



## Housing for the Aged Action Group

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28 July 2017

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### Review of internal dispute resolution processes under the Retirement Villages Act 1986

#### Options paper

This submission is a response by Housing for the Aged Action Group (**HAAG**) to the options paper regarding Internal Dispute Resolution (**IDR**) processes under the Retirement Villages Act 1986 (**RVA**).

#### Options for reform

##### Option 1A and 1B

HAAG's preference is for option 1A to be adopted:

#### **Introduce a definition of 'complaint' into the RV Act and clarify requirements around recording complaints**

It is important for residents, managers and operators to understand the definition of a complaint so that any issues that may arise can be considered against a clear description.

The definition mentioned in the options paper, used by the Australian Securities and Investments Commission (**ASIC**), provides what appears to be an appropriate option. However where the options paper would like to differentiate between 'requests for action' versus a 'complaint' we believe the ASIC definition seems to pick up on the whole process.

It is understood there is a concern that processes may become too onerous if the recording of 'requests for action' were mandated but perhaps to remain in line with the ASIC definition if a request is made where "a response or resolution is explicitly or implicitly expected" then it should be recorded. To assist this process, residents should be encouraged to provide their request in writing so it can be easily documented and recorded by the manager.

What must be acknowledged is that in order to make this review more meaningful the RVA should be reviewed as a whole. The Act should contain clearer obligations and responsibilities for all parties. In theory if the rights and responsibilities of each party are outlined in the Act then the number of complaints and disputes should be reduced, or at the very least more easily resolved.

## **Option 2**

### **Review and improve the protocols, and raise their profile amongst owners and residents**

The original purpose behind the protocols, and the proposed review, are well intentioned but as long as they remain unenforceable they will not be considered a legitimate part of the IDR process by residents, managers and operators. Not being a mandatory instrument means they can be easily dismissed and there is no obligation for managers and operators to be bound by them.

If, as the options paper proposes, the protocols were linked to an accreditation scheme or were part of the external dispute resolution processes then there would be some level of accountability and managers and operators may more readily utilise the protocols.

It is also important to ensure residents understand there are protocols in place, as up until now many have been unaware of their existence. It should be made mandatory that they be displayed in a prominent place and be made available in a publication that is specifically targeted at residents.

## **Option 3**

### **Clarify in legislation avenues for directing complaints about village managers**

The amendments proposed to address the conflict that occurs when residents make a complaint about a village manager – to the village manager - are very important. Residents should not have to be fearful of voicing their concerns so an alternative process for dealing with management complaints is welcomed.

The option refers to an alternative contact, being someone other than the village manager but in the same company for larger operators and an alternative person outside of the company or organisation for smaller operators. HAAG believes it should be a consistent choice across all operators, no matter their size.

An external alternative is preferred and should form part of the external dispute resolution process. This is where an ombudsman could play an important role in assisting to resolve disputes in a timely manner. Once again this highlights the need for an overall review of

the RVA to ensure that all of the intricate parts of the regulation and legislation work cohesively.

#### **Option 4**

**Require approval for 'above CPI' increases to maintenance charges to be obtained through the annual meeting of residents, and facilitate voting by alternative means than attending that meeting in person**

This option is a very important one to ensure that a decision that impacts directly on all residents involves the consultation and input of all residents.

HAAG received a phone call from a concerned resident in a retirement village where the residents committee had agreed to a fee increase above the Consumer Price Index (**CPI**). Many residents were upset that this had occurred without consultation and for some it placed pressure on their finances because they lived solely off their pension. Unfortunately with the Act as it is now there was no recourse for residents to have the decision rescinded. Once the residents committee agree it is taken to mean the residents views have been represented, even if the residents have not been consulted.

All residents should be consulted in decisions related to charges and should have the opportunity to vote on an increase. Not everyone can, or will, attend meetings so alternative forms of voting should be made available to provide people with an opportunity to be involved. This could include postal votes and proxy votes.

#### **Option 5**

**Remove the role of residents committees in resident dispute mediation, and promote alternative avenues available for resident-to-resident dispute resolution, such as the Dispute Settlement Centre of Victoria**

Once again this proposed amendment is welcomed. HAAG has often spoken to residents who feel their residents committee does not represent them. There have been instances where committees appear to be more in line with management and are used as a management tool rather than an instrument and avenue for residents to have a voice within their village.

It is also very common to have division amongst residents within a village and sometimes committee members are involved for their own personal agenda rather than for the good of the greater residents group. A village environment is a microcosm of the macrocosm. People do not always get along in society, often disagree and vary in their perspectives.

The retirement village environment is exactly the same and when living in close proximity disagreements may become more pronounced. Often this can influence relationships between residents and therefore having a residents committee involved in disputes between residents becomes a significant conflict of interest.

A resident contacted HAAG one day because she was being harassed by another resident. It ended up at the Victorian Civil and Administrative Tribunal (**VCAT**) and a restraining order was requested. Some residents' committee members were friends with the resident who had the restraining order taken out against him and so some members attended VCAT in his support. This caused significant conflict and should never have occurred. The committee took sides due to their alliances and in such a matter, where serious allegations were noted, they should never have become involved.

Mediation takes skill and training and should not be placed in the hands of residents. The Dispute Settlement Centre of Victoria (**DSCV**) is much better placed to handle these matters and this avenue should be widely promoted.

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