



Housing for the Aged Action Group

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Regulation and Policy Division

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Regulatory Impact Statement for Retirement Villages Amendment (Records and Notices) Regulations 2013 and Retirement Villages Amendment (Contractual Arrangements) Regulations 2013

This submission is a response by Housing for the Aged Action Group (HAAG) to the Regulatory Impact Statement (RIS) produced by Consumer Affairs Victoria (CAV) for the proposed amendments for retirement village regulations relating to information disclosure and contract arrangements.

In summary, we submit that:

- HAAG welcomes the improvements to information disclosure and contract layouts for retirement villages, but has concerns regarding the impact on Not-For-Profit retirement village residents, the process for educating village operators and residents about the changes and the need for an overall review of the *Retirement Villages Act 1986* beyond these specific amendments.
- HAAG believes there should be consistency in the information provided throughout each option to ensure well-informed decision making by prospective residents. As a result each option should contain the same type of information, expanded in further detail as stages progress.
- HAAG's preferred options outlined in the Regulatory Impact Statement are: Options 1a, 2b and 3a.
- In option 1 HAAG supports option 1a as the most appropriate proposal for disclosure at the intermediate stage. It provides a clearly set out and detailed factsheet for prospective residents. With a few added inclusions to bring it in line with the information provided at the pre-contractual stage, HAAG believes the factsheet will allow older people to make a more informed decision about their retirement housing.

- In option 2 HAAG supports option 2b as the most appropriate proposal to improve pre-contractual disclosure. This option builds on the factsheet in option 1 and would provide comprehensive information about a retirement village at a very crucial stage in the decision making process. It is only with this type of detail that a decision could be properly made about the suitability of a retirement village.
- In option 3 HAAG supports option 3a to have contracts with standard layouts for retirement villages. This would allow for clear comparison between villages for prospective residents, and would also present the information in a clear and logical manner.

About Housing for the Aged Action Group (HAAG)

As described in the RIS (page 28) HAAG is partially funded by CAV to provide tenancy and retirement housing information and support services to vulnerable and disadvantaged older people.

The RIS described HAAG's retirement housing work as providing support to residents '*encountering general difficulties or who are in conflict with each other and to those in dispute with an operator*' (page 28). This must be corrected in that HAAG does not deal with resident v resident disputes, but otherwise reflects the nature of the work clearly.

The work undertaken specifically within the retirement villages sector is focused on Not-For-Profit (NFP) retirement villages which, as the RIS points out on page 11 Table 4, makes up approximately 50-55% of the entire industry. It is also interesting to note that the information provided by the RIS around the NFP portion of the industry is vague, as there is not much consistency across the range of villages on offer for vulnerable older Victorians with lower levels of income and assets.

HAAG also facilitates and supports a working group made up of residents living in NFP retirement villages. The working group was consulted in relation to the RIS and their feedback is reflected throughout this submission.

Some preliminary concerns

1. The purpose of the *Retirement Villages Act 1986* (RVA) is meant: '*to clarify and protect the rights of persons who live in, or wish to live in, retirement villages*' (RIS, page 1). HAAG welcomes the amendments being proposed in the RIS, as case work over the years has shown a low understanding of rights by residents in retirement villages. The concern is that an overall review of the Act may be postponed due to the application of the current proposed amendments.

HAAG hopes the improvement of information disclosure will not take precedence over improvements required around overall residents' rights. A review of the RVA is overdue since eight years have elapsed since the last amendments, and too often lease and license arrangements within

retirement villages lack a clear description of rights. Issues such as repairs, maintenance, privacy and access, processes around exercising rights and access to justice are often ignored and are then difficult to advocate for.

HAAG sees a need to differentiate between for profit and NFP retirement villages in the Act, as it must be acknowledged there are differences in operation and application of the law. Examples are seen in the varying levels of financial investment between the two groups, as well as the exemptions provided to NFP retirement village operators. HAAG sometimes questions whether it is appropriate for any operator to be exempt from a law that in its entirety is already limited.

The RIS (page 13) mentions that the proposed information and document disclosure options *'complements the other aims of the Act'* such as ensuring rights are unambiguous and enforceable, that actions of operators do not infringe on those rights and that undesirable marketing practices are avoided by promoters of retirement villages. HAAG unfortunately does not believe the Act is fulfilling these aims, especially providing for unambiguous and enforceable rights, and for this reason would like to see an overall review beyond the application of the proposed amendments in the RIS.

2. Along with a review of the Act HAAG believes there is also a need to review the supports surrounding retirement village residents, such as: community education services, advocacy services, legal and financial services and the Victorian Civil and Administrative Tribunal (VCAT). The RIS is clear in stating there is a lack of appropriate supports within the sector and therefore it is important to ensure efforts are taken to make improvements into the future.
3. HAAG is unclear about the process around existing contracts in retirement villages, and whether all existing residents will be provided with new contracts containing the structured layout proposed by the RIS or whether it will only be applicable to new residents.
4. HAAG is concerned about the cost burden that the RIS indicates will fall onto village residents as a result of applying these amendments.

The RIS states on page 56 that *'existing residents are affected since the costs of compliance with the options would ultimately be borne by them, through increased fees and payments'*.

On page 141 of the RIS retirement villages are split into two sub-groups: group Y and group Z. Group Y indicates villages that are a part of larger organisations, and therefore have access to more resources. Group Z are stand-alone villages, or are part of a small cluster (up to four), and therefore have access to less resources.

The RIS is clear that residents in group Z villages will potentially bear more

costs due to the small size of operation and lack of immediate resources at hand. HAAG's concern is that many NFP villages will fit into group Z and where residents are more vulnerable costs may be higher for village operators to comply with the amendments.

NFP retirement villages often have very simple contracts, and residents are starting from a low income base. The move from the current situation to the disclosure and contracts proposed will be a significant change for the smaller operators.

The RIS acknowledges on page 19 that *'prospective and proposed retirement village residents may be vulnerable consumers'* and that *'vulnerable consumers are at high risk of consumer detriment'*. The RIS even touched upon the vulnerabilities associated with ageing, on page 25, and explained that it is due to *'information asymmetry'* (RIS, page 22) that these amendments are being proposed.

For the reasons noted in the above paragraphs, and due to the lack of self-regulation around disclosure and transparency within an industry that is approximately thirty years old, it is clear that costs to comply with the amendments, especially initially, should be borne by the village operators. An alternative could be Government assistance to low asset operations to comply with the amendments by providing financial support or access to pro-bono legal support. This would reduce the costs borne by low income residents.

There is also the requirement for fees to be increased according to a specific calculation bound by the Consumer Price Index (CPI) under the RVA and therefore if costs are passed on to residents it is unclear how this is likely to occur. What powers in the Act would allow for such an increase? How would residents be consulted if this was to occur? Would notice be required?

5. HAAG also questions what community education resources will be available to inform existing residents about the amendments and to inform prospective residents about what to expect when contacting a retirement village. The RIS does not mention how residents will be informed, especially if it is proposed they will bear costs at some point.
6. HAAG is also unclear about the process for accessing justice if it is found that a village operator has not complied with the disclosure terms. Where the RIS states (page 14) that the Victorian Civil and Administrative Tribunal (VCAT) is *'low-cost, accessible, efficient and independent'* HAAG only partially agrees. In the case of retirement village matters it appears that VCAT is not accessible or efficient, from past case history, and therefore HAAG questions what the process will be if village operators are found to be non-compliant with disclosure. This is especially pertinent for those small, singular villages that may not be accessing up to date information around law reform.

7. In conjunction with point 6 HAAG would also like clarity around the conciliation and compliance processes conducted by CAV if an operator is found to be non-compliant.

Housing for the Aged Action Group's preferred options: Options 1a, 2b and 3a

Option 1 – Introduce disclosure at the intermediate stage

HAAG has reviewed the proposed information to be included in a factsheet at the intermediate stage of retirement village decision making and prefers **option 1a** as it is far more extensive than option 1b. Residents have expressed they would like as much information as possible at this stage and option 1a appears to fulfil this need.

The example provided in the RIS for a factsheet utilising option 1a (page 97-108) has been approved by HAAG's working group residents as having a good layout and large, clear type. They expressed that although it was long it was easy to read and the information was simple, in the style of tick boxes. The group also felt providing a cover page to the factsheet outlining where to find further assistance and explaining the legislative coverage, was very appropriate and would assist prospective residents to better understand their rights.

After comparing options 1a and 1b, as well as considering how option 1 would link in with options 2 and 3, there were some adjustments that HAAG would like to propose:

- It is important to ensure that there is consistency across the three options, whereby each stage of disclosure builds on the last by providing a progression of more in-depth and detailed information.
- Where option 1a contains significant detail there is some information HAAG felt should be further included, such as:
 - Whether the village is in receivership. This information is available in option 2b and should also be made clear up front in option 1.
 - Does the village have a capital works fund? This is included in detail in option 2b and should also be included in 1a, as a simple yes or no tick box.
 - Does the village have an internal dispute resolution process? This is included in detail in option 2b and should also be included in 1a, as a simple yes or no tick box.
 - Resident restrictions are included in option 1a but are limited in scope. Option 1b included any restrictions on gardening by residents and should be added in 1a as well.
 - Whether there are organised social activities, as included in option 1b.
 - Also whether the village is a member of an industry association, as indicated in option 1b.

- The cover page attached to the factsheet is also a vital part of disclosure and HAAG feels there needs to be some extra inclusions, such as:
 - It is important to have CAV's contact details clearly displayed as an available source of information if prospective residents have questions further to the factsheet, and they would like to speak to an independent entity.
 - It should be offered up front that further detailed information is available in the progressive stages of documentation, should a prospective resident be interested in learning more about that particular village. In this way people will know to expect further disclosure along the way.
 - It should be mandatory to provide the Consumer Affairs Booklet: 'Guide to choosing and living in a retirement village' as part of the factsheet package. This will provide an up front summary of retirement village rights to prospective residents, which would assist with improved disclosure.
 - Information about access to independent support services, such as HAAG, should also be included.

It is not entirely clear in the RIS whether the factsheet would be provided to every interested older person who contacts the retirement village for information.

On page 38 of the RIS it states that:

'Option 1 proposes that, at the intermediate stage, a retirement village operator be required, upon request from a prospective resident or their representative, to provide free of charge within 7 days'... a factsheet and access to certain documents.

HAAG believes the factsheet, along with the CAV booklet, should be provided as a standard practice and not only at the request of interested parties. If people are unaware of the existence of this information they would not know to ask, and would therefore possibly miss out on making a well informed decision about their retirement.

Option 2 – Improve pre-contractual disclosure

HAAG has reviewed the information to be included in a disclosure statement in the pre-contractual stage and prefers **option 2b** as it provides for far more comprehensive information than option 2a. Again this is consistent with the expressed need of residents to have thorough information provided to them to be able to make the most informed decision possible about their retirement.

The example provided by the RIS, of the disclosure statement template (pages 109 -116), was assessed as being clear to read and easy to understand again due to the utilisation of the tick box approach. It is understood that the template is based on option 2a, and that option 2b would be much longer, but the HAAG working

group felt that if it is clearly itemised and simply set out the length would not be an issue.

After comparing options 2a and 2b, and considering how option 2 links in with options 1 and 3, HAAG proposes the following to be added to option 2b:

- A statement setting out the purpose of a disclosure statement
- A statement that the Act requires that a disclosure statement be given
- A statement about the importance of seeking advice from an independent legal and/or financial advisor
- A statement that no costs will be borne by the prospective resident in obtaining the disclosure statement
- The types of tenure in the village and their definitions so that prospective residents understand what type of contract they would sign if entering the village
- Ensuring the summary statement of costs contains in-depth details of the current ingoing costs, ongoing costs and exit costs (as well as any further relevant costs)
- It should be clear about what ongoing charges cover, such as what services, facilities are offered to residents, and what aspects of maintenance are the responsibility of the operator and the resident
- Clear detail of responsibilities around refurbishment, reinstatement and renovations of units
- Entry requirements of village operators to individual units
- The estimated departure entitlements table, as included in option 2a

HAAG recognises the need to ensure that the disclosure statement clearly reflects the information contained in a village contract. The next step beyond perusal of a disclosure statement is the decision by a prospective resident to choose their village and sign their contract. They can only do this if the disclosure provided is comprehensive and allows them to make a well-informed decision regarding the suitability of a retirement village in all of its aspects.

Option 3 – Introduce contract standardisation requirements

HAAG recognises that consistency between pre-contractual disclosure, and contractual content, is imperative to ensure that the decision made by a prospective resident is validated in their legal documentation. HAAG's opinion is that a retirement village contract should not contain any topics of information that were not disclosed prior to the contractual stage.

HAAG understands that a contract must fulfil legal requirements, and provide details that may not be appropriate in the pre-contractual stage, so long as the topics of disclosure are consistent across both options.

Therefore HAAG supports a standard layout for retirement village contracts under **option 3a** that contains the same information provided in option 2b at the pre-contractual disclosure stage but in more detail.

Within the NFP retirement village sector the majority, if not all, contracts are a combination of residence and management rights and responsibilities. Therefore when looking at the structure of the proposed contract layouts Part C of Appendix F in the RIS, on pages 130 – 136, was HAAG’s primary focus.

After comparing options 1, 2 and 3, to allow for consistency throughout the disclosure process, HAAG proposes the following be added to the ‘matters to be included’ in a retirement village contract:

- Where the contract outlines all costs and charges payable by the resident to the owner during residency the calculation used for fee increases should be included, as should the timing and frequency of increases
- Where the contract outlines costs and charges payable by the resident upon leaving the village, the contract should be clear about the timelines associated with refund entitlements of ongoing contributions, and the calculations in relation to the estimated refund

The proposed layout and content of contracts by the RIS appears to be detailed and clear, and having a standard format will assist prospective residents to better explore their choices. What is not clear though is whether the standard format will be employed for all retirement village contracts, including existing residents.

HAAG is also unclear about the proposed prescribed term stating that residents and operators deal with each other in ‘*good faith*’ (RIS, page 50). This term appears ambiguous and does not seem to provide for a tangible, practical application. HAAG does acknowledge the need to support best practice in retirement village relationships so perhaps citing the CAV publication ‘Good practice to address key issues’ would assist to substantiate the term ‘good faith’.

HAAG would also be interested in the production of a similar publication targeted at residents, that addresses communication strategies, internal dispute resolution and good practice expectations, which may also assist to define what is meant by ‘good faith’.

HAAG is relieved to see the excluded terms listed by the RIS cover a number of contract clauses that have been an issue for quite a long time, such as the ‘entire agreement’ terms.

In conclusion

Feedback provided from HAAG’s NFP retirement village working group clearly indicated the need for in-depth, information disclosure when choosing to live in a retirement village, no matter what stage of the process.

HAAG's preferred options based on the proposals outlined by the RIS are options 1a, 2b and 3a. HAAG believes it is imperative that each stage of disclosure builds on the last, providing for further detailed information as the process progresses.

A retirement village contract should reflect the information provided in intermediate disclosure and pre-contractual disclosure, and vice versa, to ensure that at every step a prospective residents' decision is clear and validated. Upon entry into a retirement village information given to a resident should replicate the documents provided in previous stages of disclosure, albeit in more detail.

At all times throughout the decision making process an older person should understand what their rights are, that independent advice is available to them and they are entitled to full disclosure at no cost.

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