

**Submission to the Victorian Government Parliamentary Review into Retirement Housing**

**Submitted by** Derek Fern

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**Submission**

1. **The Problem** Most , if not all, dedicated retirement housing is the subject of contracts.

The contract is, by reference, subject to a statute such as the Retirement Villages Act 1989 as amended, or the Owners Corporation Act 2006, the majority in the former category. The characteristics of the contracts therefore reflect the tenor and scope of the legislation.

A 2009 review commissioned by the then Retirement Villages Association (RVA)[ref 1] , which compared legislation in all Australian States and New Zealand, revealed shortcomings in the Victorian legislation including the absence of regulation of :-

- . responsibility for maintenance
- . responsibility for replacement of capital items in the village
- .responsibility for costs of capital improvement
- . obligations on the owner to insure
- .right of termination by the resident, although the rights of the owner are fully covered
- . recovery of the residential unit on termination, and disposal of uncollected goods
- .responsibility for renovation and/or refurbishment
- .establishment of an exit fee.

These matters have all proved to be vexatious in the way they have been dealt with in contracts, the degree of conflict depending on the competence and integrity of the compiler and the experience of anyone called upon by prospective residents to give advice.

2. **A Solution** One solution to this problem is to develop a standard contract or agreement. This proposal has detractors on the grounds that –

- . it raises a belief that, being standard, it can be assumed to be infallible
- . one standard cannot address the various tenancies such as lease-for life, strata title, company shares etc.
- . it removes from owners the flexibility to introduce innovative schemes.

Concerns about differing tenancies can be addressed by , having developed one standard, adapting it to form a suite of documents with a common title and format but individual part numbers and specific content.

Concerns about the loss of flexibility would be covered by inclusion of annexures in which special contract conditions can be recorded for formal acceptance by both parties.

Concerns about perception of infallibility would, as at present, be covered by advising prospective residents to seek competent advice as to its suitability for their needs.

A standard has no legal standing in that it cannot be made compulsory, and only becomes operative when specified and agreed by all parties. The advantages are that well compiled standards soon develop their own precedents, minimise the grounds for dispute and are not seen to advantage one party.

3. A National Alternative Throughout 2009 the writer headed a RRVV project to produce a standard contract for Victoria, which rapidly escalated to a national project. The Standards Association of Australia (SAA) agreed to support the preparation of such a document (or suite of documents) under their auspices. The resulting Standard would very probably have received New Zealand endorsement. SAA participation required broad support for the panel preparing the Standard and rigorous procedures for presentation, public comment and review. All but one of the required supporters, including the RVA and the Shadow Attorney General, had been secured when the project was prematurely terminated.

4. Recommendation That the review panel support the development of a Model Contract, or suite of contracts for Retirement Housing in Victoria and frame any proposed changes in legislation to incorporate the Model.

While the Victorian Government clearly cannot mandate the adoption of a national standard, it could encourage and facilitate the development of a Model contract (or agreement) for Victoria, in the same way that it proposes a Model constitution under the Associations Incorporation Reform Act.2012.

The 2010 concept of harmonising RV legislation in Victoria and New South Wales was well received but was effectively limited to the introduction of comprehensive disclosure statements. Indications are that a Victorian Government initiative such as that outlined would gain recognition and adoption.

The writer is prepared to appear before the review panel in support of this recommendation.

  
Derek Fern

  
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References [1] Australian and New Zealand Retirement Villages Legislation Compendium,  
Minter Ellison 2009