



30 September 2024

## Information and Disclosure

Following consultation with representatives of the Department of Energy, Mines, Industry Regulation and Safety (DEMIRS) on Monday 16 September 2024, this document presents the retirement living industry's response to the first consultation paper on proposed amendments to the Retirement Villages Regulations 1992 relating to information and disclosure.

### Preliminary comments

The Property Council supports the stated intent of these consultations; which is to improve the information and disclosure process and to make it streamlined and simple. Improving clarity, transparency and certainty during the disclosure stage benefits both residents and operators, resulting in a more streamlined process for prospective residents and more appropriately outlining the obligations of operators. However, we note the significant existing disclosure requirements and caution against unnecessary duplication or overcomplication, which could have the opposite effect; potentially confusing prospective residents and burdening operators.

Feedback from industry indicates that residents understand and are aware of the contracts that they are signing, and that operators are aware of their obligations. This feedback is reflected by the government's own data, which shows that since 2011, there has been just one prosecution under section 13(2) of the *Retirement Villages Act 1992* (RV Act) for failing to provide required documents to a person entering into a residence contract. Moreover, there have been very few State Administrative Tribunal (SAT) cases in relation to the RV Act and, of those that have proceeded, they are predominantly cases where an operator is seeking to terminate a residence contract due to resident behaviour.

### Community Arrangement Statement

The Property Council believes the intent of a Community Arrangement Statement (CAS) should be to provide high-level information on what a village offers in a standard and simple format. This approach aligns with DEMIRS's intent of "earlier, clearer disclosure of the type of tenure, availability of facilities/services and costs of entering, living in, and leaving a village."

The Property Council also reinforces our position that contracts are between residents and operators, not operators and residents' families. While we acknowledge that families or other people often become involved when a resident departs a village, it must be understood and clarified that the consumer in this instance is the resident themselves.

Where a village does not have a website on which to publish its CAS, the Property Council recommends the easiest and most effective solution is to make copies of the CAS available for inspection or collection from the village.



## **Prospective Resident Information Statement**

The Property Council recommends the Prospective Resident Information Statement (PRIS) should outline more specific details for a prospective resident. These details include the entry costs to move into a specific unit, ongoing costs such as recurrent charges, reserve fund contributions, and exit costs such as reinstatement and renovation fees.

If an operator does not wish to provide a PRIS to a prospective resident due to not wishing to enter into a relationship with a certain resident, the Property Council recommends the inclusion of a provision that outlines the concept of a “prospective resident” to avoid residents who are either vexatious or if the operator has reasonable grounds to believe the resident cannot live independently. This addition would help to give greater clarity to prospective residents and operators of their roles and responsibilities at this stage of the process.

## **Response to consultation questions**

The Property Council notes the inclusion of the six primary questions contained in the Information and disclosure document and has provided answers to the questions throughout this submission.

## **Next Steps**

If you require further information or clarification on anything contained in this submission, please contact Andrew Thomson, WA Policy and Research Advisor, at [athomson@propertycouncil.com.au](mailto:athomson@propertycouncil.com.au) or on 0409 470 336.

Yours sincerely,

A handwritten signature in black ink, appearing to read "N. Brischetto", written over a light blue horizontal line.

**Nicola Brischetto**  
WA Executive Director  
Property Council of Australia

## Community Arrangement Statements

Part	Property Council response	Rationale
<b>Important information for the prospective resident</b>	Remove in its entirety	The Property Council notes that this information on the front cover of the CAS is also included on the front cover of the PRIS. The Property Council suggests that this should be removed from one document or the other to avoid duplication and suggests that it be included at the PRIS stage as it is more pertinent at that part of the process.
<b>2</b>	Remove in its entirety	The Property Council suggests removing this, given the definition of retired person in section 3 of the <i>Retirement Villages Act</i> refers to persons 55 years of age, or retired from full time employment, or the spouse or de-facto of such person.
<b>3.2</b>	Remove “number of units” from the specific tenure types	The Property Council recommends the CAS be as streamlined and simple as possible. We propose including the total number of units available in the village, followed by the types of units available.
<b>3.3</b>	Remove in its entirety	These questions will vary from unit to unit, change frequently, and are ultimately unnecessary at the CAS level. This information is better included in the PRIS.
<b>4</b>	Align with current Form 1 Part 4	The Property Council notes the current Form 1, Part 4 has appropriate information available to current residents and recommends using the same format as in Form 1. The Property Council recommends removing reference to individual bays for individual units as this can change frequently. This information is better included in the PRIS.
<b>5</b>	Align with current Form 1 Part 22	The Property Council recommends alignment of this question to the current Form 1, Part 22A and 22B. Alignment with this part ensures continuity for residents and operators and provides a clear set of development plans for the resident to view. Further information should be provided once the prospective resident has demonstrated an interest in a particular unit.

<b>6.1</b>	Rephrase the question below the list of available amenities and facilities	The Property Council recommends rephrasing the question to a positive question such as “Are any of these facilities available to people from outside the village?” This will assist prospective residents to understand the privacy limitations of the amenities and facilities the village provides.
<b>7.1</b>	Clarification on “services”	The current legislation refers to “communal services” and “personal services”. The Property Council suggests using consistent language to match the current Form 1.
<b>7.2</b>	Reframe question	The Property Council agrees with the inclusion of this question but notes it would be beneficial to the streamlining of the CAS to have the list of available personal services as an attachment rather than prescribed in the form itself. This would prevent the operator from having to update the CAS each time the services vary or fees change, which would be impractical.
<b>8.2</b>	Remove in its entirety	The Property Council is not aware of any villages where the security arrangements in place are not monitored.
<b>9.1 9.2 9.3</b>	Remove in its entirety	The Property Council notes that these costs change on a regular basis and recommends that specific costs should be provided when a prospective resident has expressed interested in a particular unit. The Property Council notes that there is duplication between the CAS and PRIS and recommends including this only in the PRIS.
<b>10.2</b>	Remove in its entirety	The Property Council notes the information to be provided in Part 10.2 is already included in PRIS Part 4.5 and recommends removing it from the CAS. This would avoid duplication and lower the complexity of the CAS.
<b>10.3</b>	Align with current Form 1 Part 6C	The Property Council recommends that at this document level, the question should be a “yes” or “no” with responsibilities relevant to a specific unit disclosed in the PRIS.
<b>11.2</b>	Remove in its entirety	The Property Council agrees with the inclusion of Part 11.1, but recommends that Part 11.2 be included in the PRIS and not the CAS.

<b>11.3</b>	Reframe question	The Property Council recommends that at this document level, the question should be a “yes” or “no”, with specific exit costs and fees outlined later in the process.
<b>12.1</b> <b>12.2</b>	Reframe question	The Property Council recommends that at this document level, the question should be a “yes” or “no”, with specific narrative and percentage of costs due for renovation outlined in the PRIS.
<b>13</b>	Reframe question	The Property Council recommends that at this document level, the question should be a “yes” or “no”.
<b>14.1</b> <b>14.2</b>	Rewrite question	The Property Council recommends rewriting this question to ask “Is an exit entitlement payable to you?” with a “yes” or “no” answer. The specific amount of the exit entitlement should be outlined in the PRIS.
<b>15.1</b>	Remove in its entirety	This question is already covered in Part 10.2 relating to ongoing costs, including insurance.
<b>15.2</b>	Rephrase question	The Property Council recommends rephrasing this question to ask “Do residents contribute through their recurrent charges to insurance and any excess?” with a “yes” or “no” answer. This is due to it being a more specific charge and detail is provided in the budget.
<b>16.1</b> <b>16.2</b> <b>16.3</b>	Rephrase question	The Property Council agrees with the inclusion of the question but notes that the restrictions or conditions are subject to the rules specific to the contract and should be acknowledged as such in the CAS.

## Prospective Resident Information Statement

Part	Property Council response	Rationale
<b>Important information for the prospective resident</b>	As noted in the response to the CAS section	As noted in the equivalent section in the CAS response, the Property Council notes that this information on the front cover of the CAS is also included on the front cover of the PRIS. The Property Council recommends removing this from the CAS to avoid duplication as it is more relevant at the PRIS part of the process.
<b>1.2</b>	Duplication, suggest removing.	The Property Council recommends removing Part 1.2 as the information it provides already exists in Part 2.1.
<b>3.1</b>	Changes suggested	The Property Council recommends including after “an ingoing contribution of \$...” the options to outline what the contribution comprises; be it a loan, a licence or other, as it may be relevant for tax purposes. The Property Council recommends including purple title, to be consistent with other stages of the document and with the current Form 1. The Property Council recommends removing “stamp duty” as it does not exist under the WA legislation and should be referred to as “transfer duty” or simply “duty”.
<b>4.5</b>	Refer to Part 10.2 in CAS	As referenced in Part 10.2, the Property Council recommends the costs not covered by recurrent charges should be referred to here and agrees with its inclusion.
<b>4.6</b>	Move into CAS	The Property Council notes this information is relevant to the broader village rather than a specific unit. As such, the Property Council recommends moving this table into the CAS.
<b>5</b>	Include capital maintenance or capital replacement fund	The Property Council recommends capital maintenance or capital replacement fund be included in this section as it can form part of the exit fee that is payable to the operator.
<b>5.3</b>	Include a reference to the Property Condition Report	At the end of the first dot point, include the wording “fair wear and tear, by reference to the property condition report”. This will assist operators and residents alike with having a specific reference point to which the reinstatement level can be adjudicated.

6	Include capital maintenance or capital replacement fund	The Property Council recommends capital maintenance or capital replacement fund be included in this section as it can form part of the exit fee that is payable to the operator.
6	Annual capital growth measurement	The Property Council notes that adding a standardised number for the estimated annual capital growth will allow for easier comparison of exit costs between villages. Different operators will approach this in different ways, so the Property Council recommends using a prescribed percentage value. We note that in NSW, the measurement is based on a rolling average of the median price of established homes in the same suburb and recommend against using this approach. Currently, Annexure B of the Form 1 requires the use of 2 per cent per annum increase.

## Village contracts

Section	Subject matter	Comments
<b>A2</b>	The start and end date for the cooling off period	New requirement and not feasible to include in the contract. The contract is provided firstly to the resident as part of the disclosure package that the resident must have for at least 10 working days (section 13 of the RV Act) and then if the resident agrees the contract is signed and returned to the operator who then signs the contract. The contract date is the date the last person to sign the contract signs it and when the cooling off period starts. Therefore, the actual start and end date of the cooling off period could not be inserted until the day the last person signs the contract.
<b>A10</b>	The resident's right to resell the right to reside in the accommodation unit.	Not acceptable, as not all contracts include a right to "resell". Under some financial models, the outgoing resident is paid their exit entitlement within 45 days of permanently vacating and then the operator re-releases the unit to the next resident.
<b>B15</b>	Details of all amenities that the resident has exclusive use of and the charges that apply to each	For consistency, the Property Council recommends that the drafting should continue to use terminology that was introduced in the 2014/2015 RV Act amendment that refers to personal amenities, communal amenities, personal services and communal services.
<b>C16</b>	The services to be supplied to the resident and charges that apply, including: 1. services funded from recurrent charges; 2. services, if any, available on a fee-for-service basis.	For consistency, the Property Council recommends that the drafting should continue to use terminology that was introduced in the 2014/2015 RV Act amendment that refers to personal amenities, communal amenities, personal services and communal services.





## **Advertising and Marketing**

The Property Council does not support creating regulations for advertising and marketing of retirement villages, and recommends guidelines are a more suitable way to encourage consistency around the information that is provided. Each retirement village operator will have a different practice for advertising their village and the introduction of guidelines would allow operators to advertise in a manner that is appropriate to the village.

The Property Council welcomes the introduction of a directory of retirement villages on the DEMIRS website, with each village entry in that directory to link directly to the CAS published on the villages' website. This allows prospective residents to compare villages easily and reduces the onus on operators to provide extensive information to DEMIRS.