

# National Seniors

Australia

Submission in response to the Issues Paper:  
Review of the Queensland *Retirement Villages Act 1999*  
August 2012

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## Recommendations

- 1 Retirement village operators could consider offering a range of higher and lower cost products, to improve affordability across a range of socio-economic circumstances.
- 2 National Seniors Australia recommends that the Product Information Document be redrafted taking into consideration the work performed by the previous Ministerial Working Party and the variety of retirement village models in operation.
- 3 National Seniors Australia recommends that when residents are informed of any increases in fees or charges, their attention should be brought to their rights under the RV Act.
- 4 National Seniors Australia recommends that the Committee enshrine more realistic establishment of exit fees in the legislation to prevent blatant profiteering.
- 5 National Seniors Australia recommends that the right of residents to access some level of the capital gain on the sale of a unit should be addressed in the legislation.
- 6 National Seniors Australia recommends that a cap be placed on the length of time and level of fees that vacating residents, their estates or beneficiaries have to pay until a unit is sold. Villages currently have different continued payment requirements but it is considered that the length of time should be no more than 6 months.
- 7 National Seniors Australia recommends that the legislation should be amended to provide access to the tribunal for determination where the parties cannot agree on reinstatement charges.
- 8 National Seniors Australia recommends that, while appreciating the necessity of villages to remain financially viable, the current restrictions should remain in place to protect vulnerable residents.
- 9 National Seniors Australia recommends that the RV Act be amended to include provisions relating to village closures, along the lines of those included in other jurisdictions.
- 10 National Seniors Australia recommends that the rights and obligations of the parties should be inserted into the RV Act as a separate part to provide clarity and certainty for the parties involved.
- 11 National Seniors Australia recommends that accreditation be made mandatory to ensure continuing quality in the retirement villages industry.
- 12 National Seniors Australia also recommends that education/training qualifications for village managers should be mandatory.
- 13 National Seniors Australia recommends that the current legislation be retained with improved disclosure provisions.

National Seniors Australia believes that the legislation amendments will facilitate innovation, expansion and viability as they will give greater confidence to residents and potential residents to enter retirement villages.
- 14 National Seniors Australia recommends that residents should be clearly informed in the PID of their rights to participate in budgetary and other financial issues relating to the village.
- 15 National Seniors Australia recommends that tribunal access should be improved by government to avoid any delays in resolving disputes.

## Our Response

### Introduction

National Seniors Australia welcomes the opportunity to provide the following submission in response to the review of the Queensland *Retirement Villages Act 1999*. Many of our members reside in retirement villages and their views have informed our response.

National Seniors Australia acknowledges that the issues involved in the operations of retirement villages are complex particularly with different models currently being in existence.

Members assign great importance to the protections afforded under the RV Act, especially security of tenure and protection of their investment. These issues are of particular importance if they need to move to other accommodation, either because they require additional support as they age and become frail or if the village faces closure.

Fifteen recommendations are made, the majority relating to the terms of reference provided in the Issues Paper released in August 2012 by the Transport, Housing and Local Government Committee.

#### Affordability of retirement villages

Couples entering retirement villages and with access to two incomes (low or fixed), pensions or who are self-funded, are generally able to meet their financial obligations despite the value of those incomes diminishing in real terms over time. However, when one partner passes away or enters other medical or health facilities, the remaining partner may not only suffer emotional but also financial stress.

The demographics of retirement villages indicate an over-representation of females residing alone. Many are often frail and easily intimidated, either perceived or real, by younger village managers. While the RV Act endeavours to provide consumer protection, residents in a frail or distressed state may feel isolated and reluctant to access those protections out of fear of repercussions.

Retirement village operators could consider offering alternative lower cost products so that villages reflect the situation in the general community with a variety of dwellings across a range of socioeconomic circumstances. This could create a business opportunity for industry, add to the stock of retirement options and prevent villages becoming an exclusive domain for the well off thereby excluding the lower end of the market economically.

**GENERAL RECOMMENDATION No. 1: Retirement village operators could consider offering a range of higher and lower cost products, to improve affordability across a range of socio-economic circumstances.**

## **National Seniors' Responses to the Terms of Reference of the Committee**

TOR 1: *Consider whether the RV Act provides adequate fair trading practice protections for residents; including providing appropriate material to enable informed decisions to be made.*

The stated objects of the RV Act are to promote consumer protection and fair trading practices in the operation of retirement villages by declaring particular rights and obligations of residents and scheme operators and facilitating disclosure of information to prospective residents.

The RV Act also encourages continued viability and growth in the industry by the adoption of best practice standards and providing a clear regulatory framework to assist in planning for future development. The RV Act facilitates participation by residents who want to be involved in the affairs of retirement villages as well as providing processes for resolving disputes between residents and scheme operators.

Residents enter retirement villages on a promise of long term security in a stress free environment. The view has been expressed that while security is initially important as time passes concerns arise about money which could be lost when the resident moves into low or high care.

### **Consumer Protection Concerns**

Some longer term residents have expressed the view that they would not have entered a retirement village if they had been better informed about the costs associated with leaving the village.

Other issues of concern which have been raised about the adequacy of the consumer protection offered include:

- increases in General Service Fees
- the level of Exit Fees
- capital gains on termination
- continuing to pay fees until the unit is sold
- disputes over reinstatement works
- village closures. (This concern will be dealt with in a later TOR.)

Due to the complexity of the industry and the different retirement village models, to achieve its objects the RV Act provides minimum consumer protection standards and practices which should be included in contractual arrangements and disclosure documents concerning retirement village living.

## Public Information Document

The key disclosure document under the RV Act intended to inform prospective residents of their rights and obligations is the Public Information Document (PID). The current PID is lengthy and repetitious and not user friendly.

Before the last State Election, a Ministerial Working Party, which included representation from National Seniors Australia and other stakeholders, worked on the development on an improved PID. It is understood that the draft altered the structure of the PID to ensure that 'decision critical' information was more clearly identified and understood so that prospective residents could more easily make comparisons between different villages. Improvements in the draft PID included:

- critical information was placed early and prominently
- all resident-specific or tailored information was located in one place rather than being scattered throughout as in the current PID
- prescribed attachments appeared in the designated places
- the document could be signed by the parties
- duplication of information was removed.

The New South Wales PID was taken into consideration in developing the new PID. It is suggested that the Committee acquire a copy of the draft prepared by that group as the basis for considering any necessary alterations to the current PID.

The PID as it presently stands is designed to deal with all retirement village models. The length of the PID and some of the confusion over rights and obligations of the parties could be reduced if each model had its own specific PID rather than trying to incorporate all models into a generic document.

**RECOMMENDATION No. 2: National Seniors Australia recommends that the PID be redrafted taking into consideration the work performed by the previous Ministerial Working Party and the variety of retirement village models in operation.**

To continue to be viable, retirement villages must have the ability to meet ever rising costs imposed by other organisations outside of their control, for example, salaries and wages, insurance premiums, and government rates or taxes. The RV Act prescribes how General Service Fees may be increased in the annual General Services Charges budget by CPI and other outside imposed increases.

A major complaint is that residents are uncertain of their rights and accept increases contrary to the prescribed methods without properly considering the protections available under the RV Act. It may be appropriate if the operator was required by the RV Act to inform residents of their

rights at the time of notifying any increases. With over 300 villages being in existence this may already be done in some villages but making it mandatory would add to greater transparency.

**RECOMMENDATION No. 3: National Seniors Australia recommends that when residents are informed of any increases in fees or charges, their attention should be brought to their rights under the RV Act.**

The levels of exit fees continue to be of concern to residents or estate beneficiaries. Some of the arguments for exit fees include:

- Operators do not profit from monthly charges
- They ensure the operators meet their long term obligations to maintain and improve the village
- They assist the operator to provide quality leisure facilities
- They assist the operators in building upmarket retirement facilities in prime locations with good capital growth.

Exit fees vary from village to village and have not been regulated. A National Seniors Australia member recently received an advertising leaflet from a village stating that the exit fee had been reduced from 40% to only 35%. It is considered that such a level of fees is totally unacceptable and could be setting a trend in the industry.

**RECOMMENDATION No. 4: National Seniors Australia recommends that the Committee enshrine more realistic establishment of exit fees in the legislation to prevent blatant profiteering.**

Retirement village residents have usually sold their homes in the community to pay the ingoing contribution. If the resident wants or has to move out of the village, the issue of capital gains on the unit becomes a critical issue. Capital gains and access by residents vary depending on the type of village and the PID. To re-enter the outside market or to pay a bond on aged care the resident needs to access the exit payment or in the case of freehold village, the sale amount.

Exit payments, usually the refund of the ingoing contribution, may be affected by exit fees, reinstatement costs, legal fees, and ongoing fees until the unit is sold. The share, if any, of the capital gains on a unit depends on the particular village and is usually contained in the PID.

Without access to capital gains, residents could be severely disadvantaged in trying to obtain alternative accommodation. They have left the outside market at a point in time and may find themselves no longer able to purchase a replacement home unless they have access to capital gains on their retirement village home. While capital gains may be an essential component of village operator profit, departing residents without access to their exit payments can be left in a difficult financial position.

**RECOMMENDATION No. 5: National Seniors Australia recommends that the right of residents to access some level of the capital gain on the sale of a unit should be addressed in the legislation.**

The continued payment of fees and charges by residents or their estate from date of termination to the actual sale of a unit may be necessary for villages to meet their annual budgets. The requirement for continued payments and the period involved is usually outlined in the PID.

However, while these payments may meet short term financial issues, they have potential to be damaging to the industry in the long term. The on-going costs may be financially detrimental to a person who has moved into higher care and has to pay for both that care and the retirement village charges. Relatives or beneficiaries under an estate who may be potential retirement village residents in the future are often appalled by the perceived profiteering and are 'turned off' this type of accommodation for their own retirement.

**RECOMMENDATION No. 6. National Seniors Australia recommends that a cap be placed on the length of time and level of fees that vacating residents, their estates or beneficiaries have to pay until a unit is sold.**

**Villages currently have different continued payment requirements but it is considered that the length of time should be no more than 6 months.**

Reinstatement of units after sale or termination continues to cause concern for many residents. While the RV Act outlines procedures and responsibilities, often the level of the work to be completed is in dispute. Units will require different levels of work depending on the actual condition at the time of vacation. Some residents consider that the owners are engaged in refurbishment rather than reinstatement at their expense.

**RECOMMENDATION No. 7: National Seniors Australia recommends that the legislation should be amended to provide access to the tribunal for determination where the parties cannot agree on reinstatement charges.**

*TOR 2: Consider whether the RV Act does not include unnecessary restrictions and provisions which increase the affordability of living in a Retirement Village.*

The RV Act does contain restrictions on the operation of retirement villages including registration, limitations on increasing charges, providing detailed documentation, resident access to and participation in financial matters, and dispute resolution processes. These requirements do impose costs on industry thereby reducing profitability. Against this must be weighed the fact that residents are elderly, in some cases frail or vulnerable, are disproportionately females living alone and have limited financial resources.



Residents have entered into contracts to reside indefinitely in villages and operators have accepted these contractual arrangements being fully aware of the nature of their clients and their capacity to meet financial commitments. The reduction of any of these consumer protection measures could have implications for residents. At the recent public hearing of the committee it was stated that there was reluctance on the part of baby boomers to enter retirement villages having regard to the treatment of their parents.

**RECOMMENDATION No. 8: National Seniors Australia recommends that, while appreciating the necessity of villages to remain financially viable, the current restrictions should remain in place to protect vulnerable residents.**

*TOR 3: Consider whether the RV Act provides adequate certainty, accountability and transparency for residents in relation to their financial obligations, including the interests of residents in the event of a village closing down.*

The provisions of the RV Act endeavour to provide certainty, accountability and transparency for residents in relation to their financial obligations. Due to the number of villages and different operating models the PID is an essential component in this process. Making the PID a more user friendly document using plain English will improve the understanding of the financial obligations. (See the proposal in Recommendation 2)

National Seniors Australia is of the view that village closures are not adequately covered in the legislation. In October last year in response to a Discussion Paper released by the Office of Fair Trading (OFT), National Seniors Australia made a formal submission responding to the issues raised.

The National Seniors Australia submission is accessible on the National Seniors Australia website [www.nationalseniors.com.au/policy/submissions](http://www.nationalseniors.com.au/policy/submissions). It is suggested that the Committee should examine the responses made to that Discussion Paper by the stakeholders.

People enter villages expecting that they will be able to continue to reside there until they are no longer able to live independently. They enter into contractual arrangements with the village operators to permit them to achieve this aim and village operators should meet their contractual obligations and do everything in their power to maintain the village in good order and to continue operating. Closure should be the last resort.

National Seniors Australia recognises that there are competing issues involved. Villages must remain commercially viable or operators may wish to use their assets in a more profitable way by redevelopment. As land valuations appreciate and with returns in the retirement village sector being lower than other traditional forms of property, according to the Retirement Villages Association Strategic Plan 2010-2012, there will be an increasing interest from operators in village closures particularly of those not operating efficiently.

Closure has the potential of causing enormous detriment to residents who may be unable to relocate to similar facilities in a suitable location due to both the costs involved and availability. At the same time, closure may suit the village operators who may be able to realise significant capital gains through redevelopment. Consequently, closure or deregistration of a retirement village scheme will not have the same major impact on the village owner.

The OFT Discussion Paper examined issues such as dealing with the maintenance reserve funds, general services charges, reinstatement costs, time frames for winding down, unit valuations, exit fees and the payment of compensation. It is not intended to deal with all those issues here in detail.

In brief, National Seniors Australia recommended:

- increased time frames for winding down rather than those specified in the RV Act
- surplus funds held in the maintenance reserve funds to be returned proportionately to existing residents and partially to those having left within the last 12 months
- closure expenses to be paid by the operator and any surplus in the general services charge to be returned proportionately to residents
- where facilities are withdrawn during the winding down period the general services charge should be reduced accordingly
- reinstatement costs should not be paid by residents as reinstatement would not be necessary if the village is closing
- units should be valued on the basis of the village continuing to operate or measured against comparable units in other villages
- exit entitlements should be paid as soon as possible to allow residents to purchase new homes or find alternative accommodation.

The village operators may be in breach of contract by terminating the tenure offered to the residents. The village owners have marketed the village offering secure tenure and have a responsibility to continue operations. Residents have fulfilled their part of the contract by paying significant ingoing contributions and ongoing charges. Operators should have been fully aware of the financial capacity of the segment of the market they have targeted.

As such, residents should be entitled to receive compensation from the village owners in addition to their exit entitlement when the village closes. This compensation will assist residents who may otherwise be financially disadvantaged by the closure. Provision for compensation payments is included in the New South Wales retirement village legislation.

Compensation should be payable regardless of the reason for closure. Village operators choosing redevelopment have the opportunity to profit from the change at the expense of elderly people who may have sold their family homes to enter the village. Village operators closing for financial reasons will still be left with an asset from which they may be able to recover any losses. Residents affected by the closure do not have any way to recover losses and should be entitled to compensation.

Closure of retirement villages is dealt with in a number of ways in other jurisdictions. In Western Australia and South Australia, the Supreme Court must approve termination of a village. In Victoria, Tasmania and South Australia residents must agree to the closure. In New Zealand, an operator seeking to close a village must have the approval of at least 90% of the residents.

**RECOMMENDATION No. 9: National Seniors Australia recommends that the RV Act be amended to include provisions relating to village closures, along the lines of those included in other jurisdictions.**

*TOR 4: Consider whether the RV Act provides sufficient clarity and certainty in relation to the rights and obligations of residents and scheme operators.*

Currently, the rights and obligations of residents and scheme operators are contained within the separate provisions of the RV Act rather than being set out in a manner which can easily be understood.

The *Manufactured Homes (Residential Parks) Act 2003* Part 3 clearly outlines the basic responsibilities of park owners and home owner.

**RECOMMENDATION No. 10: National Seniors Australia recommends that the rights and obligations of the parties should be inserted into the RV Act as a separate part to provide clarity and certainty for the parties involved.**

*TOR 5: Consider whether the RV Act should make provision for scheme operators to develop and adopt best practice standards in operating villages, or require operators to comply with mandatory standards or accreditation.*

The Retirement Villages Association has developed 27 standards for accreditation purposes. These are currently industry self regulation and should be commended. The RV Act could be amended to require accreditation based on the current minimum standards (as developed for the self-regulating accreditation process). This will ensure that villages which have not adopted the present model will do so and demonstrate a commitment to continuous improvement.

The current legislation requires criminal history checks on village managers. Consideration should be given to prescribing training or other qualifications for managers. Village management is an important component in ensuring an harmonious lifestyle in park living.

This training could include:

- facility management
- first aid
- dealing respectfully with elderly people
- financial management/budgeting.

**RECOMMENDATION No. 11: National Seniors Australia recommends that accreditation be made mandatory to ensure continuing quality in the retirement villages industry.**

**RECOMMENDATION No. 12: National Seniors Australia also recommends that education/training qualifications for village managers should be mandatory.**

*TOR 6: Consider whether the RV Act adequately promotes innovation and expansion in the retirement village industry, avoids purely 'red tape' requirements, and facilitates the ongoing viability of villages.*

With an ageing population, there is considerable scope for innovation and expansion in the retirement village industry. For example, lower cost villages could be developed to assist residents in the lower socioeconomic bracket. The RV Act promotes innovation and expansion by providing certainty for both residents and operators. While there are regulatory issues for operators and costs involved, these must be balanced against the needs of elderly residents and their capacity to pay.

The consumer protection measures should allay concerns of potential residents and encourage entry into retirement villages. Potential residents and their families need confidence in the industry for it to flourish and retention of appropriate regulation will benefit both residents and industry. Often family members are involved with the potential resident in the unit purchase and later disposal. These members may inherit any problems associated with village living.

**RECOMMENDATION No: 13: National Seniors Australia recommends that the current legislation be retained with improved disclosure provisions.**

**National Seniors Australia believes that the legislation amendments will facilitate innovation, expansion and viability as they will give greater confidence to residents and potential residents to enter retirement villages.**

*TOR 7: Consider whether the RV Act affords residents all reasonable opportunities to be involved, should they wish to be, in budgetary and other decisions affecting their financial obligations.*

Residents are able to establish village committees which may deal with managers/operators on day to day operational issues and complaints or proposals raised by residents. The village committee may with resident's approval and subject to the agreement of the operator, make change or revoke any by-laws by special resolution.

Residents are entitled to copies of audited and unaudited financial statements for each financial year and copies of quarterly financial statements for the capital replacement fund and the maintenance reserve fund. Resident have the right to consider general services fee increases above CPI and by special resolution reject any excessive increase. These provisions do afford residents reasonable opportunities to be involved.

However, the main issues are whether residents want to exercise these rights, know of their rights or simply do not do so out of fear of intimidation.

**RECOMMENDATION No. 14: National Seniors Australia recommends that residents should be clearly informed in the PID of their rights to participate in budgetary and other financial issues relating to the village.**

*TOR 8: Consider whether the RV Act adequately provides a timely, informal and cost-effective process for resolving disputes between residents and scheme operators.*

The RV Act provides dispute resolution processes including internal negotiation, mediation or, as a last resort, tribunal access. The costs if seeking to have legal representation at the tribunal hearing can be prohibitive for a resident on a limited income. The process for the particular village must be outlined in the PID.

Due to fears of intimidation of individual residents, it is considered that the residents' committee should play an expanded role in dispute resolution. Delays in access to the tribunal are a concern which needs to be addressed by government. Ongoing disputes can bring the industry into disrepute and impact on house values. Timely resolution is best for all concerned.

**RECOMMENDATION No. 15: National Seniors Australia recommends that tribunal access should be improved by government to avoid any delays in resolving disputes.**

## Conclusion

In summary, National Seniors Australia supports continuation of the existing regulatory regime for retirement villages with clarification of certain issues. In particular:

- the Product Information Document should be improved
- the level of exit fees should be regulated
- the issue of ongoing payments after termination of residence and capital gains should be revisited to ensure fair treatment for residents
- closure provisions should be introduced, including the payment of compensation to affected residents
- the rights and obligations of the parties should be presented in a separate section to provide clarity and certainty
- accreditation and training of village managers should be mandatory.

While there are regulatory restrictions on industry, there are benefits as well. The RV Act provides certainty in a market which is expected to grow with the ageing population in the coming years and the consumer protection measures are essential to encourage interest in this type of retirement accommodation.

## **About National Seniors Australia**

National Seniors Australia is the largest organisation representing Australians aged 50 and over, with around a quarter of a million members nation-wide. This broad-based support enables National Seniors to provide a well informed and representative voice on behalf of its members and contribute to public education, debate and community consultation on issues of direct relevance to older Australians.

**We give our members a voice** – we listen and represent our members’ views to governments, business and the community on the issues of concern to the over 50s.

**We keep our members informed** – by providing news and information to our members through our Australia-wide branch network, comprehensive website, forums and meetings, bi-monthly lifestyle magazine and weekly e-newsletter.

**We provide a world of opportunity** – we offer members the chance to use their expertise, skills and life experience to make a difference by volunteering and making a difference to the lives of others.

**We support those in need** – as a not-for-profit organisation, we raise funds and redirect monies received to older Australians who are most in need.

**We help our members save** – we offer member rewards with discounts from over 7,000 business across Australia, we offer discount travel and tours designed for the over 50s, and we provide older Australians with affordable, quality insurance to suit their needs.

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