

Rec 27/6/16
RAS Submission 716

John Sheedy,

24th June 2016
The Secretary,
Legal & Social Issue Committee,
Parliament House,
Spring Street,
Melbourne, Vic. 3002

Dear Sir,

PARLIAMENTARY INQUIRY INTO RETIREMENT HOUSING SECTOR

We entered [REDACTED] in 2012, I was a member of the [REDACTED] Residents' Committee for 3 years and am the Resident Liaison Officer for the Residents of Retirement Villages Victoria members in [REDACTED]. I believe this experience along with my academic qualifications and business background, makes me suitably well qualified to make a submission to the Inquiry.

1. Retirement Villages Act & Regulations

The 30 year old Act needs to be re-written in plain English to provide better and stronger protection for residents. Meaningful penalties must apply for any breaches or non-compliance by managers and/or owners. The new Act should incorporate the following -

- **maintenance charges** - definition be expanded and clarified to include service fees as well as contributions to capital replacement/maintenance/sinking fund. It should also provide that when village account is in surplus, then any automatic annual increase in service fees, should cease until such time as the village budget reveals a future need for increase
- **deficit** - clear definition should be included with provision for any deficit carried forward into next financial period
- **surplus** - add a clear definition with any surplus carried forward into the next financial period. Also to include **restrictions that prevent any village manager/owner being entitled to receive any portion of any surplus from village operating account**
- **annual meeting (section 33)** - in addition to the requirements of section 34 (1) to (4) requirements should include: issue 30 day notice of meeting with formal agenda, outline proceedings for conduct of meetings, detail voting arrangements (including proxies for matters requiring a vote by residents), minutes to be kept of proceedings of meetings, financial statements to contain information in accordance with accepted accounting principles and standards (including breakdown of any head office/ administration expenses showing wages/salaries and details of all other costs included)
- **residents' committee (section 36)** - provides for residents' committee to represent the interests of residents. The recent **Associations Incorporation Reform Act 2012 (AIRA)** calls for model rules to be incorporated into association rules with residents' committee representing interests of members. This creates a uncertain legal situation for residents who chose for various reasons, not to become members of the association. Any non-members of the association have no collective voice to deal with manager/owner except at annual general meetings of residents. If the new Act provided for all residents to be represented by the residents' committee formed under the AIRA, no-one would want to join the association and pay essential (modest) annual subscriptions creating chaos for the residents' committee and all village residents. So this is clearly not a viable option. This conflict between the two Acts needs to be resolved but I personally do not currently have a solution

- **disputes/complaints (section 38E - 38H)** - these sections prevent management from dealing with a management complaint or resident dispute while it is being handled by the residents' committee. Uncertainty exists on whether or not the residents' committee can get involved after a decision has been notified but one of the parties feels justified in wanting to challenge the outcome. The new Act needs to clarify this situation and provide for an appeals process via a Retirement Housing Ombudsman (see later under separate heading)

2. Consumer Affairs Victoria - Retirement Village Protocols

In 2012 CAV published protocols setting out "best practice" measures for retirement village managers to take to prevent commonly arising issues from causing friction or disputes & promote harmonious relations in villages and enhance the experience of village life for residents.

The protocols covered changes to services, maintenance charges and processes, what do service fees and capital replacement fund charges cover, presentation of annual financial statements, marketing procedures for a unit after a resident departs the village, ongoing charges after a resident leaves or dies and refurbishment of units.

The Government and CAV expected village managers to adopt "best practice" procedures and universally implement the protocols. Village managers state protocols are purely voluntary and not legally binding because implementation is discretionary.

In order to give residents confidence that village manager is applying "best practice" procedures, the CAV protocols should be made mandatory by specific inclusion in the new Act.

3. Local Government Rating

Council rates cover the cost of providing services like roads, drains, street lighting to the boundary of the rateable property. In the case of retirement villages such Council services do not go to the property boundary instead these are provided by village and charged for in service fees. Council saves significant cost by not having to maintain this infrastructure within villages while residents are effectively paying twice. Ministerial Guidelines were introduced to address rate disparities and deliver greater fairness and equity by the use of differential rating for retirement villages. However because these were not mandatory few Councils have adopted differential rating despite regular requests by villages and residents setting out multiple valid reasons for same.

It is strongly recommended that differential rating be made compulsory in the RVA within a range of say 10% to 30%.

4. Retirement Housing Ombudsman

Problems encountered with disputes/complaints include -

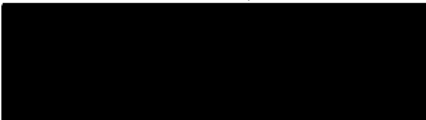
- complaints on management issues are handled by village manager which is neither transparent or independent and can lead to biased or unfair decisions
- if resolution of the complaint/dispute is considered unfair, unreasonable or unsatisfactory by the complainant, there is no appeal process making a real need for an ombudsman appointment
- while any complaint/dispute is being dealt with by management, the residents' committee is prevented from being involved - sometimes having the residents' committee involved could bring about a quicker and more acceptable solution for all parties
- many complaints/disputes arise from different interpretations of the RVA which can only be resolved by taking expensive legal action
- complex and lengthy documentation is another regular cause of complaints/disputes which can be onerous, unfair and slanted in favour of managers/owners leaving residents disadvantaged

- the Dispute Settlement Centre of Victoria (part of the Victorian Department of Justice) provides a free service, but village managers/owners often will not volunteer to attend and/or refuse to be bound to any decision reached
- CAV are largely ineffective in resolving complaints/disputes referred to them. CAV enforcement of RVA is generally weak to non-existent. CAV have proven reluctant to side against managers/owners letting consumers down and often suggesting that legal action may be necessary to resolve an issue. Clearly legal action would entail significant expense and an uncertain outcome meaning few (if any) retirement village residents are financially able or willing to take this step. CAV problems may stem from budgetary constraints, inadequate staff numbers and expertise in understanding RVA plus a restrictive mandate
- Victorian Civil and Administrative Tribunal (VCAT) can hear disputes but to mount a VCAT case is highly expensive, time consuming and retirees tend to find it stressful and daunting to deal with the issues and information required

All the above factors make it imperative that a Retirement Housing Ombudsman be appointed to deal with disputes/complaints and any other matters arising from the RVA or other retirement housing issues. The Ombudsman must have appropriate power to make and enforce decisions with penalties for non-compliance and adequate funding to engage an adequate number of appropriately qualified staff to undertake what will be an important and busy role.

Please do not hesitate to contact me regarding any aspect of this submission.

Yours faithfully,



John Sheedy