

**Property Council of Australia  
Victoria Division**

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# **Submission to the Standing Committee on Legal and Social Issues**

## ***Inquiry into the Retirement Housing Sector***

July 2016

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## **EXECUTIVE SUMMARY**

The Property Council of Australia represents the retirement village sector. Our submission below does not purport to make comment on any sector which operates outside the *Retirement Villages Act*.<sup>1</sup>

Retirement villages cannot be built fast enough to meet demand. As Victoria's population continues to age, this demand is expected to outstrip supply by more than 30 per cent.<sup>2</sup> Victoria is Australia's second largest market for retirement villages by dwelling number, with approximately 27.3 per cent of the market being not for profit.<sup>3</sup> In 2014, our State housed approximately 23 per cent of Australia's village residents and has a 5.3 per cent market penetration rate.<sup>4</sup>

The same report estimated that 43,107 Victorians currently live in retirement villages and more are moving into villages at an exponential rate due to the vast social, support, lifestyle and care options that they offer.<sup>5</sup> Currently we know an overwhelming majority of retirement village residents are happy, key indicators include:

- 97 per cent indicating they are satisfied and 96 per cent that they would make the decision to move into a village again;<sup>6</sup>
- The sector's average Net Promoter Score<sup>7</sup> being 25 in 2013, a marked 40 points higher than the average Australian industry performance of -15 and the Big Four Banks<sup>8</sup> who scored -15.15 in the same year.<sup>9</sup> This score makes retirement villages the highest rated sector based on all available data; and
- According to complaints data available from Consumer Affairs Victoria, 0.13 per cent of the sector made a complaint in the 2014/15 financial year; this is significantly lower than the previous year. We attribute this reduction to the disclosure reforms by Consumer Affairs Victoria. We also note that this is significantly lower than complaint levels of similar asset classes.

The change in the demographic character of our community will result in a dynamic transformation in the residential property market. This has the potential to either enhance or undermine Victoria's standard of living, public finances and the quality of government service provision.

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<sup>1</sup> *Retirement Villages Act 1986* (Vic).

<sup>2</sup> *Economic Contribution of Australian Retirement Villages 2011*, Prepared for the Retirement Villages Association, KPMG.

<sup>3</sup> *National overview of the retirement village sector 2014*, Prepared for the Property Council of Australia, Grant Thornton.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> *McCrindle Baynes Villages Census Report 2013-2014*, Prepared by McCrindle Baynes.

<sup>7</sup> The Net Promoter Score is a consumer calculation of the promoters minus the detractors. It is used to calculate performance in consumer oriented or service industries.

<sup>8</sup> Chris Roberts, *Australian Banking NPS Results* (18 September 2013) Engaged Marketing  
<<http://www.engagedmarketing.com.au/australian-banking-nps-results/>>

<sup>9</sup> *McCrindle Baynes Villages Census Report 2013-2014*, Prepared by McCrindle Baynes.

In 2014, the Victorian sector made the following contributions:<sup>10</sup>

- \$686.1 million to Australian GDP through construction and operation;
- \$41.3 million in annual taxation revenue; and
- \$505.8 in savings to health care and aged care systems.

It must be acknowledged that an increase in legislative burden does not always correlate with an increase in best practice or resident satisfaction, both of which are already at high levels in Victoria. We believe that the numbers speak for themselves.

While the retirement village sector has recently been through a review, has high satisfaction ratings and relatively few complaints, we are aware that there is appetite for further reform to dispute resolution processes. Consequently, we encourage the Inquiry to consider a model with an advocate like that of South Australia. We believe this reform will complement our current system and provide stakeholders with peace of mind.

Additionally, we believe the sector would benefit from further attention in the form of a retirement living minister. The Property Council has long advocated for the creation of this portfolio to foster this burgeoning sector as we believe that it would be of great benefit to Victoria. Please find attached our paper on this important policy initiative.

This sector gives Government the opportunity to build a strong foundation for Victoria's economy by attracting private sector investment into public services that are in growing demand. We encourage Government to consider the long term ramifications of any recommendations made by this Committee with regard to our long term standard of living.

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<sup>10</sup> *National overview of the retirement village sector 2014*, Prepared for the Property Council of Australia, Grant Thornton.

## **ISSUES**

### **Existing Legislation**

**Term of reference:**

- (1) With the aim of identifying opportunities for improvement and reform, consider existing legislation that relates to retirement housing, in particular recommendations for reform of retirement housing legislation to ensure it**
- - (a) reflects the diversity of retirement housing types;**
  - (b) Includes proper consumer protections, dispute resolution procedures, fair pricing, and consistent, simplified management standards and regulations across the sector; and**
  - (c) Has a focus on dignity, respect, appropriate care and quality of life for retirees**

### **Our response**

#### *Diversity of retirement housing types*

Retirement villages in Victoria comprise a diverse offering from villa style units within broad acre developments, to medium density low rise townhouses and high density apartment and penthouse accommodation. This diversity allows for a range of financial offerings across Victoria. The *Retirement Villages Act* permits this diversity in offerings.

We urge Government to ensure that this opportunity for diversity is retained and no amendment be made to the Act with regard to housing types.

#### *Fair Pricing*

Retirement villages are a self-funded form of affordable housing and services for seniors. As such, villages receive no government funding or subsidies, and therefore prices are market driven. The price of a retirement dwelling is not set or approved by the government and is a function of market forces mainly being the influences of the wider residential housing market. Potential residents have the choice of living in a dwelling within a retirement village or outside a retirement village such as in a townhouse or unit. The choice is up to the consumer and they make their decision on what they perceive to be the best value for money given their financial circumstances. Retirement villages operate in a competitive market and have little pricing power over the market price of dwellings.

Although there are a number of forms of retirement village arrangements, by far the most common form of agreement for purchase of retirement village property is a lifetime leasehold arrangement.

The lifetime lease secures the residents tenure in their retirement home and other rights (such as exclusive access to community facilities) in relation to the property. The purchase price for the lifetime lease is structured as two payments, comprising:

1. An upfront payment (reflective of a discount to market price for the unit and facilities); and
2. A deferred payment payable when the resident leaves the village permanently.

This two tiered payment arrangement means that the upfront cost, when a resident moves to the village, is affordable and enables them to conserve part of their savings to help fund their retirement lifestyle costs.

The total property costs associated with the purchase and on-going tenure of a retirement village can be broken into three components:

- *Entry Payment* paid up front;
- *On-going Service and Maintenance Fee*; and
- *Deferred Payment* paid upon leaving the village.

A description of each is as follows:

#### **Entry Payment**

This is a single up-front payment, which is also known as an 'Ingoing Contribution'. It is similar to (but may be less than) the purchase price of a comparable residential property in the same area. Further, residents are given access to all the community facilities that are included in a retirement village. The Entry Payment is less than the village developer's total required return i.e. less than the cost of construction of the houses, the community facilities and the infrastructure, and a reasonable profit margin. Proper recovery of these elements is derived by the developer from the combination of the Entry Payment and the Deferred Payment (see below).

This two tiered payment structure enables retirement village housing to be affordable for incoming residents, and frees up equity from their old family home to partially fund their retirement years.

The Entry Payment will be the largest single payment a resident will make, and is typically funded from the proceeds of the sale of their old family home. This payment secures the resident's place in the retirement village community.

#### **Service and Maintenance Charge**

These are weekly or monthly charge payments that residents make that contribute to the running costs of the community, its common facilities, village maintenance and staff. The Act also requires that, if the Fee is to rise above CPI, residents must approve the operating budget each year at an annual meeting. Residents therefore decide just how they want their money allocated.

The Service and Maintenance Charge is similar to owners corporation fees in a standard residential strata development when you buy an apartment, or similar to on-going maintenance costs in a traditional family home. However, because the Fee is reflective of the communal sharing of facilities and services, and the economies of scale it provides, it enables retiree living costs to be lower they more affordable than incurred in their old family home.

The annual budget setting process with the residents' input helps to ensure that there are no surprise costs and generally covers such things as:

- Managing the village and paying the salaries of the site staff and emergency medical care services;
- Maintaining the community buildings, facilities and common areas such as gardens and recreational areas, as well as any additional services like a village bus, bowling green, library, pool, etc; and,
- Building insurance for the community buildings and all homes in the community.

### **Deferred Payment**

This is often one of the less understood aspects of the financial components of village living.

The Deferred Payment is the amount that is paid by the resident when they leave the community permanently and their village unit has been sold to a new resident under a new lifetime lease (reflective of the new market values).

A logical way of thinking about the Deferred Payment is: if you buy a residential unit or house, the day of settlement the developer recovers all of their costs and derives a profit from the selling price. With the Deferred Payment structure, the developer delivers a more affordable home upfront and derives a profit over time, with a majority being received when a resident leaves the community.

This Deferred Payment is usually a percentage of the Entry or Exit Payment that the resident pays. Depending on the contract, there may also be a sharing of the capital gain from the sale of the unit between the resident and the developer/operator. This reflects their shared market risk over the period of the residents' tenure. The Deferred Payment is agreed between the developer/operator and the resident upfront.

Essentially, the agreed Deferred Payment structure is a way of ensuring that more people can afford to access comfortable retirement living in an area that they like, with additional facilities to improve their lifestyle. This includes those who might not usually be able to afford it, while ensuring there is sufficient return for operators to invest in this type of accommodation.

### **Fair Disclosure**

Operators want residents to be fully informed and aware of any financial agreement that residents enter with them and generally recommend residents seek their own legal and financial advice before entering into any agreement.

The *Retirement Villages Act* has strict and full disclosure requirements that the operator abide by at the time a resident is considering moving to a village. This includes the provision of a Disclosure Statement that comprises:

- A Fact Sheet;
- The Entry Payment;
- Calculations of estimated future Deferred Payments;
- On-going Service and Maintenance Fees; and
- An Example Contract.

Accordingly, residents are made completely aware of these costs before the time of purchase, to assist with decision making and comparing villages.

Finally, residents do not make the decision to move into a retirement village lightly. Besides the disclosure statement and independent legal advice, it is common practice for a prospective resident to visit a village on several occasions to assess their offering. We believe that residents who live in a retirement village make an informed decision.

## *Consistent, simplified management standards and regulations*

### **Management standards**

The sector has been committed to ensuring retirement living communities are well managed for more than two decades.

The industry associations (both the Retirement Village Association (RVA) and the Retirement Living Council, as a division the Property Council of Australia) have developed, promoted and continuously improved its accreditation program.

Initially the sector, of its own accord, developed 28 standards that retirement living communities should comply with. These were developed with the involvement of many sector pioneers (many whom are now Life Members) to show that the sector had a strong commitment to improving the experiences of residents nationally.



For around fifteen years the sector reviewed and refined these standards (which also included reviewing, combining or expanding standards) to be consistent with contemporary resident needs and expectations. Moreover, residents were involved in both the development of these standards and the audit (accreditation) process that was formerly undertaken by experienced sector professionals on either a voluntary, or cost recovery basis.

Accreditation was granted on a three-year basis when a village met all standards (with a rigorous, evidence-based audit), followed by two annual reviews that ensured continued application of practices in the village in accordance with the standards. Villages paid around \$1,000 to \$1,500 per annum to undertake and retain accreditation and displayed the accredited village logo on their marketing materials, community facilities, websites, stationary etc. with great pride.

The Accreditation was strongly linked to membership of the industry association and over time had increasing penetration across villages nationally. While this process was non-compulsory, it gained momentum and was backed by for profit, not for profit, large and small village operators alike.

It should also be noted that this included the surveying of 3000-4000 residents in villages each year, which highlighted greater than 96 per cent satisfaction with the retirement village experience. This was highly consultative and showed that the villages that sought accreditation generally had very satisfied customers.

By 2012, the National Accreditation Committee (all volunteers) were accrediting around 100 villages per year, meaning that around 60 per cent of the RVA membership was accredited at any time (a strong result given the growing and rapidly changing membership base).

It was around this time (2011 and beyond) that the National Board of the RVA began a review of the accreditation process. The objective of this review was to ensure it assisted the sector in improving the rigour of the standards, to align them with international best practice and to introduce greater independence.

Advice was procured, at a significant cost funded from RVA membership, from globally recognised consultants in certification / accreditation. This advice was given by Graeme Drake from GED Consulting who is a board member of ISO in Geneva. His review was highly detailed, but concluded that the industry lead system was very robust and had a good level of practices in place that were the equal of many other industries with a long history of standards or codes of practice.

This resulted in a significant review of the standards, the audit process and accreditation of villages.



It included a range of operators (from small to large) with the goal of showing residents and prospective residents that the sector (and individual villages) were:

- 1. Committed to international best practice standards; and
- 2. Moving to a system where villages were scrutinised by third party assessors that reviewed dozens of industries, including many that had their own International or Australian Standards (SO or AS).

This coincided with the merger with the Property Council of Australia (2013), which also supported a best practice industry accreditation program for retirement villages. The Property Council, via the newly formed Retirement Living Council (RLC) appointed British Standards International (BSI) to undertake the audits of villages on a contract basis with individual operators in accord with the newly developed standards.

The standards for the sector include the following:

- 1 Lifestyle (4 standards)
- 2 Support (4 standards)
- 3 People/staff (5 standards)
- 4 Safety (4 standards)
- 5 Regulations (5 standards)
- 6 Village policy (4 standards)



The standards are rigorous and include the following areas:

#### Lifestyle

- Village Activities;
- Transport Services;
- Resident's Involvement in Decision Making; and
- Continuous Improvement Program.

#### Support

- Resident Information;
- New Resident Information;
- Communication; and
- Resident Satisfaction.

#### People/Staff

- Resident Dignity and Privacy;
- Employment Practices;
- New Staff Orientation;
- Performance Management; and
- People Development.

#### Safety

- Safety and Security;
- Signage;
- Emergency Call System; and
- Fire Safety, Emergency and Disaster Planning.

#### Regulations

- Food/Catering Services;
- Contractual and Financial;
- Regulatory Compliance;
- Occupational Health and Safety; and
- Insurance.

#### Village Policy

- Dispute Resolution/Feedback;
- Annual/General Meetings of Residents;
- Policies and Procedures; and
- Maintenance.

In addition the program was rebranded and launched as Lifemark, the new benchmark for villages in Australia. This has been extremely well received across the RLC membership. As of May, the Lifemark Accreditation has had:

- 23 organisations involved;
- 214 villages achieving the Accreditation; and
- 82 villages going through or to go through the Accreditation.



## Regulations

The *Retirement Villages Act* (the Act) was established in 1986 to govern retirement villages in Victoria. As an instrument, it is very prescriptive regarding how villages are to operate. Over time, Government has sought to tighten some areas, to ensure that the law continues to reflect the modern practices of villages and the dynamic needs of residents.

Each time, this comes at a considerable administrative cost to villages (many of which are small businesses) who are keen to ensure that practices are in line with what is set out in the Act and Regulations.

A review into the Act was conducted in 2006 and some amendments were made at that time to the contractual arrangements. More recently (2012) the Victorian Government introduced the *Retirement Villages Amendment (Information Disclosure) Bill*. The Bill amends the Act to require the owner or manager of a retirement village to:

1. Provide a summary of information relating to the retirement village; and
2. To make certain documents available for inspection to prospective residents.

In effect this was a greater level of disclosure that aimed to make it simpler for residents to understand village contracts and the obligations of the parties.

Since that time, the sector with great support from members of the Property Council have implemented training and development for villages so that sector came into line with the newly required practices that emerged from the Bill. To date, this has proved to be very successful, with the vast majority of villages operating in line with the new disclosure processes.

The Property Council has led new innovation with the development and implementation of a Village Manager Diploma delivered via our professional development Academy. These course units were developed by a committee of highly experienced practitioners from across the sector nationally to ensure that managers can be effectively trained to provide better service to residents, and comply with the relevant legislative instruments in each jurisdiction.

It is important to note that retirement villages have the highest level of consumer regulation of any sector of the property market in Australia. Residents have far more protection in terms of disclosure, cooling off periods, contract transparency etc. than any other class of property. The Property Council supports these protections as we believe a well governed sector that protects the rights of both residents and operators is one that will continue to prosper.

However, this must be balanced with principles of fairness for both parties to ensure the on-going commercial sustainability of the sector.

The Property Council has worked closely with Government and residents to ensure that the Act and Regulations promote the growth of villages, allowing more people to embrace the great lifestyle villages have delivered to thousands of Victorians.

### *Focus on dignity, respect, appropriate care and quality of life for retirees*

The Property Council acknowledges the importance of residents being treated with dignity and respect, that their quality of life is appropriate and that they have access to suitable care options.

It is essential that retirement villages make health and wellbeing of existing residents a priority not only because it is best practice but also because it is critical to attracting new residents to a village.

#### **Treating retirees with dignity and respect**

The role that legislation can play in ensuring that retirement village residents are treated with dignity and respect is somewhat limited. However, the inclusion of appropriate protections or rights for residents can be effective in limiting or deterring the mistreatment of residents.

The existing legislation that governs retirement villages in Victoria contains some relevant protections. These include:

- (1) A manager of a retirement village is restricted from demanding or accepting a power of attorney from a resident; and
- (2) There are restrictions on when a retirement village owner may terminate a resident's residence contract (e.g. the breach of the residence contract must be substantial).

In addition to this, there are a number of good practice protocols that have been published by Consumer Affairs Victoria (CAV) to identify the appropriate behaviours towards and consultation that ought to be undertaken with residents. These protocols were developed by CAV in consultation with member representatives of the Property Council and various consumer groups that represent the interests of aged persons and residents of retirement villages.

The Property Council considers the above measures to be appropriate in ensuring there is a focus on treating residents of retirement villages with dignity and respect.

#### **Access to appropriate care**

Retirement villages offer accommodation to those who choose to live independently while having care options and other services available. The care available to residents may range from:

- A high degree of home based care;
- An on-site professional who is available for consultations on an as needs basis; or
- Simply an "emergency call system" that operates in the case of emergencies.

With the recent reforms to the aged care legislation, operators are now looking at how they can facilitate the provision of care in their villages, especially as the average age of entry and tenure for residents' increases.

The existing retirement villages legislation does not place any restriction on residents receiving appropriate care while residing in a village. Therefore, the Property Council considers that the current legislative framework appropriate in allowing operators to offer appropriate care arrangements to respond to consumer needs.

### Quality of Life

The Property Council and its members understand the important role retirement villages play in contributing to a person's quality of life. Living in a retirement village is a lifestyle choice which carries significant benefits. Most notably it allows older Australians to connect with others and have a sense of community that translates to tangible health and well-being benefits. This is in contrast to the physical or social isolation that may be felt by retirees who choose to remain in the broader residential community.

Consequently, we urge the Government to look at ways to encourage older Victorians to reside in appropriate accommodation that meet their needs as they age and enhance their quality of life.

## Reform in other Australian and overseas jurisdictions

### Term of reference:

- (2) With the aim of identifying opportunities for improvement and reform, consider comparable reviews and recommendations for reform in other Australian and overseas jurisdictions.**

### Our response

The key themes arising from current reviews of retirement village legislation within other Australian jurisdictions, and similar provisions within the New Zealand framework are set out below.

1. Prescribing clearer pre-contractual disclosure obligations
  - (a) Western Australia – Implemented two new disclosure statement forms that must be given to prospective residents at least ten working days before being asked to sign a contract. These forms intend to replace and simplify the current form that is being used.
  - (b) Australian Capital Territory– The *Retirement Villages Amendment Bill* 2016 proposes a list of additional information about:
    - The difference between retirement villages and aged care facilities,
    - Information about:
      - Departure fees; and
      - The operator's policy on residents' access to care services.
    - This information must be included in the general inquiry document.

- (c) South Australia – The *Retirement Villages Bill* 2016 proposes to introduce the concept of a standard form 'disclosure statement'. This form is to be provided to a prospective resident at least ten business days before that person enters into a residence contract.

The Bill provides that the disclosure statement must include the following:

- All fees and charges that residents will be responsible for under the contract (including a description fee, the amount and the manner in which it will be calculated);
  - A statement advising the resident that they may be required to pay a special levy;
  - The insurance arrangement in place for the village; and
  - Any interest an operator has in services used within the village e.g. electricity or internet services.
- (d) New Zealand – The model offered in the *Retirement Villages Act* 2003 is based on the notion of a “Licence to Occupy”. This concept means a resident purchases an “occupation right” to live in the village for as long as they want or are able to live independently. They do not have title to the building or the land. The regime requires that operators must provide all residents with the following documents:
- A disclosure statement, setting out the details of the village ownership, status, cost of units, approximate re-sale times etc;
  - An Occupation Right Agreement (ORA), which is the individual contract between the operator and the resident. These may vary between one resident and the next;
  - A copy of the Code of Practice;
  - A copy of the Code of Residents’ Rights; and
  - The village’s financial report must be provided on request.

In Victoria, new two stage process for disclosure was implemented in July 2014. This new process provides transparent, clear disclosure for consumers and has been well received by consumers and operators. We submit that disclosure in Victoria is sufficient and no further reform is required.

## 2. Managing residents at the village and providing for dispute resolution

- (a) South Australia – The Bill allows termination of a residence contract on the basis that a resident is seriously disturbing the peace or comfort of other residents. The Bill requires the operator of a retirement village to maintain a written policy in relation to resolution of disputes between the operator and residents. A party to a dispute between an operator and a resident may apply to the South Australian Civil and Administrative Tribunal for resolution. An application may only be made if the parties have made reasonable attempts to resolve the dispute. This must be done in accordance with the operator’s dispute resolution process and such attempts must have failed.
- (b) Australian Capital Territory – The Bill includes new provisions on dispute resolution procedures and provides that the operator of a retirement village must establish a committee (a disputes committee) to resolve disputes that arise between residents and the operator.
- (c) New Zealand – The *Retirement Villages Act* 2003 outlines the structures and processes for dispute resolution. This process requires operators to have a written policy and procedure within their village to deal with complaints (a complaints facility). If a complaint cannot be resolved, the matter may require resolution by a dispute panel. This panel must be established in accordance with the Act and the Retirement Villages (Dispute Panel) Regulations 2006.

The *Retirement Villages Act* already requires that operators create and maintain a dispute resolution procedure for managing complaints about management, and disputes between residents. This procedure must be disclosed to potential residents and made available to all residents in the village. A resident dispute may also be referred to the resident committee if the resident chooses to do so. The Act therefore already sufficiently provides for internal dispute procedures within villages.

### 3. Timing of exit entitlement pay-outs

- (a) South Australia – The Bill requires an exit entitlement to be repaid within 18 months from a resident giving notice, if it is not relicensed prior to this time.

In Victoria, the *Retirement Villages Act* provides residents with rights upon the resale of their unit to appoint an external agent, set the resale price and determine which offers should be accepted. The resident has sufficient control over the sale process to ensure that their unit is sold and exit entitlement received within a timely manner.

### 4. Clarifying procedures around resident meetings

- (a) South Australia – The Bill clarifies that the role of a residents' committee is to consult with the operator on behalf of the residents. The Bill also allows for the regulations to include provisions for the election, function and procedures of a residents' committee. The Bill places obligations regarding the provision of meeting minutes. For example, operators must provide meeting minutes to each resident within ten business days of an annual meeting.
- (b) Australian Capital Territory – The convenor of meetings between residents and operators must ensure accurate minutes are kept of proceedings at the meeting. The types of meetings this applies to are those listed in the legislation (i.e. an annual meeting or a meeting of residents convened by the operator or the residents' committee). They would not include an ad hoc meeting between the village manager and an individual resident.

### 5. Clarity on recurrent charges and any increases

- (a) Australian Capital Territory – The Bill provides that except those made by fixed formula, residents' consent is required for all increases in recurrent charges, as well as all proposed annual budget expenditure.
- (b) South Australia – The Bill seeks to improve the transparency of all items included in recurrent charges and any management expenditure by requiring that this information be detailed in a notice for an annual meeting. The Bill also provides that recurrent charges cannot be increased beyond a level shown to be reasonable in view of the accounts for the previous year, and the estimates for the current financial year, as explained at a meeting of residents.

In Victoria, the *Retirement Villages Act* already limits increases in the recurrent maintenance charge to the consumer price index increases (other than due to increases in municipal rates or salaries). Operators are exempt from this requirement if a majority of residents approve the increase. We believe that this provides the resident with certainty as to how the maintenance charge may be increased, and sufficient protection as only a majority resident vote can increase the charge in excess of CPI.

Australia and New Zealand are the most regulated jurisdictions with respect to retirement villages, with each containing legislation which specifically regulates this sector. Other Commonwealth jurisdictions do have legislation which regulates nursing home accommodation, but do not have legislation which is particular to retirement villages.

## Our conclusion

The reforms being considered in other Australian jurisdictions are already regulated in Victoria, most recently through the reforms to the Act and Regulations which came into effect on 1 July 2014.

## Experiences and views of retirement housing residents

### Term of reference:

- (3) With the aim of identifying opportunities for improvement and reform, consider the experiences and views of residents of retirement housing and their families and retirement housing owners and managers.**

### Our response

The retirement village sector is able to provide information about the experiences of each of these groups with a grass roots understanding of the myriad of complex issues faced by people in villages. This includes very painful issues such as permanent disability, dementia and even death. Villages deal with these issues on a daily basis and take the responsibility very seriously.

The vast majority of operators regularly consult and survey their residents. Indeed they are interacting with them every day – making sure they are healthy, happy and supported. This is also assisted by comprehensive surveying of residents that occurs during the accreditation process many villages go through via the Lifemark scheme.

While there are some people entering villages earlier (i.e. at retirement) for the range of lifestyle and social benefits they provide, there are other reasons for people to become residents of retirement villages. What is not well understood is that they also cater for the needs of people that are ageing and increasingly facing a range of changes to their lifestyle, and challenges in terms of health. In these instances, retirement villages are equipped to provide them with the access to support and care they require.

The average age of residents in a retirement village is nearing 80 years, which means that owners and operators have an obligation to aid people as they face new and often daunting daily life issues. A major benefit of villages that many residents and families report is the increase in health and vitality that people achieve when they move into a village. They have more support, more social avenues, new activities, new friends and greater levels of surveillance (e.g. via emergency call systems etc) than in the broader community. This brings great peace of mind to both the residents and their families.

While we represent the views of owners, operators and managers, we are aware that without satisfied residents and their families, villages cannot survive. Put simply, happy residents mean happy villages that in turn is the greatest advertisement for the sector.



The sector has long been committed to listening to the needs of its customers (residents and families) and has regularly funded and supported sector or academic studies to better understand the factors which contribute to good experiences for residents. This has included research into resident decision drivers, factors that promote healthy and happy people as they age etc. One example of this is Australian Unity who undertook significant and costly research in developing its Wellness Index. This Index sought the views of older people about key factors that increased their feelings of being healthy and happy so that they could better the lives of their residents.

## **Retirement Housing Ombudsman**

**Term of reference:**

- (4) With the aim of identifying opportunities for improvement and reform, consider the option to appoint a Retirement Housing Ombudsman.**

### **Our response**

#### **Current Dispute Resolution options for retirement village residents**

The Property Council believes that the current dispute resolution process is sufficient. We also emphasise to Government that an increase in regulation may not guarantee a correlated increase in resident satisfaction. As resident complaints are already in low numbers, a cost benefit analysis of introducing any new system must be conducted. The current system in Victoria is as follows:

1. A resident may resolve a dispute with another resident or management through:
  - a. The retirement village's own dispute resolution process
  - b. Conciliation by Consumer Affairs Victoria (**CAV**)
  - c. Proceedings at the Victorian Civil and Administrative Tribunal (**VCAT**).
2. Retirement villages must have an internal dispute resolution scheme in writing which sets out details of:
  - a. When and where complaints can be made and to whom
  - b. How a dispute with management or between residents will be handled
  - c. Options for dispute resolution including seeking advice from CAV or residents' committee for disputes between residents or applying to VCAT.
3. CAV does not intervene or conciliate in disputes between residents. VCAT cannot deal with disputes between residents in a retirement village that does not have an owners corporation
4. CAV has a specialist "Residential Accommodation" conciliation service which includes retirement villages and can conciliate between residents and management if the dispute is about a contract or there is a clear breach of the law. CAV does not determine or enforce an outcome.
5. CAV has provides an effective conciliation service to residents - in 2014/15, only 58 complaints were received

#### **Other Potential Alternative Dispute Resolution processes**

We have considered the following alternative or additional dispute resolution processes:

- An Ombudsman;
- A Trustee / Statutory supervisor; and
- An Advocate.

## **Ombudsman**

### **1. Overview of current Ombudsmen**

- a. Currently there is one Commonwealth Ombudsman and one Ombudsman for each State and Territory (except the ACT) in relation to services provided by Government agencies. By arrangement with the ACT Government, the Commonwealth Ombudsman acts as the ACT Ombudsman.
- b. The Commonwealth Ombudsman also acts as the Ombudsman for the following industries:
  - Immigration;
  - Postal Service;
  - Defence Force; and
  - Law Enforcement.
- c. Generally, the State/Territory Ombudsmen act with complete independence from the Government, except in Victoria where the Ombudsman is an Officer of the Victorian Parliament.
- d. Several large industry groups also have Ombudsmen, these include:
  - Energy and Water;
    - Each State has its own Ombudsman, while the ACT has a Civil and Administrative Tribunal.
  - Financial;
    - Comprised of three areas:
      1. Credit Ombudsman Service Limited – for the non-bank financial services industry;
      2. Financial Ombudsman Service; and
      3. Superannuation Complaints Tribunal.
  - Telecommunications;
  - Private Health Insurance;
  - Public Transport;
  - Tolling;
  - Oxfam briefly ran an Ombudsman service for complaints regarding the mining industry;
  - Produce and Grocery Industry; and
  - Employment.

### **2. Financial Ombudsman Service**

We considered the Financial Ombudsman Service (**FOS**) as an example.

- a. It is a not-for-profit and non-Government organisation.
- b. The service is provided free of charge for applicants with costs met by members.
- c. Member organisations include banks, financial advisers, credit agencies, insurers.
- d. It is governed by an independent board of consumer and industry representatives.
- e. It operates under a Terms of Reference which details the types of disputes that can be considered, remedies that can be awarded, dispute resolution processes, reporting obligations and relevant time limits.
- f. In the 2014 – 2015 period, they received 31,895 disputes and closed 34,714.<sup>11</sup>
- g. The vast majority (94 per cent) of their 14,107 members did not have any disputes lodged against them in 2014-2015. When members did have disputes lodged against them, most had only one dispute.<sup>12</sup>

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<sup>11</sup> FOS Annual Review snapshot 2014-2015

- h. The proportion of disputes closed by agreement between the applicant and the financial service provider was 63 per cent in 2014-2015. The proportion of disputes resolved through a FOS decision – because an agreement could not be reached – was almost 14 per cent.<sup>13</sup>
- i. The FOS noted that collaborative resolutions are quicker and cheaper than resolutions achieved through a formal decision by FOS. They can be tailored to the specific facts of the dispute and are also more likely to maintain, or even improve, relationships between the consumer and their financial service provider.<sup>14</sup>

### **Trustee / Statutory Supervisor**

1. In New Zealand, retirement village operators are required to appoint a statutory supervisor who must be licensed under the Financial Markets Authority.
2. A statutory supervisor has four duties under the NZ Retirement Villages Act:<sup>15</sup>
  - a. Acting as an independent stakeholder for deposits and progress payments by residents to operators;
  - b. Monitoring the financial position of the village;
  - c. Reporting annually to the Registrar of Retirement Villages and to residents on the performance of their duties; and
  - d. Carrying out any other functions specified in the Act or the deed of supervision with the village.
3. A deed of supervision is the contractual document used by an operator to appoint a supervisor to act in respect of a particular village. The deed must record a range of provisions prescribed in the Act and regulations.
4. The statutory supervisor has the power to direct the operator to provide specific information to residents or to manage the village in a specified manner where the financial position of the village, security of residents or management of the village is inadequate.
5. The deed of supervision requires the operator to accept that the statutory supervisor is a representative of the interests of the residents of the village in any matter relating to the village.
6. This means the representative role of the statutory supervisor is primarily for the collective interests of residents, distinct from engaging in every individual case where a resident may want advocacy or support.
7. However a resident is entitled to bring any alleged breach of a right, referred to in the Code of Resident's Rights, to the attention of the statutory supervisor.
8. An operator must have a process for residents to contact the statutory supervisor about an alleged breach of a right or to make a complaint. Residents can ask the operator to see that process at any time.
9. A resident is entitled to bring any alleged breach of a right, referred to in the Code of Resident's Rights, to the attention of the statutory supervisor.
10. The statutory supervisor's fees is paid by the operator and recovered from residents through their recurrent charges.

### **Retirement Village Advocate**

If Government believes that further reform in the dispute resolution area is required for the sector, the Property Council believes that a Retirement Village Advocate would best complement our current system.

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<sup>12</sup> FOS Annual Review snapshot 2014-2015

<sup>13</sup> FOS Annual Review snapshot 2014-2015

<sup>14</sup> FOS Annual Review snapshot 2014-2015

<sup>15</sup> <http://www.cffc.org.nz/retirement/retirement-villages/legislation/the-role-of-the-statutory-supervisor> (accessed 25 May 2016)

Outlined below is how this works in South Australia:

1. Following recommendations in the 2013 Parliamentary Select Committee Review of the South Australian Retirement Villages Act 1987, a Retirement Village Advocacy Program (**RV Advocate**) was established in November 2014, to provide advocacy services to retirement village residents in South Australia.
2. The RV Advocate was established under The Aged Rights Advocacy Services (**ARAS**) which is the South Australian component of the National Aged Care Advocacy Program. ARAS is a not-for-profit community based organisation, providing advocacy support since 1990. It is an independent, rights based organisation that aims to promote and protect the rights and wellbeing of older people, through the provision of information, education, support and representation.<sup>16</sup>
3. The RV Advocate is supported and funded by the Office of the Ageing (**OFTA**) (which administers the Retirement Villages Act in South Australia) and provides advocacy support and assistance for residents of retirement villages to assist them to voice their concerns to village management.
4. The RV Advocate provides:
  - a. information about rights and entitlements relating to residency of retirement villages;
  - b. advocacy support, assistance or representation when individual resident and/or groups of residents need to contact village management, OFTA, or attend tribunals.
5. The RV Advocate employs a full-time staff and assistance is provided when a resident contacts them. Their services may include seeking clarification of a matter from the resident, providing information on the resident's rights and providing direction on how the matter may be resolved through an advocacy process. The resident may choose to take action themselves or they may prefer the advocate to speak on their behalf. The advocate will only proceed if given permission to do so and will consult the resident throughout the process. The services provided are free, confidential and independent.
6. OFTA reported that as at 31 July 2015 (eight months from establishment), the RV Advocate has responded to 522 contacts and has further engaged with 109 of those requiring further assistance.<sup>17</sup> OFTA also acknowledged the assistance of the RV Advocate in reducing the number of matters before the South Australian Civil and Administrative Tribunal to six in the 2015 financial year from 52 the previous year.<sup>18</sup> This demonstrates the success and effectiveness of the advocacy program, which is supported by both residents and the sector in South Australia.
7. Seniors Rights Service (formerly The Aged-Care Rights Service) (**TARS**) in NSW is another example of an advocacy service for older residents of nursing homes, hostels and retirement villages and people receiving Community Aged Care Packages. TARS is a community based organisation funded by the Commonwealth Department of Health and Ageing, the Attorney General's Department and the NSW State Department of Fair Trading and Department of Ageing, Disability and Home Care.<sup>19</sup> TARS' Retirement Village Legal Advice Service provides:
  - a. Legal advice to residents of retirement villages on:
    - i. Issues arising from:
      1. Disputes with retirement village management; and
      2. Interpretation of contract.

<sup>16</sup> <http://www.sa.agedrights.asn.au> (accessed 24 May 2016)

<sup>17</sup> Retirement Registrar's Annual Report 2014-2015

<sup>18</sup> Retirement Registrar's Annual Report 2014-2015

<sup>19</sup> <http://www.agedrights.asn.au/nsw> (accessed 24 May 2016)

b. Education sessions at villages on residents' rights and obligations.<sup>20</sup>

8. TARS reported the following achievements of their Legal and Retirement Village Services in the 2014 – 2015 period:<sup>21</sup>

- Over 2,070 telephone advices;
- Over 150 face-to-face interviews;
- Nearly 2,700 legal referrals;
- Nearly 700 legal information services; and
- Opened 66 and closed 41 cases.

### **Summary**

1. An Ombudsman service is costly to establish and maintain, and is generally used in larger industries where almost every adult individual is a consumer – e.g. financial services, energy, and telecommunications.
2. The service requires formal governance, administration, processes and systems to function effectively and will not be simple to access by residents directly. For example, a substantial number of disputes lodged with the Financial Ombudsman Service were lodged by the complainant's representative including fee-for-service agents, accountants, financial advisors, financial counsellors and solicitors. This process potentially imposes an additional costs burden on residents.
3. The Ombudsman is not obliged to investigate all complaints and generally has a broad discretion to refuse. For example, the Financial Ombudsman Service will not be involved in a dispute against a financial service provider that is not a member of the service.
4. The current nature, scope, extent and frequency of disputes in relation to residents of a retirement village do not justify or necessitate the establishment and maintenance of an Ombudsman service.
5. A trustee or statutory supervisor similar to the New Zealand requirements for every retirement village in Victoria will increase the cost of living in a village and will not address the needs of an individual resident seeking a resolution to his or her issue.
6. If Government decides further safeguards are required, we recommend the implementation of an Advocate service, similar to the Retirement Village Advocate in South Australia. Funding of the service by the Government will ensure the independence of the Advocate. The Advocate service provides the appropriate approach and level of representation for residents and deals fairly with both resident and operator to seek a resolution. The successful outcomes demonstrated by the South Australian Advocate in the short period since its implementation supports the recommendation.

### **Our recommendation**

That the State Government use the South Australian Retirement Village Advocate service as a point of reference for any reform of Victoria's dispute resolution procedures.

<sup>20</sup> <http://www.agedrights.asn.au/nsw> (accessed 24 May 2016)

<sup>21</sup> The Aged-Care Rights Service Inc Annual Report 2014 - 2015

## Impact of local government rating on retirement housing

### Term of reference:

- (5) With the aim of identifying opportunities for improvement and reform, consider the impact of local government rating on retirement housing.

### Our response

On April 9, 2013, the State Government released new Ministerial Guidelines for the use of differential rates by Victorian Councils. These Guidelines are a result of a comprehensive review conducted by the Government to which the Property Council of Australia (Victoria Division) was a contributor.

One of the key reforms contained within the new Guidelines is a revised definition of what types and classes of land categories should be considered for differential rate purposes. In total, nine categories were given State Government imprimatur with the creation of a new Retirement Village Land category being a key element of the reforms.

We are a strong supporter of the Retirement Village Land category because we believe that retirement village residents are bearing an unfair rate burden in relation to the services they use. As expressed in the Property Council's submission (Draft Ministerial Guidelines for Differential Rating, Property Council of Australia (Victoria), March 2013, p. 3)...

*...As highlighted on page 13 of the Differential Rates Discussion Paper and Draft Ministerial Guidelines, thousands of Victoria's retirement village residents pay rates to local government to help fund the delivery of services and infrastructure maintenance in their local communities. In the vast majority of cases, local municipalities collect these rates from retirement village residents at an amount similar to the General Residential Rate. The Property Council believes that the existing rate collection arrangement is unfair and would like the State Government to investigate reforming the system. Our concerns in this area are twofold:*

*First, retirement villages are designed to provide independent living to residents. Through the collection of 'maintenance fees', retirement villages fund the provision of private services (E.g. Waste disposal, bus services and 24 hour emergency care) and infrastructure maintenance (Eg. Drainage, street lights, road and footpath construction, landscaping and parking areas).*

*Unfortunately, due to the imposition of rates by local municipalities, retirement village residents are being charged for the same services in the public sphere despite their low/non-use of them. These kind of arrangements represent the worst form of double taxation.*

*Second, retirement village residents rarely utilise local municipality services due their limited mobility and the provision of self-funded services at their place of residence. As a result, residents are being taxed for the provision of services they are not utilising.*

*Alternatively expressed, if the residents from within the retirement village sector started relying more heavily on the services provided by local government, they could be overwhelmed.*

*Given the conditions imposed in planning permits on the operation of villages, the current rating system 'double dips' by charging the residents through council rates and charges and the services fees from the villages to cover the costs of the services provided. An example of this is the private contractor rubbish collection for residents who are still required to pay a garbage charge.*

With this category now in place, the Property Council encourages Government to incentivise Councils to incorporate Retirement Village Land rate differentials into their future rate collection strategies.

The Property Council is of the view that a 25 per cent discount differential rate (or rebate) for retirement village residents strikes a fair balance between taxation equity and community obligation. We are currently aware of a number of municipalities which provide a differential of a similar nature and we encourage you to give this rating policy reform serious consideration.

### **Our recommendation**

That the State Government incentivise Councils to incorporate a 25 per cent Retirement Village Land differential rate into their future rate collection strategies.