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07 May 2021

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

Retirement Villages Act Review
Consumer Affairs Victoria
GPO Box 12
Melbourne VIC 3001

Dear Madam/Sir

Retirement Villages Act Review – Options Paper

We write to you as a coalition of residents and consumer rights groups that have assisted and represented retirement housing residents over many years. We have long campaigned for a comprehensive review of the *Retirement Villages Act 1986* (Vic) (**the Act**), which we consider to be outdated and ineffective in protecting and promoting the interests of residents.

The current review is a once-in-a-generation opportunity to overhaul the regulatory framework for retirement villages in Victoria. We have the chance to future-proof this legislation, and lead the nation in terms of retirement village regulation, which will enhance resident confidence in the sector.

We see the Options Paper as a non-definitive list of ways we can improve retirement village regulation in Victoria. We have set out below our shared vision and recommendations for the review. Our organisations may also make individual submissions with further suggestions and comments based on the experience and expertise of each organisation.

In our submission, we argue that the following is needed to improve outcomes for residents:

- Implementing a fit-for-purpose regulatory framework that clearly sets out the rights and obligations of owners, managers and residents, rather than relying on individual contracts;
- establishing a licensing scheme and public register for retirement villages;
- delineating the relationship between residential aged care, home-based aged care and the National Disability Insurance Scheme (**NDIS**);
- ensuring retirement villages remain a community for older people by prohibiting operators from transitioning a village into other forms of accommodation, for example, rental units for people under 55 years old;
- ensuring that, regardless of the form of tenure, residents have the same rights, freedoms and protections;

- reducing the complexity of contracts and business models, rather than relying on disclosure to improve understanding;
- stronger regulation of fees and charges with the aim of ensuring these fees and charges are fair, easy to understand and reflect the actual value provided to the resident;
- establishment of a free, independent and expert retirement housing ombudsman service; and
- introducing mandatory staff training and village accreditation requirements.

We have provided further detail about these themes, in response to the questions in the Options Paper, below. A summary of recommendations is available at **Appendix A**.

1. What does the Act need to include to support well-functioning retirement villages?

We support the introduction of a clear regulatory framework that sets out the rights and obligations of owners, managers and residents, rather than individual contracts setting the parameters. We need residents' rights to be significantly strengthened to ensure the power imbalance between residents and owners/managers is addressed. This should include an expanded set of purposes or objectives in the Act.

It is important that the extensive research into discrimination and attitudes towards older people is acknowledged and addressed in this Review. Understanding the context in which residents are living is core to ensuring residents' rights are appropriately strengthened. For example, Commissioner Lynelle Briggs said in the Royal Commission into Aged Care Quality and Safety Final Report:¹

"I fear that society as a whole undervalues older people and their contribution. The acceptance of poorer service provision in aged care reflects an undervaluing of the worth of older people, assumptions and stereotypes about older people and their capabilities, and ageism towards them. This must change."

We would be naïve to think these problems are limited to aged care. Indeed, we see these problems regularly in our work assisting residents in retirement villages and other forms of retirement housing.

RECOMMENDATION 1: Introduce a clear regulatory framework that sets out the rights and obligations of owners, managers and residents.

RECOMMENDATION 2: Significantly strengthen residents' rights and protections in the revised Act.

RECOMMENDATION 3: Expand the purposes or objectives in the Act, with a focus on residents rights, protections and freedoms.

We also support requiring all new retirement villages to be licensed by Consumer Affairs Victoria (**CAV**). This should include owners submitting a retirement village scheme or plan, and meeting minimum standards in terms of training, qualifications, good character and financial stability prior to approval. We have provided further information below about enhancing the existing public register for retirement villages.

RECOMMENDATION 4: Require all new retirement villages to be licensed by CAV.

We also consider the Review an important opportunity to delineate the relationship between residential aged care, home-based aged care services and retirement villages, including the right of residents to select their own aged care home service provider. Overlap with the National Disability Insurance Scheme (**NDIS**) should also be considered for younger retirement village residents.

¹ Royal Commission into Aged Care Quality and Safety, March 2021, <https://agedcare.royalcommission.gov.au/publications/final-report-volume-1>, page 26.

RECOMMENDATION 5: Delineate the relationship between retirement villages, residential aged care, aged care home services and the NDIS.

We also recommend implementing protections for residents against operators unilaterally changing a retirement village into something else – for example, transitioning all or some of a village into residential aged care facility or accommodation for people under the age of 55. Furthermore, it is critical that, regardless of the form of tenure, residents have the same rights, freedoms and protections enshrined in the Act.

RECOMMENDATION 6: Prohibit operators from transitioning a village into other forms of accommodation.

RECOMMENDATION 7: Ensure that, regardless of the form of tenure, retirement village residents have the same rights, freedoms and protections.

2. What information should be provided to prospective and current residents and when?

Our starting principle is that you cannot rely on disclosure to deliver consumer protection, or to properly enhance prospective or current residents' understanding of their rights and responsibilities. This has been proven time and time again by behavioural economics research, particularly when dealing with complex financial arrangements² Macquarie University research on prospective retirement village resident comprehension also found that the current approach is not fit for purpose because comprehension of key features the offer is critically low.³ Entrenching this approach with yet more disclosure documents would only worsen the situation. Instead, we should be looking at ways to protect consumers from unfair arrangements or excessive costs.

Empowering residents to undertake their own research, and providing much-needed transparency across the industry, could be supported through the establishment of a more comprehensive public register for retirement villages. The current register provides very limited information to prospective residents, and also requires people to know the name and suburb/postcode of the village, rather than allowing browsing.⁴ Establishing a comprehensive registration system accessible to the public with further information about villages, including demographic data, would help prospective residents to do more thorough investigation and would allow monitoring of trends in the profile of villages, residents and length of stay.

RECOMMENDATION 8: Establish a comprehensive public register of retirement villages.

We also strongly support reducing complexity of contracts, including ensuring all costs are quantifiable at the time of entering a village. This could include standardising particular terms in contracts, or standardising contracts as a whole. Contracts should be in plain language and significantly shorter – similar to residential tenancy lease agreements. If a prospective resident can't understand an offering, then operators should not be making it. Requiring residents to get legal advice won't solve this problem – the quality and cost of advice makes this an undesirable option, and is an outdated way of trying to promote consumer understanding.

RECOMMENDATION 9: Simplify contracts by using plain language, reducing length and standardising terms or contracts as a whole.

Prospective residents should also be offered easy-to-understand choices for payment – for example, pay as you go (equivalent rental), paying upfront or fixed exit costs. Proposed payment models should form part of the licensing application process for approval to ensure they are fair and reflect value provided.

² For example, Australian Securities and Investments Commission, *Disclosure: Why it shouldn't be the default*, October 2019, <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-632-disclosure-why-it-shouldn-t-be-the-default/>.

³ Consumer Policy Research Centre, *Submission to Retirement Villages Act Review*, December 2019, <https://cprc.org.au/app/uploads/2019/12/CPRC-Submission-Retirement-Villages-Act-Review-1.pdf>.

⁴ Consumer Affairs Victoria, *Search the retirement village public register*, <https://registers.consumer.vic.gov.au/rvsearch>, accessed 3 May 2021.

RECOMMENDATION 10: Offer residents easy-to-understand choices for payment that are quantifiable upon entry.

We also support the introduction of a settling in period, rather than extending the cooling off period. This would allow a resident to try the village to see if it suits their preferences and lifestyle, and help them to move on to different accommodation if they change their mind. This promotes both choice and competition in the housing market. Cooling off periods are generally an ineffective form of consumer protection, with research finding that consumers don't change their minds when offered a cooling off period, even when the alternative is considered subjectively better.⁵

RECOMMENDATION 11: Introduce a settling in period for retirement village residents.

3. How can protections for exiting retirement village residents be strengthened?

In addition to the recommendations above, we also support stronger regulation of fees and charges with the aim of ensuring these fees and charges are fair, easy to quantify and reflect the actual value provided to the resident. This should include reducing the timeframe ongoing fees can be charged after a resident leaves a village, allocating reinstatement and renovation costs in line with capital gains share, ensuring operators share both capital losses and gains, requiring the deferred management fee (DMF) to be capped, applied equally over a period and calculated on the ingoing price.

RECOMMENDATION 12: Strengthen regulation of fees and charges to ensure they are fair, easy to quantify and reflect the actual value provided to the resident.

4. Are the current internal and external dispute resolution processes adequate?

As set out in our numerous previous submissions, we consider that the current internal and external dispute resolution processes are not adequate.⁶ In addition to our recommendations above, which would help to clarify the roles, rights and responsibilities of parties, we strongly support the establishment of a free, independent and expert retirement housing ombudsman service.

RECOMMENDATION 13: Establish a free, independent and expert retirement housing ombudsman to resolve disputes.

5. What is the best governance framework to support well-functioning retirement villages?

Currently, the Act does not require retirement village owners, managers or staff to have any particular qualifications or training. Breakdowns in communication, loss of trust and hostility between residents and managers, and poor consumer outcomes, can result from this lack of mandatory training and expertise. We support minimum training and qualification requirements for owners, managers and staff delivered by a registered training organisation to improve skills and expertise. We also consider that this training could enhance staff respect and understanding for older people living in retirement villages.

We also support the establishment of a mandatory village accreditation scheme, delivered by an independent third party, to ensure the quality and safety of accommodation provided to residents.

RECOMMENDATION 14: Establish mandatory training and accreditation for retirement villages.

⁵ Paul Harrison, The Conversation, *Cooling-off periods for consumers don't work: study*, 28 November 2016, <https://theconversation.com/cooling-off-periods-for-consumers-dont-work-study-69473>

⁶ For example, see: <https://consumeraction.org.au/parliamentary-inquiry-retirement-housing-sector/>, <https://consumeraction.org.au/submission-retirement-living-council-retirement-living-code-of-conduct/> and <https://consumeraction.org.au/submission-internal-dispute-resolution-in-retirement-villages/>.

Please contact Director Policy & Campaigns Katherine Temple at Consumer Action Law Centre on 03 9670 5088 or at katherine@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

Katherine Temple | Director Policy & Campaigns
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APPENDIX A – SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1: Introduce a clear regulatory framework that sets out the rights and obligations of owners, managers and residents.

RECOMMENDATION 2: Significantly strengthen residents' rights and protections in the revised Act.

RECOMMENDATION 3: Expand the purposes or objectives in the Act, with a focus on residents rights, protections and freedoms.

RECOMMENDATION 4: Require all new retirement villages to be licensed by CAV.

RECOMMENDATION 5: Delineate the relationship between retirement villages, residential aged care, aged care home services and the NDIS.

RECOMMENDATION 6: Prohibit operators from transitioning a village into other forms of accommodation.

RECOMMENDATION 7: Ensure that, regardless of the form of tenure, retirement village residents have the same rights, freedoms and protections.

RECOMMENDATION 8: Establish a comprehensive public register of retirement villages.

RECOMMENDATION 9: Simplify contracts by using plain language, reducing length and standardising terms or contracts as a whole.

RECOMMENDATION 10: Offer residents easy-to-understand choices for payment that are quantifiable upon entry.

RECOMMENDATION 11: Introduce a settling in period for retirement village residents.

RECOMMENDATION 12: Strengthen regulation of fees and charges to ensure they are fair, easy to quantify and reflect the actual value provided to the resident.

RECOMMENDATION 13: Establish a free, independent and expert retirement housing ombudsman to resolve disputes.

RECOMMENDATION 14: Establish mandatory training and accreditation for retirement villages.