supported by a mandatory Code of Conduct.

Option 17: Improve staff qualifications.

Option 18: Improve industry practices and resident outcomes across retirement villages by strengthening existing voluntary accreditation or developing a mandatory accreditation scheme.

Internal dispute resolution processes

The Property Council supports internal dispute resolution processes that enables residents and operators to resolve disputes in a low cost, non-adversarial and timely manner.

The Property Council supports clarifying the current ambiguity in the RV Act in relation to when a complaint or dispute has arisen, as defined under the RV Act. A request for an operator to provide a service should not amount to a complaint or dispute; it should only be treated as such where a request has been made and the complainant is not satisfied with the action taken, or there is a lack of action by the village operator. We would support development of this clarification through the ongoing stakeholder consultation process.

The Property Council is comfortable with the option for removing a resident committee from the internal dispute resolution process, although we still consider that there is a role for a resident committee to play in dealing with resident-to-resident disputes, provided there is no conflict of interest and the complainant is comfortable with the committee dealing with the dispute at that time. It is important to recognise that resident committees vary in structure and size, and that some committees may have more capacity to resolve disputes than others.

The Property Council is supportive of utilising the Good Practice Protocols to further assist in the resolution of disputes. However, those protocols are now quite dated and require further

development by stakeholders as part of this process. We would encourage usage of a refreshed set of protocols in dealing with internal disputes, however the Property Council would not support these protocols being a binding obligation on the part of an operator in operating a village.

Introducing a code of conduct

Internal dispute resolution is a core subject contained in the Retirement Living Code of Conduct, developed by the Property Council together with Leading Age Services Australia (LASA), to create an accepted standard to help operators provide a trustworthy and high-quality service to residents living in and considering moving to a retirement community. Each retirement community operator who has signed up to the Retirement Living Code of Conduct (the Code) commits to standards that govern a resident's experience moving into, living in, and moving out of a retirement community.

The Code is administered by a Code Administrator, and is overseen by the Code Review Panel, which is an independent panel comprising Dr Elizabeth Lanyon as the independent chair (formerly Director – Regulatory Services at Consumer Affairs Victoria), two representatives from industry, currently Mr Peter Nilsson of The Village Glen and Ms Jennifer Clancy of TIGCorp, and two representatives of the Australian Retirement Village Residents Association, currently Mr Alistair Christie (ACT) and Ms Judy Mayfield (Queensland). That panel has independent oversight of the Code of Conduct, and considers complaints and disputes made by consumers against operators. A copy of the Code is attached to this submission (**Appendix 5**).

It is worth noting that 573 villages covering 66,497 ILUs and Independent Living Apartments (ILAs) are registered under the voluntary Retirement Living Code of Conduct. Of this, 141 villages with 21,768 ILUs and ILAs are in Victoria (just over 25 per cent of the entire registration), which shows there is support in the state. Approximately 46 per cent of Australian seniors living in retirement villages are living in code compliant communities, and coverage is expected to grow strongly given many villages have been delayed in signing up due to the competing time pressures caused by COVID-related lockdowns and issues.

As a key component of the retirement living industry's eight-point plan, the Retirement Living Code of Conduct is focused on the wellbeing of residents. It prioritises fairness in marketing and sales practices; maintaining good relationships with residents and stakeholders; and transparent processes when residents move out.

Allowing consumers to identify if a village is a signatory to the Code, and compliant with the legislation, will facilitate strong consumer confidence for persons considering approaching a village. We would strongly support any efforts made at a regulatory level to amplify villages signed up to the Code.

The Property Council does not support introducing a mandatory code of conduct for resolving internal disputes, as proposed in Option 13 and 15). Rather, we recommend that operators are

encouraged to join as signatories to the Retirement Living Code of Conduct, which includes detailed obligations in relation to operating an internal dispute resolution process.

The Property Council would strongly oppose any creation of another code, such as the NSW 'Rules of Conduct', which have caused significant confusion within the sector for little to no benefit, and is willing to engage further with the Department about how the industry code can be adopted for greater use in Victoria.

Supporting accreditation

The Australian Retirement Village Accreditation Scheme (ARVAS) Standards are designed to work directly with the Retirement Living Code of Conduct.

The Property Council believes that the current industry governance framework - comprising a single, unified voluntary accreditation scheme for Australian retirement villages and communities (ARVAS) together with a widely-adopted code of conduct applying to village operators the Code- provides a robust, comprehensive, high-standard, relevant and customer-centric regime to protect and promote the interests of all participants in the sector (most importantly, prospective, current and future residents).

The Property Council is supportive of the government's assistance in promoting the continued rollout and uptake of ARVAS across the industry. This could take the form of announcements/promotion outlining general support, acknowledgement and endorsement of the benefits of ARVAS to operators, the industry and the broader public.

It must also be acknowledged that the financial cost and administrative burden of accreditation is most acutely felt by smaller, private operators and not-for-profits. This can be a significant barrier to take up of voluntary accreditation. To the extent the government can assist in reducing this barrier - e.g. providing subsidies or part-funding accreditation costs - would encourage and promote broader uptake by this impacted group.

The Property Council does not support implementation of a mandatory accreditation scheme, as proposed in Option 18. Developing and maintaining a mandatory accreditation scheme would be expensive, not feasible for some operators and provided limited (if any) cost/benefit above and beyond the current voluntary framework of ARVAS and the Retirement Living Code of Conduct.

Staff qualifications

Increasing retirement village staff qualifications in relation to dispute resolution training is supported, provided that a mandatory qualification is not required (Option 17). Training is already provided through the Property Council Academy, and other industry training organisations including the DCM Institute, Aged and Community Services Australia (ACSA) and other private providers.

There are many different roles within retirement villages and each operator is best placed to decide what skills, qualifications and experience that are required for the position. Many operators have their own training procedures and policies in place depending on the functions of the job and to meet their organisation's values and objectives. There are also a range of external training offerings which are outlined earlier in our response.

The Property Council (through the Retirement Living Council) is also developing a robust Management Capability Framework for the retirement living sector, that clearly identifies the core competencies required of an effective village manager so owners/operators can clearly identify these skills in manager candidates and/or provides key guidance to what upskilling may be required.

It has been developed to reflect the sector's commitment to consistent, high level village manager and/or sales professional capability. It is forward looking, aspirational, and provides a road map of what is expected of these roles.

The Capability Framework places the customer/resident experience central to the model. It consists of seven domains and a total of 40 explanatory, industry-specific and original component definitions. The domain and component definitions detail clear, unambiguous high-level descriptions of the technical and behavioural characteristics of successfully performing village managers and/or sales professionals – in other words, the capabilities required of those managers.

Stage one of this work is to develop a Capability Framework to set the industry standard for developing and maintaining the professionalism of village manager and sales manager roles. It involves the creation of an original sector-wide model that articulates the technical and behavioural management capabilities that would be expected of high performing retirement living managers.

Stage two, now underway, will set the scene for further work to create formal and informal learning pathways for managers at a legislative, technical and interpersonal level, and in due course, scope a Certified Village Manager/Sales Professional offering. We would welcome further engagement to provide a fuller briefing on this work and how it may eventually be formally recognised.

Note: we have consolidated our response to the following options into this section due to the overlapping themes contained within them.

Option 14: Reform the external dispute resolution process.

Option 19: Create an Industry Ombudsman.

The Property Council believes that internal dispute resolution processes must be followed before a party should resort to an external dispute resolution process, and that it is important that the internal dispute resolution process is robust and timely, to assist with the early resolution of disputes.

External dispute resolution should be efficient, timely and cost effective, and provide each party with an opportunity to present their position in relation to the dispute, without any binding orders imposed upon the parties unless the terms of the binding order are agreed between the parties.

While the Property Council believes that the current process where residents can go to an external agency such as the Dispute Settlement Centre of Victoria for free dispute resolution services works well, it is understood that the Centre is currently under-resourced, and there is a significant delay in considering disputes. Accordingly, the Property Council would support increasing the resourcing for that Centre, to assist further with external dispute resolution, rather than to create a new body to deal specifically with retirement living disputes.

Further it is noted that in the current process if an application is made to Victorian Civil and Administrative Tribunal (VCAT), the parties usually are required to submit to a mandatory mediation process as part of an application to VCAT in any event.

If there is consideration by the Minister to look to an additional external resolution body, then the Property Council would support a process, provided that:

- a party cannot apply to the external organisation until it has used the internal dispute resolution process and the dispute has not been resolved;
- that organisation cannot make a binding order on the parties, unless that is because of a mediated outcome and agreed resolution to the dispute;
- the parties may still apply to court if necessary, in relation to any urgent injunctive relief;
- the organisation is appropriately resourced to consider referrals in a timely manner;
- to encourage parties to participate in the external dispute resolution process, there is a potential cost penalty to a party which refuses to participate if the matter proceeds to VCAT, like the arrangements for the Small Business Commission; and
- that the process is cost effective and is funded by Government (and not by owners and operators of retirement living communities).

The Property Council is concerned that the reference to a binding order may mean that there is consideration to set up a body similar to the Domestic Building Dispute Resolution Service. The Property Council does not support this. There is a concern with this service, in that it is significantly funded by industry, there is a lack of current resourcing leading to delays, and there is inconsistency in the manner and outcome of dealing with disputes by this service. Further, the ability to impose a binding dispute resolution order is not supported.

The Property Council would support a service which operates in a similar manner to the Small Business Commission, which is a low cost and efficient service, requires parties to attend conciliation and if they fail to do so, there is a risk of a penalty if the matter proceeds to VCAT by way of a costs order, and allows agreement to be reached in relation to a mediation without any binding dispute resolution order.

Ombudsman proposal

The Property Council believes that the current dispute resolution process is sufficient and does not believe a proposal for an industry Ombudsman is appropriate. The sector is too small, and the number of complaints is too low to justify the expense of an Ombudsman. It should be noted the expense of an Ombudsman and their office would have to be paid for by the industry and therefore this would be a cost to the residents.

We also emphasise to Government that an increase in regulation may not guarantee an increase in resident satisfaction. As resident complaints are already in low numbers, a cost benefit analysis of introducing any new system must be conducted before it is introduced.

The current system in Victoria is as follows:

1. A resident may resolve a dispute with another resident or management through:
 - a. The retirement village's own dispute resolution process;
 - b. The Dispute Settlement Centre of Victoria (DSCV), where free and expert mediation is offered;
 - c. Consumer Affairs Victoria, which may offer advice on some disputes and conciliate between residents and management; and
 - d. Victorian Civil and Administrative Tribunal.
2. Retirement villages must have an internal dispute resolution scheme in writing which sets out details of:
 - a. When and where complaints can be made and to whom;
 - b. How a dispute with management or between residents will be handled; and
 - c. Options for dispute resolution including seeking advice from, the Dispute Settlement Centre of Victoria, Consumer Affairs Victoria or the residents committee.

We would support an external dispute resolution service with the key components as set out above, rather than an Ombudsman.

We would also be supportive of exploration of a targeted advocacy program such as the one in operation in South Australia delivered by the Aged Rights Advocacy Service and supported by the Office for Ageing Well. Residents can contact the service and receive tailored advice and direction on how best their complaint or dispute can be resolved and can engage an advocate to speak up on their behalf. The Aged Rights Advocacy Service model provides a much more personalised and non-confrontational approach that offers more support to residents than an Ombudsman model would.

Option 16: Improve the operation of residents committees.

A well-run resident committee can benefit a retirement village community. Resident committees act as a liaison between management and the residents and enable an open line of communication in a village and promote a positive and cohesive village that residents want to be an active part of.

The Property Council believes for resident committees to be effective, there needs to be clear guidelines on how they best can operate to provide some direction to committee participants and reduce the likelihood of internal village disputes about a committee's activities.

NSW currently provides a 'Model Rules' document that can be used by resident committees as a basis for their own rules but does not prescribe rules and enables each committee to retain appropriate control over their activities. We believe that can be an appropriate model for a Victorian context. Within it, consideration should be given to providing guidelines on the:

- number of residents on the committee;
- tenure of the committee; and
- tenure of the chair.

To ensure a greater spread of representation on committees, we recommend only one resident per unit should be permitted to be a member of the resident committee at any one time.

We acknowledge and support the feedback within the Options Paper about the difficulties that some resident committees have in involving themselves in the potential resolution of disputes, especially where there is a conflict of interest. However there may still be cases where it is helpful and appropriate for a resident committee to have a role, where the parties to a dispute and the committee itself consents to being involved.

Many committees already have rules established and if legislation occurs in this area, the rules may not align with what is mandated. Residents' committees should be free to set up their own rules and guidelines that best suit their community and situation alongside guidelines that inform them of the sorts of items that need consideration.

It is recommended that it should be outlined that resident committees are consultative committees, not management committees.

Other comments

The Options Paper is silent on the issue of where and how it is appropriate to terminate a resident contract if a resident is no longer capable of living independently.

The Final Report of the Royal Commission into Aged Care Quality and Safety, has made it clear that it is likely in the future that older Australians should be encouraged to live in their own homes for as long as possible, including planning for care in the home until funding for this support becomes more economical to provided it in a residential care setting. The advantage of this model is that it

will enable residents to continue to reside within their homes for a longer period. However, a concern for operators is the potential increase of residents wanting to live within the village setting for longer than is practical. These circumstances are already occurring in village communities and have negative outcomes for the resident themselves, their fellow residents and the staff of the village.

A resident's contract can currently be terminated through section 16 of the RV Act, if the owner of the village believes a resident has substantially breached their residence contract, and where the resident has not complied with a previous breach notice, or where two medical professionals have certified that the resident needs care of a kind that cannot be offered within the retirement village.

Operators report, when there is not a supportive family or guardian in place, the process to achieve this termination is burdensome and takes too long. At times operators have had to seek an order from the Office of the Public Advocate, and this is also time consuming. Operators advise in these cases, the impact such a resident has on their fellow residents, often using them as social supports well past what would be considered fair and reasonable, as well as staff of a village, who are often called upon to provide support and other assistance that is well beyond the realities of village provision.

Some examples of circumstances where residents are no longer safe to live in a village provided by operators include:

1. A resident developed dementia and had a stroke. This previously passive resident became increasingly confused and aggressive to staff, other residents and his wife. The resident is still currently residing in the retirement village.
2. A resident became increasingly frail and has had multiple falls. Staff and ambulance have assisted him in getting him upright. In some circumstances he has agreed to go to the hospital, however at other times he has refused. Each time he has insisted on returning to his home in the village and it is no longer suitable for him to live there. He has a supportive family, but they will not go against his wishes. The hospital contacted village staff and advised the resident had told them he had supports in place in the village.

It is recommended that operators or their delegates can request the resident get a medical suitability statement or an aged care assessment. Operators would be willing to work with residents and the Government to draft a set of guidelines which outlines a pathway to be able to facilitate residents moving to a more formal care environment quickly without breaching their right to privacy.