

RETIREMENT HOUSING SECTOR INQUIRY

Legislative Council Standing Committee on Legal and Social Issues

The Law Institute of Victoria (LIV) welcomes the opportunity to contribute to the parliamentary inquiry on the retirement housing sector.

The LIV has been actively involved in policy and law reform in relation to retirement villages contracts (submission available [here](#)) and welcomed the reforms in the *Retirement Villages Amendment (Information Disclosure) Act 2013*.

The LIV is, however, aware of further concerns in the sector. Some of the key issues include:

- Residence Contracts
- Dispute Resolution Process

Reform of legislative framework

Previous LIV advocacy related specifically to retirement villages. However, the LIV notes that the retirement housing sector is broader than just retirement villages and the legislative framework is very confusing. Currently, housing options for the elderly include independent living units (within a retirement village); serviced apartments (within a retirement village); not-for-profit retirement villages; for profit retirement villages; supported residential services; rooming houses; residential parks; home care packages and residential aged care facilities. These housing options all operate under different legislative provisions, both State and Federal.¹ Whilst recognising the complex array of legal structures within the sector, sometimes even within the same legal structure (such as a lease based village) there may be different:

- Facilities and services provided;
- Obligations of the residence in relation to the maintenance of units;
- Method of calculating refundable contributions; and
- Re-sale provisions.

¹ *Retirement villages Act 1986*(Vic); *Residential Tenancies Act 1997* (Vic); *Owners Corporations Act 2006* (Vic); *Supported Residential Services (Private Proprietors) Act 2010*(Vic); *Health Services Act 1988* (Vic); *Aged Care Act 1997* (Cth).

The LIV considers the overlapping legislation creates greater complexity and confusion in the sector and practically reduces the protection available to elderly residents. This inquiry may provide an opportunity to clarify the legislative framework, and reform regulation of the retirement housing sector.

Residence contracts

Whilst the 2014 amendments to the *Retirement Village Act 1986 (RVA)* and the *Retirement Villages Amendment (Information Disclosure) Act 2013* provided increased disclosure provisions, LIV members report that there continues to be general confusion about the “**ingoing, the ongoing and the outgoing**”.

Ingoing: LIV members note that there is sometimes confusion about the ability of residents to negotiate or amend residence contracts by, for example, side agreements, and that, generally, the contracts are too complex for residents and their families to understand. This is, at least in part because legal ownership in retirement communities can include leasehold, license, company title and freehold title.

There also appears to be little information provided to residents, when entering an arrangement, about the possible ongoing adverse consequence of the legal relationship in which they enter, such as the possible effect of continuing to receive government benefits). For instance, the amount someone pays to enter a retirement village or a manufactured home estate can affect whether that person is a ‘home owner’, which can have an impact in relation to asset testing for other forms of government assistance.²

Ongoing: The fees for general services charges and extra services, as well as the management, appointment and control of these services, can be confusing. The specification of minimum repair or service levels is not regulated and can be ambiguous depending on the contract.

Outgoing: As the deferred (or exit) fees are not regulated (outside the disclosure statement), there are many different formulae for calculation, which can be quite unclear and work to the disadvantage of residents. For example, in a retirement village contract, the deferred management fee (usually 30%) can be calculated on the ***purchase price*** or the ***sale price***.

² The relevant figure of \$149,000 is the difference between the lower thresholds for a homeowner and a non-homeowner in 2015/16. It will change each financial year.

This can make a significant difference to the amount being paid on exit by the resident, which is not fully appreciated at the time of entering the contract.

Further, the calculation of, and therefore the sharing of capital gains can also be quite variable, depending on whether the contract provides calculation 'before or after' the deferred management fee has been deducted. This can have a large impact on the amount a resident pays on exit and this effect may not be obvious in the contract. This can create further confusion with 'refurbishment fees'; re-letting fee / admin fee – that are also not regulated outside the disclosure requirement.

The LIV supports reforms that ensure consumers are better able to understand, assess, compare and choose between the various industry contracts presently on offer.

Dispute resolution process

Dispute resolution processes for residents in the retirement housing sector can be lengthy and complicated. The type of dispute resolution process engaged depends on the type of housing and the contract between the resident and provider. The applicable process may not be immediately clear.

In a retirement village, when a dispute cannot be directly resolved between the resident and the retirement village manager, the matter can be referred to Consumer Affairs Victoria's conciliation service. However, Consumer Affairs Victoria is unable to make a binding decision, which can leave parties dissatisfied, especially when the dispute is between the resident and the management. The only alternative is the Victorian Civil and Administrative Tribunal, which can be expensive and lengthy, with limited availability of free legal services.

Residents of aged care facilities (regulated under the *Aged Care Act 1997 (ACA)*) can make complaints to the Aged Care Complaints Commissioner. This is limited to services funded and regulated by the Federal Government. The service is free and complaints can be made confidentially and anonymously, ensuring that residents are protected from any adverse treatment as a result of their complaint. In a retirement village situation the resident is required to make a complaint directly with the management in the first instance which can be intimidating especially if the complaint is about the management.

The existence of multiple complaints processes can be confusing, especially as many aged care service providers often operate residential aged care facilities and independent living units on the same property, which are regulated separately and can have different complaint processes.

An ombudsman in Victoria may be a preferable dispute resolution model for the sector. This might provide a streamlined and cost effective process for dispute resolution in the sector where internal dispute resolution processes are not appropriate.

Other issues

Some LIV members have also raised concerns that exemptions under section 6 the Retirement Villages Act is inappropriate. There are reports that some large service providers are charging high fees and in-going contributions and should not be exempt from compliance with the disclosure provisions of the legislation.

Conclusion

The LIV considers that in addition to regulatory reform, there needs to be more accessible information for residents (or potentially residents) on the options available across the sector and the associated rights and responsibilities. Often people are looking at types of residential care at a time of high stress and need to be assisted to navigate the system.

The LIV would appreciate the opportunity to participate in any ongoing work proposed in addressing these issues.

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