Retirement Villages Amendment (Information Disclosure) Bill 2012

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NB: Readers should note that this Research Brief was current at the time of its preparation prior to the conclusion of debate on the Bill by the Victorian Parliament. For further information please visit the Victorian Legislation and Parliamentary Documents website @ http://www.legislation.vic.gov.au.
Introduction

The Victorian Government introduced the Retirement Villages Amendment (Information Disclosure) Bill 2012 (‘the Bill’) on 23 October 2012. The Bill amends the Retirement Villages Act 1986 (‘the Act’) to require the owner or manager of a retirement village to provide a summary of information relating to the retirement village and to make certain documents available for inspection to prospective residents of retirement villages.

I. Second Reading Speech

The Hon. Michael O’Brien, the Minister for Consumer Affairs gave the second reading speech for the Retirement Villages Amendment (Information Disclosure) Bill 2012 on 24 October 2012.\(^1\) The Minister explained that the Bill is a component of the Government’s first retirement village commitment to ‘actively promote better understanding of retirement village residents’ rights and obligations both prior to entry and also while a resident’.\(^2\)

According to the Minister, components of the first commitment include: enhancement of the disclosure statement to contain entry costs, ongoing costs and departure costs; standardisation of the structure of retirement village contracts; and the prescription of a basic set of mandatory rights and responsibilities of residents and of owners and managers.\(^3\)

Mr O’Brien informed the House that there are approximately 30,000 Victorians living in 400 retirement villages across the state and that this would significantly grow as the population ages. The majority of retirement village units (70 per cent) are in commercially operated villages, while the remainder are owned by not-for-profit entities.\(^4\)

He stated that resident and consumer groups have been critical of existing disclosure requirements under the Act, and have sought an enhanced disclosure regime which ensures that the information that is provided to prospective residents is appropriate to each stage of the process of choosing a retirement village.

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\(^1\) Victoria, Legislative Assembly (2012) Debates, Book 16, 24 October, p. 4724.
\(^2\) ibid.
\(^3\) ibid. The Minister outlined the Government’s retirement village commitments set out in the Coalition’s 2010 Plan for Consumer Affairs. They are: to actively promote better understanding of retirement village residents’ rights and obligations both prior to entry and also while a resident; to improve the effectiveness of the retirement village internal dispute resolution guidelines published by Consumer Affairs Victoria; and to work with peak bodies representing retirement village owners and residents to develop protocols to encourage a more consistent approach to dealing with contentious issues across Victoria’s retirement villages. See Victorian Liberal Nationals Coalition (2010) The Victorian Liberal Nationals Coalition Plan for Consumer Affairs, Coalition policy document, Election 2010, p. 8.
\(^4\) ibid.
The Minister explained that Consumer Affairs Victoria publishes information and conducts seminars which address the first stage of the process, but currently under the Act, information disclosure for the other stages is minimal and only required at the contract signing stage when ‘prospective residents may be too financially or emotionally committed to the village they have chosen to be able to make effective comparisons’.

To this end, the Minister stated that the Bill addresses these concerns by requiring that retirees who are investigating and comparing villages (that is, at the second stage of the process of choosing a retirement village), be provided a factsheet and be provided the opportunity to inspect documents.

The second reading speech lists the information that is proposed for the factsheet. It includes the following: the number and size of units, proposals for further development of the village, the services and facilities available to residents, the range of entry, ongoing and departure costs, and the financial status of the village.

The documents to be made available for inspection include: the village site plan, construction plans, planning permissions, financial statements and blank forms of the contracts that require a signature.

Mr O’Brien highlighted that the fact sheet and document inspection must be provided when a retiree requests it, and whether requested or not, must be provided before a prospective resident signs a contract, unless the factsheet or document inspection has previously been provided and the information has not materially changed. Additionally, the factsheet must be part of any village marketing material given to a retiree unless it has previously been provided and the information has not materially changed.

The information contained in the factsheet and disclosure statement is to be prescribed, but the Minister stated that, ‘to better ensure that the documents will achieve their aims and that necessary changes can be made expeditiously’, the Director of Consumer Affairs Victoria must approve the forms of the documents.

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5 ibid., p. 4725.
6 ibid., p. 4726.
2. Background

This background section provides information on the retirement village market, the current legislative framework of retirement village accommodation in Victoria and the types of retirement village residence contracts.

Profile of Retirement Villages

The Retirement Villages Act 1986 defines a retirement village as a community where:

- the majority of residents are retired persons and are provided with accommodation and services other than services that are provided in a residential care facility; and
- at least one of the residents, before or upon becoming a member of the community, pays or is required to pay an in-going contribution that is not rent.

Retirement villages provide people with independent accommodation in a community setting with shared facilities, and often lifestyle services and social amenity. Retirement villages can be run by commercial operators for profit or by community organisations, such as religious or ethnic associations. As noted by Cradduck and Blake from Queensland University of Technology, the retirement village sector has become a significant sector within the residential property market. The sector has attracted operators with diverse portfolios and property development activities, as noted in the Stakeholder section of this paper.

Increasingly, retirement villages are also targeting younger residents (aged 55 plus) who may be attracted to the social and community aspects of a retirement village lifestyle, want to downsize or are seeking a low-maintenance property. According to the most recent Grant Thornton/RVA [Retirement Village Association] Retirement Living Survey however, most residents living in retirement villages were approximately 73 years old on entry and the average age of residents was 79.

As noted by Consumer Affairs Victoria (CAV), there is a lot of variation in what is provided by retirement villages, with accommodation and lifestyle services that cater for different needs and budgets. A public register of retirement villages can be viewed on CAV’s website, listed by letter and by postcode.

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8 ibid., p. 1.
Retirement villages are different from residential care facilities, such as aged care facilities, nursing homes and hostels, which are usually covered under the Commonwealth Aged Care Act 1997. Some retirement complexes offer low-level and/or high-level nursing homes and aged care facilities that may be located on the same site as a retirement village. CAV note that a common misconception is that retirement village residents will be able to move into an aged care facility near the retirement village where they live when they need additional care. However, access to these facilities is dependent on an aged care assessment, as required by Commonwealth law, and operators cannot keep places available for retirement village residents. A retirement village resident may have to end their contract with the retirement village and pay any associated fees when moving into an aged care facility.

**Retirement Village Contracts**

There are a number of different types of contractual arrangements offered to residents, even within the same retirement village. The most common types of contracts for retirement villages are strata title, long-term lease or licence, company title, unit trust and periodic tenancy.

A strata title unit is a common contract where a resident pays the agreed purchase price and is registered as the owner of the unit on the title deed held at the Land Titles Office. Unlike other strata title schemes, however, a resident also needs to sign a retirement village contract and be approved as a resident by the retirement village operator. The resident also needs to pay owners corporation fees while owning the unit, a recurrent maintenance charge and other relevant charges. As noted on CAV’s website, ‘Buying into a retirement village is not the same as buying an investment property… Buying into a retirement village is a lifestyle decision, not an investment to make money’.

For strata title units, a resident normally has the right to sell their unit through the selling agent of their choice, unless the resident assigned exclusive selling rights to the retirement village operator in a retirement village contract before 1 August 2006. Residents of strata title units may have to pay a share of any capital gains, departure or exit fees, as well as other charges from the proceeds of the sale.

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12 ibid.


A long-term lease or licence is where a resident pays an ingoing contribution and receives a lease or licence to live in a particular retirement village unit for a period ranging from 49 to 199 years in return.\textsuperscript{15}

A company title contract refers to an arrangement whereby a person buys shares in a company that owns a retirement village and those shares give that person the right to occupy a particular unit in the village. As noted on CAV’s website, ‘Company title is a complex area of law that was not developed for private residential accommodation. It is important to understand that, under this arrangement, [a person is] not buying property, but shares in a company.’\textsuperscript{16}

A unit trust is similar to a company title scheme except a person buys a unit in a trust that carries an entitlement to occupy the unit. Like a company title contract, a unit trust is a complex legal arrangement.\textsuperscript{17}

A periodic tenancy arrangement is a lease which operates from rental period to rental period, it is an arrangement between the resident and owners where there is no fixed date for the end of the lease. These arrangements are sometimes used by community-based, not-for-profit retirement villages. More detailed explanations on each of these contracts are provided on the Consumer Affairs Victoria website.\textsuperscript{18}

A report on retirement villages by consumer organisation Choice, noted its concern that contractual arrangements adopted by the retirement village industry were non-standardised and difficult to understand.\textsuperscript{19}

In line with the Coalition’s election commitment ‘to actively promote better understanding of retirement village residents’ rights and obligations both prior to entry and also while a resident’, the State Government has conducted a consultation process with stakeholders on proposals in relation to contracts.\textsuperscript{20}

Fees and Charges

In addition to a complex variety of contractual arrangements and leases, there are different types of fees and charges that may be payable to enter a retirement village, such as fees to join the waiting list of a retirement village, ingoing contributions, maintenance charges, deferred management fees, owners corporation fees, recurrent charges for assisted living or personal services and charges for metered services and insurance.

An ingoing contribution is usually required when entering a retirement village contract and is likely to be the largest single payment a resident makes to secure the right to occupy the premises.\(^{21}\) According to Choice, the average price of a two bedroom unit in a retirement village is around 90 per cent of the median house price of the local area, with maintenance charges averaging $350 per month for independent living units, but can range from $280 to up to $1000 per month, depending on the style of accommodation.\(^{22}\) In the Act, a maintenance charge refers to a recurring charge payable by a resident for the provision of goods or services by a manager (s 3(1)). Maintenance fees are usually paid weekly, fortnightly or monthly and help cover the costs of managing and maintaining the retirement village.\(^ {23}\)

Fees for personal services are normally provided on a user-pays basis and may include meals, cleaning, laundry and personal care. Services that are separately metered and charged to each unit may include telephone, gas and electricity and household contents insurance.

A resident may face substantial costs when they leave a village. Fees that may be part of the purchase price of the unit, but are deferred until the end of a resident’s occupancy are called a deferred, departure or exit fee. As noted on CAV’s website, ‘such fees are one way that commercial retirement villages generate a profit, and not-for-profit villages improve their services or subsidise recurrent charges’.\(^ {24}\)

These fees are often calculated as a percentage per year of a current resident’s ingoing contribution or purchase price or a new resident’s ingoing contribution or purchase price and are usually capped to a maximum percentage. For example, a resident may be liable to pay a deferred fee of 2.5 per cent per year up to a maximum of 25 per cent where a resident lives in a retirement village for ten years or more.


\(^{23}\) It should also be noted, that retirement villages can only increase the maintenance fees in keeping with the annual consumer price index (CPI) adjustment, unless a larger increase is approved by a resolution of the residents’ committee or the majority of residents, or due to the factors set out in section 38 of the Act, such as where there are increases in salaries or wages paid in accordance with an award.

Regarding capital gains, CAV’s website notes that some contracts assign 100 per cent of any capital gain to the retirement village owner. As residents would still be liable to pay a departure fee, CAV note that residents ‘may end up leaving with less money than when [they] entered the retirement village’.

After leaving a retirement village, there may also be recurrent fees, such as maintenance fees, personal services and owners corporation fees, which a resident may still have to pay for a limited and specified period of time, such as until the vacated unit is re-occupied. Residents may also have to pay refurbishment costs for the unit.

The Current Legislative Framework

The Retirement Villages Act 1986, Retirement Villages (Records and Notices) Regulations 2005 and Retirement Villages (Contractual Arrangements) Regulations 2005 provide the regulatory framework for retirement villages in Victoria. The primary objective of the Act is defined in section 1 as to ‘clarify and protect the rights of persons who live in, or wish to live in, retirement villages’.

The Retirement Villages Act and Retirement Villages (Records and Notices) Regulations 2005 require certain documents to be provided to a resident prior to entering into a contract. Section 19(1) of the Act states that at least 21 days before a resident enters into any residence contract, the owner or the owner’s agent must give a copy of the contract to the resident. The penalty for failing to comply with this provision is 200 penalty units ($28,168).

Section 19(2) of the Act states that at least 21 days before a resident enters into any management contract with the manager of a retirement village, the manager must give to the resident a copy of the management contract, the disclosure statement, the by-laws of the village and all other documents referred to in the definition of residence documents (penalty is 200 penalty units).

A disclosure statement in relation to a retirement village is a statement in the prescribed form which sets out matters that may affect the rights of residents, such as:

- the day on which the retirement village notice for the retirement village was lodged with the Registrar of Titles;


the particulars of any mortgage, charge or other encumbrances over the retirement village land that take priority to the rights of the retirement village residents;

- particulars of any agreement entered into relating to the priority of residence rights over earlier encumbrances over the land; and

- the day on which notification of charge created by Part 5 of the Act over the retirement village land was given to the Registrar of Titles.\(^\text{29}\)

Section 20(1) of the Act sets out penalties for providing false or misleading information in a disclosure statement. A penalty of 50 units applies ($7,042). Section 21 of the Act states that at a resident’s request, an owner or an owner’s agent must make available for inspection by the resident all residence documents which apply to the resident and are in the possession or under the control of the owner or agent (50 penalty units).

### Consultation Process on Information Disclosure

In 2004, CAV published a review of the Retirement Villages Act, which was the first Review to be conducted since the Act was introduced in 1986. This Review found that there was a lack of consumer awareness and information regarding the existing laws and residence contracts.\(^\text{30}\) The Review identified that with an ageing population and significant change and growth in the retirement village industry, changes were needed to ensure consumer protection.

Following this Review, legislation was passed in 2005 to make further provisions to the sale and occupation of premises in retirement villages, the operation and management of retirement villages, to establish a retirement village register and to make further provision for enforcement powers.\(^\text{31}\) In 2006, the Retirement Villages (Contractual Arrangements) Regulations 2006 also came into effect.\(^\text{32}\)

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\(^{29}\) See Section 19 of the Act and Regulation 9 of the Retirement Villages (Records and Notices) Regulations 2005.


\(^{31}\) In the second reading speech for the Retirement Villages (Amendment) Bill 2004, the then Attorney-General, the Hon. Rob Hulls stated in relation to the Review that ‘Many residents submitted that the contracts were complex and difficult to understand, even for their solicitors’ and that ‘Some residents advised that it was not until some years after signing [the contract] they realised the full extent of the deferred management fee and its impact on the capital growth of their original investment’. Victoria, Legislative Assembly (2004) *Debates*, 9 December, p. 2216.

As stated in the Minister’s second reading speech, the Coalition made several commitments in relation to retirement villages that were set out in its election policy document, *The Victorian Liberal Nationals Coalition Plan for Consumer Affairs*. \(^{33}\)

Accordingly, in 2011, CAV began a consultation process to make further changes to improve the disclosure of information to prospective retirement village residents. The Discussion Paper *Retirement Villages: Contract and Information Disclosure Options* was circulated in October 2011 and consultations were held in 2012. \(^{34}\) The Discussion Paper noted that CAV receives complaints about the complexity and length of retirement village contracts, stating that these complaints ‘indicate that it is difficult for seniors to identify the information they need to assess the suitability of a village, to compare villages and to know their rights and obligations after becoming a resident’. \(^{35}\)

As noted in CAV’s Discussion Paper, a prospective resident usually goes through three stages prior to entering a retirement village which are:

1. Investigative – generally interested in retirement village living
2. Intermediate – interested in a particular village but not yet a particular unit
3. Pre-contract – about to enter into a contract for a particular unit. \(^{36}\)

The Discussion Paper sought stakeholder feedback on the issue of information disclosure at the various stages, which is detailed below.

**Stakeholder Submissions to Consumer Affairs Victoria**

In response to CAV’s Discussion Paper, *Retirement Villages: Contracts and Information Disclosure Options*, 87 submissions were received from individuals, industry and residents' groups. \(^{37}\)

CAV noted there was broad agreement that:

- consumers compare villages only at the intermediate stage because they are too committed at the pre-contract stage, and
- the information currently made available is insufficient or is too difficult to obtain. \(^{38}\)

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\(^{33}\) See footnote 3.


\(^{35}\) See ibid., p. 15.

\(^{36}\) ibid., p. 8.

\(^{37}\) Consumer Affairs Victoria, personal communication with K. Richardson, 13 December 2012.

However, CAV received submissions both for and against information disclosure at the ‘intermediate’ stage, as outlined in its Discussion Paper. \(^{39}\) Submissions from a range of stakeholders are briefly outlined below. \(^{40}\)

**Retirement Village Association (RVA)**

The RVA is Australia’s ‘peak body’ for the retirement village industry. It represents retirement village operators, managers, owners, developers, investors and industry specialists. \(^{41}\)

In its submission, the RVA supported ‘a greater level of disclosure to ensure that consumers are provided with simple, easy to understand information which assists in their decision making process in the choice of village’. \(^{42}\) It also agreed that ‘it is essential that consumers are able to compare villages in order to make an informed choice’. \(^{43}\)

However, the RVA emphasised the importance of not overwhelming consumers with information, and maintained that information should assist, rather than hinder, enquiries. \(^{44}\) It said:

> The RVA has a significant concern that the volume of material to be provided to residents by way of disclosure must not cause greater confusion and anxiety for residents. Increased disclosure must only be implemented so as to increase clarity, understanding and transparency for residents. \(^{45}\)

Accordingly, the RVA strongly supported a requirement for a ‘single short form mandatory disclosure document’ to be provided to the consumer at the pre-contract stage. \(^{46}\)

The RVA did not agree that a staged disclosure process would better assist prospective residents to compare villages and make an informed choice. It said that the staged disclosure concept raised in CAV’s Discussion Paper ‘does not accurately reflect the actual buying process for entry into a village’. \(^{47}\) The reason for this, the RVA states, is that some consumers may take many years to move from the general enquiry stage to the contract stage. Thus, the RVA argued that staged disclosure at the intermediate stage may substantially increase the resources and costs for village

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\(^{39}\) See: ibid.


\(^{42}\) ibid., p. 1.

\(^{43}\) ibid., p. 7.

\(^{44}\) ibid., pp. 1, 7.

\(^{45}\) ibid., p. 8.

\(^{46}\) ibid., p. 7.

\(^{47}\) ibid.
operators to meet their compliance obligations. The identification of when a disclosure obligation would arise was also raised as a concern.\textsuperscript{48}

**Residents of Retirement Villages Victoria (RRVV)**
The RRVV is a not-for-profit association representing the interests of residents in Victorian retirement villages. In its submission, the RRVV stated that existing legislation did not sufficiently enable residents to compare retirement villages and understand their rights and obligations.\textsuperscript{49}

Accordingly, the RRVV strongly supported staged disclosure at the enquiry/investigative stage, the intermediate stage and the pre-contract stage. It supported early disclosure because ‘initial legal advice is cost prohibitive at the enquiry stage’.\textsuperscript{50}

**Law Institute of Victoria (LIV)**
In its submission, the LIV stated that ‘current legislation makes it difficult for prospective residents to access important information’. It said:

The structures of retirement villages and retirement village contracts are often complicated and vary between villages. The mandatory information that must currently be provided to prospective residents does not enable them to readily and easily compare information about villages and to understand their potential rights and obligations.\textsuperscript{51}

The LIV, however, did not support mandatory staged disclosure in its submission because it ‘would impose an obligation on retirement village operators and managers to maintain multiple sets of information’, and increase administrative burdens on operators. The LIV expressed concern that such an approach ‘may actually result in confusion for prospective residents rather than providing any benefits’.\textsuperscript{52}

Rather, the LIV proposed that information already provided to CAV by retirement village managers under section 38L of the Act\textsuperscript{53} should be published on CAV’s website, and that the pre-contract disclosure statement, currently required under the Act, should be revised.\textsuperscript{54}

\textsuperscript{48} ibid.
\textsuperscript{50} ibid., pp. 6-7.
\textsuperscript{52} ibid., p. 5.
\textsuperscript{53} That is, the name and address of the manager of the retirement village; and any other prescribed particulars.
\textsuperscript{54} Law Institute of Victoria (2011) op. cit., p. 5.
The LIV recommended that the required disclosure statement should be kept ‘as short as possible’ (preferably 3-4 pages).\(^{55}\) It argued that if it is too long, residents may find it difficult to absorb all the information.\(^{56}\) It also proposed that the first page of the disclosure statement could comprise a summary of the items set out in the statement, which could then be made available to residents in the initial enquiry stage.\(^{57}\)

**Stockland**

Stockland is a retirement village operator, and has approximately 8,000 established units across Australia.\(^{58}\)

In its submission, Stockland suggested that only one form of information disclosure should be prescribed.\(^{59}\) It stated that a two-tiered disclosure requirement may result in duplication of information, and increase the administrative burden on, and costs to, village operators. Stockland also queried whether disclosure obligations at an intermediate stage could be defined with ‘adequate certainty’ for operators. It noted that a ‘clear definition of this stage’ would need to be provided. Alternatively, it suggested that an obligation to provide disclosure information could arise on request by a prospective resident, and CAV’s publication, *Guide to choosing and living in a retirement village*, could be used to inform a prospective resident that they may make such a request.\(^{60}\)

**Consumer Action Law Centre**

The Consumer Action Law Centre is an ‘independent, not-for-profit, campaign-focused casework and policy organisation’. It is the ‘largest specialist consumer legal practice in Australia’ and provides free legal advice to vulnerable and disadvantaged Victorians.\(^{61}\)

In its submission, the Consumer Action Law Centre stated that current disclosure requirements in the Retirement Villages Act ‘do not adequately assist consumers to understand products on offer or compare competing products’.\(^{62}\)

The Consumer Action Law Centre supported the staged disclosure process in CAV’s Discussion Paper, provided that it is ‘carefully designed’ to ensure the stages meet their ‘intended purposes’. It emphasised the importance of providing appropriate

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\(^{55}\) ibid., p. 3.
\(^{56}\) ibid.
\(^{57}\) ibid., p. 5.
\(^{60}\) ibid., p. 2.
\(^{62}\) ibid.
information early, because if disclosure is left until late in the process, a consumer may have already committed to a particular unit, ‘making disclosure documents less useful for comparing different products’.  

**Council on the Ageing (COTA)**

COTA is a community-based, senior advocacy organisation, representing the interests of older Victorians. COTA welcomed the Victorian Government’s policy commitment to ‘actively promote the better understanding of retirement villages resident’s rights and obligations both prior to entry to a village and also while a resident’. It agreed with the staged disclosure approach outlined in CAV’s Discussion Paper, and endorsed the RRVV’s suggestion ‘for a simplified checklist to be utilised to make this disclosure of information of documents easier and clearer’.

**Statistics**

According to the Australian Bureau of Statistics, there were almost 29,000 Victorians recorded as residing in retirement villages at the 2011 Census. The ageing trend in the state’s demographics mark this as an area signalled for growth in the coming decades. Population projections by the Department of Planning and Community Development indicate that 1 in 5 of the state’s population may be over the age of 65 years by 2036.

**Table 1. Persons Living in Retirement Villages by Electorate, 2011 Census**

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<th>Persons</th>
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<td>7</td>
<td>Cranbourne</td>
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<table>
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<th>Rank</th>
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</table>

63 ibid., p. 6.


Table 1 above, ranks Victorian state electoral districts by the number of persons counted as residing in retirement villages at the 2011 Census. As can be seen in the table, Scoresby, Bass, Carrum, Nepean and Doncaster had the highest number of persons residing in retirement villages, with each of them recording more than 900 persons. The only electorate that did not record any persons resident in a retirement village at the 2011 census is the seat of Albert Park.


3. The Bill

Clause 1 outlines the purpose of the Bill:

The main purpose of this Act is to amend the Retirement Villages Act 1986 to require the owner or manager of a retirement village to provide a summary of information relating to the retirement village and to make certain documents available for inspection to prospective residents of retirement villages.

Clause 2 is the commencement provision. It provides that the Act will come into operation on a day or days to be proclaimed. If a provision of the Act has not come into operation before 1 March 2014, it comes into operation on that day.

Clause 3 of the Bill substitutes ‘form approved by the Director’ [Director of Consumer Affairs Victoria] in place of ‘prescribed form’ in the definition of disclosure statement (s 3(1)(a)). Additionally it inserts a definition for factsheet into s 3(1)(b). Factsheet is defined here as ‘a summary of information relating to the retirement village prepared in accordance with s 18A(5)’.

Clause 4 inserts new sections 18A and 18B into the Act.

18A Provision of factsheet
The owner or manager of a retirement village must comply with an oral or written request for a factsheet by a retired person or person acting on their behalf. The request must be complied with, free of charge, no later than 7 days later, unless it has previously been provided and the information has not materially changed since then. A penalty of 120 units applies ($16,900.80).

The owner or manager of a retirement village or his or her agent must ensure that a copy of the factsheet is included in targeted promotional material that is given or sent to a retired person or person acting on their behalf (unless it has previously been provided and the information has not materially changed since then).69 A penalty of 50 units applies ($7,042).

The factsheet must be in the form approved by the Director; and contain the prescribed information; and present in a clear, concise and effective manner that information, including any information included as an attachment.

18B Inspection of documents relating to retirement village
The owner or manager of a retirement village (or his or her agent) must comply with an oral or written request to inspect one or more prescribed documents relating to the retirement village by a retired person or person acting on their behalf. The request must be complied with, free of charge, no later than 7 days later, unless the document

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69 Targeted promotional material means material given or addressed personally to a retired person, or to a person acting on behalf of a retired person, that is intended to promote a particular retirement village as a place in which to live but does not include marketing material distributed generally in a mail-out or letter-box drop. See the Bill, p. 4.
has previously been provided to the person for inspection and the information has not materially changed since then. A penalty of 120 units applies ($16,900.80).

Clause 5 inserts new paragraph (ca) and new sub-sections (3) and (4) into section 19(2) of the Act. Section 19 sets out certain documents to be given to the resident.

New paragraph (ca) and new sub-section (3) provide that at least 21 days before the signing of a management contract, the manager of a retirement village must provide a copy of the factsheet to a retired person or person acting on their behalf, unless the document has previously been provided to the person for inspection and the information has not materially changed since then.

New sub-section (4) states that at least 21 days before a [prospective] resident enters into any management contract with the manager of a retirement village, the manager must advise the resident that he or she has a right to inspect any of the documents relating to the retirement village, if the resident has not previously done so. 200 penalty units apply ($28,168).

Clause 6 amends section 20(1) of the Act to make it an offence to make false or misleading statements in a factsheet or a document prescribed under new section 18B. 50 penalty units apply ($7,042).

Clause 7 amends section 26(2)(b)(i) of the Act which pertains to the refund of the ingoing contribution. The Explanatory Memorandum explains:

Section 26(2) provides that if a residence contract contains a condition which must be fulfilled before a non-owner resident’s departure entitlement is refunded, it is deemed to be void subject to certain exceptions. Currently, one of those exceptions is if the condition entitles the resident to recover the amount only if, among other things, payment is made by another person that is the equivalent of the amount owed to the resident. The requirement that the payment be the equivalent of the amount owed is too restrictive and clause 7 amends section 26(2)(b)(i) to provide that the payment be at least the equivalent of the amount owed to the resident.

Clause 8 amends section 43(1) of the Act to enable The Governor in Council to make regulations for, or with respect to, the information that must be included in the factsheet and the documents that must be made available for inspection.

Clause 9 provides for the repeal of the amending Act on 1 March 2015.
4. Other Jurisdictions

This section of the Research Brief provides an overview of the pre-purchase disclosure requirements of retirement village operators in New South Wales, Queensland, South Australia and Western Australia.

New South Wales

In New South Wales, retirement villages are provided for by the Retirement Villages Act 1999 and the Retirement Villages Regulation 2009, which are administered by NSW Fair Trading (a division of the Department of Finance and Services). The NSW Fair Trading website states that there are approximately 591 retirement villages across NSW, accommodating more than 36,000 residents.70

Retirement Villages Act 1999 (NSW)

Part 3 of the NSW Retirement Villages Act concerns disclosure statements and information that is to be provided to prospective residents about retirement villages. Key sections 18-20 are summarised below. Notably, section 18 provides that a retirement village operator is required to provide a prospective resident with a ‘general inquiry document’ and a ‘disclosure statement’.

18 General inquiry document and disclosure statement

Section 18(1) of the NSW Retirement Villages Act provides that the operator of a retirement village must provide a prospective resident with a ‘general inquiry document’ within 14 days of the operator of the retirement village becoming aware that the person is a prospective resident. Section 18(2) states that the general inquiry document is intended to provide a basic explanation of the residential premises, services and facilities within the retirement village and must be in the form, and contain the information, prescribed by the regulations.71

Section 18(3) of the Act states that the operator must provide a ‘disclosure statement’ to a prospective resident – who requests a copy or expresses interest in particular premises in the village – within 14 days of the request received or the expression of interest being made. Failure to do so attracts a maximum penalty of 20 penalty units ($2,200)72. Section 18(3A) then provides that a disclosure statement is to give specific details of particular residential premises in a village (including details of the fees and charges that would be payable by the resident of the premises) and that the statement must be in the form, and contain the information, prescribed by the regulations. The disclosure statement must also be signed and dated by the operator of the village.73

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71 Although section 18(2) states that the general inquiry document must be provided in the form, and contain the information, prescribed by the regulations, the regulations do not – at present – set out the form and information required for the general inquiry document.

72 In NSW, a penalty unit is currently $110. See section 17 of the Crimes Sentencing Procedure Act 1999 (NSW).

73 See section 18(3) for further provisions under this section. Also see section 18(4).
Section 18(5) provides that the operator must not enter into a village contract with a person earlier than 14 days after the person has been provided with a disclosure statement. Failure to do so attracts a maximum penalty of 100 penalty units ($11,000).

Section 18(6) provides that if the operator fails to provide a general inquiry document or disclosure statement in accordance with this section, the prospective resident may apply to the Tribunal for an order requiring the operator to do so.

19 Information to be provided to prospective residents
Section 19 of the NSW Retirement Villages Act relates to information to be provided to prospective residents. It provides that the Director-General (Commissioner for Fair Trading) may approve the content and form of information that the operator must provide a prospective resident, and that approved information must be given at or before the time the general inquiry document is provided. The maximum penalty for failing to do so is 10 penalty units ($1,100). The approved information may relate to the retirement village industry generally, the rights and responsibilities of residents, and living within a strata scheme.

20 Copies of certain documents to be available
Section 20 of the NSW Retirement Villages Act provides that copies of certain documents must be made available by the operator for inspection by a prospective resident. These documents include: a site plan for a village; plans showing residential premises available in the village; proposed and approved annual budgets; the accounts for the village; examples of contracts; the trust deed for any trust fund that residents money is deposited into; the village rules; the development consent (under certain circumstances); balance statements if there is a capital works fund; and any other documents the regulations may prescribe. Failure to do so attracts a maximum penalty of 50 penalty units ($5,500). Prospective residents may also apply to the Tribunal for an order to make the operator comply.

Retirement Villages Regulation 2009 (NSW)
Part 2 of the NSW Retirement Villages Regulation provides for information about retirement villages. Notably, Part 1 of Schedule 1 to the Regulation provides the form and information that must be contained in a disclosure statement. This includes the residential village:

- Location
- Size
- Residential care facilities
- Ownership
- Management
- Residential input
- Financial management
- Security and safety
- Compliance with legislation
- Contracts

74 Clause 12 of the Retirement Villages Regulation 2009 (NSW) provides the relevant list of documents.
- Facilities
- Services
- Entry costs
- Recurrent charges
- Strata contributions payable (where applicable)
- Financial issues after permanent vacation of the village
- Vacancies.\textsuperscript{75}

### Queensland

Queensland’s retirement villages are regulated by the Retirement Villages Act 1999 and the Retirement Villages Regulation 2010\textsuperscript{76} which are administered by the Department of Housing and Public Works. There are in excess of 300 registered retirement village schemes and approximately 45,000 retirement village residents in Queensland.\textsuperscript{77}

#### Retirement Villages Act 1999 (Qld)

In Queensland, section 84 of the Retirement Villages Act 1999, requires retirement village operators to give a copy of the village’s Public Information Document (PID) to prospective residents. Section 84 states:

84 Public information document to be given to prospective resident

(1) A scheme operator must give a prospective resident of the retirement village a copy of the public information document before the prospective resident enters into a residence contract for the village.

Maximum penalty—540 penalty units.\textsuperscript{78}

(2) For subsection (1), if the residence contract consists of more than 1 written contract, the scheme operator must give the copy of the public information document before the prospective resident enters into any of the contracts.

Section 74 of the Act specifies the information required in the Public Information Document. The PID must be in the approved form and relate to only one retirement village scheme. A copy of the retirement village’s registration certificate must be attached to the PID. The PID must specify: the date on which the PID was given to the chief executive of the scheme; and any age limits for prospective applicants. The document must also contain information about:

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\textsuperscript{75} See Part I of Schedule I of the NSW Retirement Villages Regulation for details on each of these headings.

\textsuperscript{76} The Retirement Villages Regulation 2010 provides for the registration of retirement villages, information to be contained in residents’ contracts and applicable fees. As the Regulation does not include information specifically relating to pre-disclosure requirements, it will not be covered in detail in this section.


\textsuperscript{78} Based on the penalty unit value of $110, the maximum penalty for failing to comply with Section 84(1) is $59,400. See Penalties and Sentences Act 1992 (Qld) Reprint No. 12.
• accommodation (such as the type and number of accommodation units, insurance arrangements for the village including excesses applicable);
• residents’ contributions (e.g. the amount of required contributions and how exit fees will be calculated);
• payments the retirement village operator must make to residents (e.g. how any exit entitlement is calculated, if applicable);
• funds (e.g. the balance in the fund at the end of the previous financial year, the capital replacement fund contribution);
• facilities (e.g. the facilities an operator undertakes to offer);
• village land (e.g. whether or not there is a statutory charge over the land);
• residents’ rights and obligations (e.g. cooling off and contract termination rights);
• resale process information (e.g. how the resale value will be determined, the process for determining when reinstatement work will be required and who must pay for it); and,
• dispute resolution information (e.g. the types of disputes for which dispute resolution is available).79

Under section 36 of the Act, if the particulars of a PID become inaccurate in a way that may materially affect the interests of residents, operators must give notice about the inaccuracy (in the form of a full written disclosure) to persons including: persons who have indicated they will be signing a residence contract with the operator; and persons who have signed a contract but are still within the cooling off period. The scheme operator must correct the inaccuracy in the PID as soon as is practicable. The maximum penalty for each offence under section 36 is $59,400.

The Act does not appear to specify that village operators must provide other documents (apart from the PID and residence contract) for inspection prior to sale for prospective residents.

South Australia

In South Australia, retirement villages are provided for by the Retirement Villages Act 1987 and the Retirement Villages Regulations 2006, which are administered by the Disability, Ageing and Carers (DAC) branch of the Department for Families and Communities. DAC stated in 2011 that there were an estimated 23,619 people living in 509 retirement villages in South Australia.80

Retirement Villages Act 1987 (SA)
The South Australian Retirement Villages Act provides that certain information must be disclosed to prospective retirement village residents. Section 17(3) of the Act states that the administering authority of a retirement village must – prior to a person

79 See sections 75 to 83 of the Retirement Villages Act 1999 (Qld) for detailed specifications of the types of information required in each of these categories.
entering into a residence contract – provide a person with a copy of each of the following documents:

(a) the contract;
(b) if the contract relates to a retirement village already established—the financial statements presented at the last annual general meeting of residents of the village in accordance with section 22(6)(a), including a written statement of any subsequent change in the affairs of the village and the administering authority that may significantly affect the resident’s decision to enter the village;
(c) the detailed report providing information about—
   (i) the condition, as at the date of the contract, of the fixtures, fittings and furnishings (an item) provided in the residence; and
   (ii) who will be responsible for repairing or replacing an item; and
   (iii) when an item is due to be repaired or replaced; and
   (iv) how the cost of repairing or replacing an item is to be funded, (the premises condition report);
(d) the residence rules;
(e) the policy of the administering authority to be applied for the remarketing of residences (the remarketing policy);
(f) any code of conduct to be observed by the administering authority;
(g) any other document prescribed by the regulations.

Section 17(7) of the Act provides that a resident, or prospective resident, is entitled to rescind a residence contract at any time within 15 business days after the date of the contract; or if subsection (3) is not complied with—at any time before the expiration of 15 business days after the date on which the last of the required documents were provided.

Section 17(9) of the Act states that if a provision of section 17 is not observed, the administering authority is guilty of an offence, with a maximum penalty of $35,000.

Retirement Villages Regulations 2006 (SA)
Schedule 1 of the South Australian Retirement Villages Regulations contains the Code of Conduct to be observed by administering authorities of retirement villages. In relation to section 17(3) of the Act, the Code provides that:

1—Preparation and provision of documents
The administering authority of a retirement village may not charge a fee for the preparation or provision of a document required under section 17(3) of the Act to be given to a person before the person enters into a residence contract.

2—Premises condition report
The premises condition report required under section 17(3)(c) of the Act to be given by the administering authority of a retirement village to a person before the person enters into a residence contract for a residence in the retirement village—
(a) must be completed as at the date of the contract; and
(b) must specify the year in which any fixture, fitting or furnishing is to be repaired or replaced; and
(c) must be signed and dated—
   (i) by the administering authority (or by a person duly authorised to act on behalf of the administering authority); and
(ii) if or when the resident is satisfied as to the information contained in the report—by the resident; and
(d) must be reviewed at the time the resident is vacating the residence.

The next point of the Code of Conduct – ‘3—Remarketing Policy’ – sets out the requirements for the remarketing policy that must be given to a prospective resident under section 17(3)(e) of the Act. The remarketing policy sets out the way in which a retirement village residence can be remarketed if it becomes vacant.  

**Western Australia**

Retirement villages in Western Australia are provided for by the Retirement Villages Act 1992, the Retirement Villages Regulations 1992 and the Fair Trading (Retirement Villages Interim Code) Regulations 2012. The Act and both sets of Regulations are administered by the Department of Commerce. In 2009, there were 192 retirement villages and between 15,000 and 16,000 retirement village residents living in Western Australia.  

**Retirement Villages Act 1992 (WA)**

Section 13(2) of the Retirement Villages Act provides that, at least five working days before a person enters into a residence contract, the owner of the village must give that person the following documents:

- An information statement for prospective residents (with details as prescribed in the regulations);
- A copy of the village’s rules (including, for example, restrictions on visitors, pets, use of common space, parking and gardening);
- A copy of the Code of Fair Practice for Retirement Villages; and,
- A notice of a resident’s rights including that residence contracts must be in writing and that a cooling off period will apply.

The penalty for not supplying these documents is $20,000.

Under section 13(5) of the Act, a penalty of $20,000 also exists where: the village operator makes a representation to a person that is inconsistent with the information statement; or where the village operator gives a person an information statement containing information that is inconsistent with a representation made by the operator to that person.

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81 See Schedule 1 of the Retirement Villages Regulations (SA) to see ‘3—Remarketing Policy’ in its entirety.
83 This period will change to ‘at least ten working days’ under the Retirement Villages Amendment Act 2012 which was recently passed by the WA Parliament. The amending Act will commence on a day to be proclaimed.
In addition, a new offence will be created with the commencement, on a day to be proclaimed, of the Retirement Villages Amendment Act 2012. Clause 7 of the amending Act will create an offence for charging or receiving a fee for supplying the information required under section 13(2) of the Retirement Villages Act. The penalty for this offence will be a fine of $5,000.

**Retirement Villages Regulations 1992 (WA)**

Regulations 4 and 5 of the Retirement Villages Regulations prescribe the form in which the information statement and notice of residents’ rights, required to be provided to prospective residents under section 13(2) of the Act, must be presented.

**Fair Trading (Retirement Villages Interim Code) Regulations 2012 (WA)**

In addition to the requirements of the Retirement Villages Act and Regulations, the Fair Trading (Retirement Villages Interim Code) Regulations 2012 also specify that retirement village operators must provide certain information to prospective residents. Under Regulation 3.1 of Schedule 1 of the Fair Trading Regulations, the following information must be made available, in writing, to a prospective resident at least five working days before the person enters into a residence contract:

(a) a copy of —
   (i) if the retirement village is already operating, the audited or actual accounts of income and expenditure for the previous financial year of the village and the operating budget for the current financial year; or
   (ii) in any other case, the proposed operating budget for the first year of operation;

(b) a copy of every contract required to be entered into in order to reside in the retirement village and details of any costs associated with entering into every such contract;

(c) if the residential premises are comprised in a strata plan or a survey-strata plan registered under the *Strata Titles Act 1985* —
   (i) a copy of the by-laws of the relevant strata company; and
   (ii) an authority to obtain information pursuant to the *Strata Titles Act 1985* section 43.

Under Regulation 3.2 of Schedule 1, the retirement village operator must also give the following information, in writing, to a prospective resident at least five working days before the person enters into a service contract: the costs payable under the service contract, including all ongoing village operating costs or charges; details of the services that will be provided under the contract; and notice requirements of, and costs payable by, the resident upon termination of the provision of services.
References

Relevant Legislation

Retirement Villages Act 1986 (Vic)
Retirement Villages (Records and Notices) Regulations 2005 (Vic)
Retirement Villages (Contractual Arrangements) Regulations 2005 (Vic)
Retirement Villages Act 1999 (NSW)
Retirement Villages Regulation 2009 (NSW)
Retirement Villages Act 1999 (Qld)
Retirement Villages Act 1987 (SA)
Retirement Villages Regulations 2006 (SA)
Retirement Villages Act 1992 (WA)
Retirement Villages Regulations 1992 (WA)
Fair Trading (Retirement Villages Interim Code) Regulations 2012 (WA)

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