

20 March 2020

The Hon Marlene Kairouz
Minister for Consumer Affairs, Gaming and Liquor Regulation
Level 16, 121 Exhibition Street
MELBOURNE VIC 3000

By Email: marlene.kairouz@parliament.vic.gov.au

Dear Minister,

On behalf of members of the Retirement Living Council, I write in relation to industry concerns regarding the COVID-19 preparedness of many retirement communities. We are seeking urgent advice and direction from the Government on how operators should act in circumstances where complying with legislation and contractual obligations presents risks to the health and well-being of residents.

As you would be aware, local retirement communities are legislated by the Victorian Government, and comprise of retirement villages and seniors' communities in residential parks. These communities are not part of the formal aged care system, even though they provide homes for two of the seven categories for people "most at risk" of serious coronavirus infection – elderly people and people in group residential settings.

Unlike aged care, retirement community residents live independently and have the freedom to come and go as they please. They also usually have legislated and contractual rights to access community facilities and services. Retirement village operators have a duty of care to residents, but they are not typically responsible for the health and well-being.

Currently, the main priority for operators is keeping retirement village residents and staff safe.

While there is specific advice for aged care and hotel operators, currently there is no guidance on what measures retirement operators can take to protect residents, or how residents will be impacted by a confirmed diagnosis of COVID-19.

Operators are currently taking action to minimise risk in communities by implementing preventative and mitigation measures based on general advice on the Department of Health. In this regard, one of the measures many operators have implemented is social distancing. This has included limiting or cancelling gatherings in the village, limiting non-essential outside visitors and closing community facilities.

In light of the Prime Minister's announcement related to the restrictions of gatherings to under 100 people and limiting visitors to aged care facilities, it is expected operators will continue to implement further social-distancing measures to reduce the risk to residents and staff in their vulnerable communities.

In implementing these preventative measures, operators have been relying on the voluntary support of residents. It is not likely that all residents will be willing to comply with requests of

this nature, and there is a further risk about breaching contracts and Victorian legislation, which will result in potential dispute or penalty.

Through these difficult times it is necessary to have clear guidance from the Victorian Government on how it will deal with operators who may need to breach legislation in order to comply with public health directives and workplace health and safety legislation, or to simply act in the best interests of protecting the health and wellbeing of residents.

The key issues operators need immediate clarity and direction on include:

1. **Power to prohibit access to community facilities.** Some operators have closed, or are considering closing, community facilities. As the situation continues to evolve it is expected more operators may be required to instigate this measure to stop the transmission of COVID-19 throughout their community. However, operators are unsure whether they have the clear legal right to do this due to contractual obligations and legislative provisions. Operators need support for expedient action and clear guidance on this issue and a commitment from the Government to amend legislation, if necessary, to enable action during the pandemic.
2. **Powers to limit visitors to a retirement community.** Many operators are currently considering implementing policies to limit unnecessary visitors to their village. This includes limiting outside contractors access for non-essential work, and also requesting resident's visitors to not enter the village if they meet high-risk criteria, such as having travelled overseas in the last 14 days, been in contact with anyone with coronavirus, or are showing signs and symptoms of illness.

It is likely that as the spread of the disease continues, retirement village operators will need to implement increasingly strict measures to decrease the risk of transmission. Even though operators can strongly advise residents to request their visitors to heed advice in this regard, it is unclear whether operators have the power to enforce this request.

It is therefore essential for the Government to provide guidance on whether it will support, and if necessary, amend legislation, to give village operators the confidence and power to stop visitors, for the health and wellbeing of residents', from entering the village.

3. **The requirement for meetings to be held in relation to the annual budget.** The legislation states that the residents must meet and consent to the annual budget. Members of the Property Council would like some clarity from the Department on whether these annual budget meetings can be postponed or convened in a way that is not face-to-face.

Another issue that is important to place on your radar is that due to efforts to limit unnecessary community visits, operators advise the most sales activities have now ceased. Some operators have now also diverted sales staff to supporting staffing efforts in communities and have stopped contractors, required for reinstatement and refurbishment work, from entering communities. As such, it is unlikely sales activity will resume before there is an official end to the COVID-19 pandemic. Likewise, during this period, for reasons outlined above, there will be a limited ability for valuers to access communities.

In addition to these practical limitations, operators are concerned about liquidity risk and the going concern assessment that will need to be made at the end of this financial year.

Accounting Standard AASB 101- *Presentation of Financial Statements*, requires directors, when preparing the financial report to make an assessment of a company's ability to continue as a going concern. Directors are also required to disclose the uncertainties about which the directors were aware in making their assessment of going concern, where those uncertainties may cast significant doubt on the company's ability to continue as a going concern.

Further, AASB 101 requires the directors' assessment to be for at least, but not limited to, 12 months from the end of the reporting period (although it could be a longer period).

After this initial crisis abates the industry would request that consultation occurs to look at the ramifications COVID-19 has had on the economic climate, the impact that it is having on the sale of dwellings in the sector and consider measures to ensure operators remain financially viable.

The Property Council has been liaising with the Consumer Affairs Victoria on these issues and eager to see quick action to provide clear and transparent direction to operators and residents.

Any delay in providing certainty to operators may have dire health consequences and significantly undermine the effort operators are making to protect the health and wellbeing of residents and staff and we are wanting to work with the Government to mitigate this risk.

If you would like to discuss these issues further please contact me on bmyers@propertycouncil.com.au or 0400 778 833.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ben Myers', with a stylized, flowing script.

Ben Myers
Executive Director – Retirement Living