

Submission

Submission 6

by **Wim Boog**

to **The Transport, Housing and Local Government Committee.**

Re: Review of Retirement Villages Act 1999.

Criminal and Other Legislation Amendment Bill 2011.

Retirement Villages Act 1999 [RVA 1999]

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20 September 2012.

Wim Boog

[Redacted]

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Email: [Redacted]

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Background in the Retirement Village Industry

Being part of the Retirement Village Industry started in the early 1990s after 10 years with Philips Industries as divisional technical director followed by 4 years in charge of Logistics with Bryant & May/Wilkinson Swords.

My starting point in the Retirement Industry was a retirement village in its development stage with a hostel facility & kitchen, a handful of 'independent living units' (ILU) and a lot of work in progress. The task was to manage the village, run the administration for the village and the association and take charge of the building activities.

The philosophy of selling ILUs at replacement value was to keep the price at an affordable level so that residents had some money left after they sold their family home.

The philosophy of the 'deferred management fee' (DMF) was to generate a 'village equity' that in future is to be used for improvements and unforeseen events. A club house for the ILU's, extensions of the Hostel, renovations of the early hostel units and lately the establishment of a 60 bed nursing home on site are a few examples of this.

The philosophy of early payment of exit entitlements and no monthly fees after the month of vacating the unit is a combination of fairness and the need to have the exit entitlements available for entry in care facilities.

Functions in the Industry:

1. Village Manager of the Netherlands Retirement Village Association (NRVAQI)
2. Director of Age Care Queensland (ACQ)
3. CEO of the NRVAQI
4. Director (Treasurer/Secretary) of the NRVAQI
5. Advisor to the Board of the NRVAQI
6. Resident in a Village in Mackay

Introduction

Being passionate about a complete overhaul of *the Act* finds its origin in the original philosophy of the industry as shown in my background. The original philosophy worked very well until companies were established with the philosophy that big profits could be made. **The section of the industry that is after big money must have realised that by looking at 'return only' has turned them, in many cases, to a no longer viable and sustainable industry. In fact it is creating a huge problem for the government in the years leading up to the early twenties. Huge amounts of money have been siphoned off thus leaving the individual village without any reserves for future years.**

The first two priorities are:

- recognition of the rights and expectations of residents under all circumstances including a de-registration of a village as a result of receivership. ¹
- a complete overhaul of *the act* with the emphasis on the daily management of a village in order to achieve sustainability and viability at village level ²
 - simple businesslike regulations for GSF, MRF, CRF and equity funds
 - simple regulations for exit fees e.g. DMF ³ and reinstatement costs
 - introduction of an ombudsman.

¹ See the document (30 October 2010) by Wim Boog presented to Mr Damian Sammon on 5 November in the electoral office in Mackay from page 3 to 5 and Submission to OFT 3 October 2011.

² See Book by Wim Boog June 2010 "Retirement Village Industry" chapter 2, page 26

³ Deferred Management Fees must stay with each individual village. Only part of this money can be used for corporate costs.

Re RVA_Issues Paper, Page 2

Retirement villages allow a group of people to share amenities and services that individually might not be affordable or desirable. Villages provide services at different levels, ranging from low care to higher care, sometimes within the same village. It is important to note they are not nursing homes, and do not provide the level and type of care available in nursing homes. **Following the new directions of Canberra, it is now possible to have ILUs suitable for Nursing Care so that Hi-Care can be received at home.**

At June 2011, 311 schemes were registered in Queensland, housing 28,000 residents and employing 8,000 people. This equals to 1 employee for every 3.5 residents. **This does not sound realistic for independent living and in turn could affect viability.**

The protection of consumers is a primary objective of the RVA. **Looking back over 6 and more years, this protection has not been very effective as we see an index increase of the monthly fees that is much higher than the increases of Australian Pensions and Brisbane CPI.**

Re RVA_Issues Paper, Page 3

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

1. Do you think the RVA promotes consumer protection and fair trading practices? **NO** If not, where you believe improvement is required? **E.g.:**
 - **use of exit fees**
 - **regulations to safeguard life time occupancy**
 - **business like regulations for fees of GSF,MRF and CRF**

Re RVA_Issues Paper, Page 4

2. If you have considered becoming a resident of a retirement village, did you have all the information you needed to make an informed decision? Was the information presented in an easy to understand way? What could have helped you in this process, for example independent fact sheets based on the Act.

The majority of residents do not comprehend the PID. A more user friendly PID in plain English, without the legal and technical jargon, would not only assist the future residents but also would assist consistency by not having to change the entire document every year. There could be many different PIDs applying to various residents.

3. Does the public information document include all relevant information to enable prospective residents to make informed decisions? Is there any other information you believe should be required to be included in the public information document?

The issue of receivership and closure, combined with for life occupancy, must be part of the PID. People go to a Retirement Village to feel secure and have a residence for life. Many do no longer have funds sufficient to move to another village.

4. Have you had any experiences where you felt as though your rights as a consumer of services provided by a retirement village operator were not protected? This could include, for example, being misled or deceived, having false expectations set by an operator that were not met once you moved in to a village or being taken advantage of.

Yes. Website www.rvwt.net will state an example.

5. Do you have any views about how the RVA compares with other legislation to provide consumer protection as well as business viability, for example, the Residential Tenancies and Rooming Accommodation Act 2008 or the Body Corporate and Community Management Act 1997?

Many of the problems and challenges in the Industry would be solved if a Retirement Village is run in similar fashion as a Body Corporate. The 'for Profit' issue would be solved. No problematic viability issues to deal with.

Re RVA_Issues Paper, Page 5 & 6

2. Consider whether the Act does not include unnecessary restrictions and provisions which increase the affordability of living in a retirement village.

The key financial obligations on residents of retirement villages are provided in the RVA and described below. Each of these should be considered with regard to their effect on the affordability of living in a retirement village.

When a resident leaves a retirement village, they receive an exit entitlement and also pay the operator an exit fee. Proceeds of the sale of the unit fund both an exit entitlement for the resident and an exit fee to the operator. This fee represents the operator's profit.

The 'operator's profit' should be rephrased into 'operators income' out of which the CRF has to be funded, corporate cost has be paid, reserves are to set aside for future refurbishment, funds have to be reserved in case of closure and/or bankruptcies and finally the Shareholders.

Exit fees are the primary source of income for the scheme operators, along with any share of capital gain they are entitled to from the re-sale or re-lease of units in accordance with residence contracts.

One provider has advised that from this income, they pay for:

- o capital replacement fund contributions
- o capital improvement costs
- o the operator's share of reinstatement costs
- o the operator's share of general services charges of vacant units
- o compliance costs **Not likely, maybe some 'non profit' SO might.**
- o shortfalls in general services budgets **Not likely, maybe some 'non profit' SO might.**
- o corporate financing and operating costs.

6. Is the exit fee an appropriate source of profit for a retirement village operator? What other approaches might encourage operators to invest in the retirement village model?

A 'for profit' retirement village operator should know that under a Retirement Village Scheme one cannot expect a return on investment and have a sustainable business at the same time.

Any movement in making the scheme more profitable will result in not viable fee structures.

The main reason for a lack of sufficient income in relation to the investment is shown in the following scenario. Continue page 5

SO1 develops a village and sells all the units. Incoming fees total all costs plus a profit margin. SO1 takes the money and sells to SO2. This scenario leaves no money in the village and probably nothing left in the CRF. SO2 now has to get a return of his investment and pay for all Corporate Costs. Had SO1 continued there would not have been a need for return on investment as all the investments already have been paid for by the residents.

Re RVA_Issues Paper, Page 7

This amendment was made in the interests of fairness. Retirement village operators submitted that this would present a risk to their viability, **[This is proof that even the operators realise the lack of sustainability and viability]** and that they would have to increase exit fees for future residents to cover the losses **[If a practice is unfair, one cannot claim a loss]** they would incur; and that valuations would decrease presenting a risk to continuity of investment.

The Association of Residents of Queensland Retirement Villages (ARQRV) believes that there is widespread dissatisfaction amongst residents caused by the exit fee, as it disempowers residents. It is argued that residents cannot move to another village because they risk losing a large amount of capital so are in effect locked in to a single village. In addition, it is claimed that some residents only learn this after they have moved in to the village. **PID is too complicated.**

On the other hand, exit fees allow retirees to leverage their capital to get a standard of living they couldn't otherwise afford, by paying for it later, from their capital. **Not the case when the first residents paid for the entire establishment of the village as historically has been the case.**

The RVA currently provides that the balance of a resident's ingoing contribution (the exit entitlement) does not have to be paid to a former resident until after the right to reside is resold unless the contract states otherwise. This could lead to some hardship for a former resident, as they are unable to access the residual funds. However, paying the balance earlier could lead to some hardship for an operator.

7. Do you believe that the current retirement village model 'locks' residents in to a village, and that this may affect how responsive operators to their requests
There is no doubt about this. Very easy to confirm.
8. Is there an appropriate balance of the burden of responsibility for vacated residences?
Some basic Abstract Thinking would confirm that the exit entitlements must be settled within a period of 4 weeks of vacating. Please note that the reason to create the Act in 1999 was to deal with this problem. Unfortunately the 'problem of having to wait' for unacceptable periods still exist. It is a known fact that residents had to wait for over a year for the exit entitlements before they could pay the entry fees for a Low/High Care facility.

Re RVA_Issues Paper, Page 8

Operators are required to establish a capital replacement fund to pay for the replacement of capital items in a retirement village. It is calculated as a percentage of a new resident's ingoing contribution, which is decided by the scheme operator **taking in account the Quantity Surveyor's report.**

Operators are required to establish a MRF to pay for the maintenance and repair of capital items. Contribution to this fund is part of the general services charges, again decided by the scheme operator **taking in account the Quantity Surveyor's report.**

9. What is your experience of the affordability of retirement village living, with specific regard to the provisions described above? **Not very good. In all cases it comes back to management that either is not aware of the Act or have only the viability of the owner in mind or both.**

10. Are you aware of any unnecessary restrictions or provisions which affect the affordability of living in a retirement village?
No, but common sense does not always prevail. The buzz word here is interpretation.

11. Is the governance of these funds appropriate?
Maybe but management controls are not.

3. Consider whether the 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 President of the Association of Residents of Queensland Retirement Villages (ARQRV) has expressed concern about the "the conflict between the need to treat residents with dignity and respect and the business imperatives of the operator..." **Unfortunately that is reality.**

Re RVA_Issues Paper, Page 9

12. Should residents have to state that they are considering leaving the village in order to receive an estimate of their exit fee? Is there another way that residents can receive this information? **No comment**

At the request of a residents committee, a scheme operator must provide a document that explains the expenditure involved in providing each general service, and any increase in the expenditure involved in providing a general service, that varies from the expected expenditure for the general service in the budget. **When there is no Residents Committee the operator does not supply that type of information! This loophole must be addressed. Not every Village is able to form a committee.**

13. If you are a resident of a retirement village, do you have certainty in your financial obligations with regard to living in the village? If not, what aspects remain uncertain? **No certainty. Cost allocations are wrongly applied. E.g. the use of MRFunds.**
Do you have any recommendations about how this could be improved?

Re RVA_Issues Paper, Page 10

14. Currently, residents need to request financial information from operators of retirement villages. However, some operators provide this information as a matter of course, without waiting to be asked. Does this represent 'best practice'? Do you feel comfortable asking for financial information? Should it be a requirement of the RVA that operators proactively provide quarterly and annual financial information to residents (or publish it somewhere it can be readily accessed), rather than waiting to be asked to provide it?

Best practice would be the monthly MRF, SRF and CRF financial reports on display and supply the entire Audit Report to each resident with the invitation to the Audit General Meeting. Budget proposals should be on display no later than 1 May with adjustments 1st week in July

15. What is your experience of the exit fee, is it variable within your village, or a fixed percentage or amount? Do you believe the system is fair and transparent? **Fair up to a total of 30%. Use of exit fee must be regulated.**

16. The RVA provides that a resident who dies is liable to pay personal services charges for up to 28 days after the termination of their contract.³³ As a resident has to give one month notice to terminate their contract, this may mean they, or their estate, continue to pay personal services charges for up to two months after they die. Is this reasonable? **NO. Last full monthly fee payment to be paid is for the month of vacating.**

As discussed on page 6, the RVA was amended in 2012 to provide clarity about the calculation of exit fees. This followed a QCAT decision that considered whether the RVA required exit fees to be calculated on a yearly or pro-rata daily basis. While the Tribunal found in favour of the operator, that exit fees were charged on a yearly basis, the appeal to the District Court found in favour of the resident and stated that the yearly calculation method provided a windfall to operators. **See page 5** (1st par under 'Re RVA_Issues Paper, Page 7').

17. Has the 2012 clarification of how to work out exit fees under section 53A of the Act provided improved certainty and about transparency in the financial obligations of residents of retirement villages? **Yes**

18. Has there been litigation over exit fees that are not calculated on a daily basis, or an increase in fees being expressed as a deferred payment of a portion of the entry fee? **I believe so.**

Re RVA_Issues Paper, Page 11

An operator of a retirement village can cancel the registration of a retirement village by writing to the CEO of the responsible Government department. Without registration, a retirement village cannot operate. The operator must provide written notice to each resident which identifies, amongst other things, how the cancellation of registration will affect them. Residents then have 60 days in which to object to the cancellation. **Not that simple**

One of the key issues with regard to the closure of retirement villages is that operators are not required to provide residents with anything in addition to the standard exit entitlement. This means that operators are acting within the law if they choose not to provide additional

assistance such as relocating residents or monetary compensation to assist with extra expenses they incur when they involuntarily leave the village. **Not correct as a life residency contract exists.**

In its submission to the Productivity Commission's inquiry 'Caring for Older Australians', Lendlease Prime Life observed that "when the business compares the development returns of traditional residential developments to retirement developments, the returns are much greater for traditional residential development, thus the allocation of funding is to where the returns are greater." This highlights one of the main reasons why some retirement villages close down. **Many more to come, so something very drastic has to eventuate to avoid elderly residents to be thrown out on the street only because in good faith they trusted a Scheme Operator.**

While the RVA allows retirement villages to close down, there are risks that an operator could let a village decline, reducing the capital value as well as amenity for those who live there. This would have a significant impact on residents, including the length of time taken to reach agreement on value (which under the RVA is an option for receiving an exit entitlement prior to a sale); or being involuntarily moved from their homes (for example if the operator issues them with notices under s53). This scenario could leave residents unable to buy in somewhere else. Operators face difficulty here too; not being able to leave retirement villages quickly could result in lost business opportunities. **Breach of Contract becomes first priority not lost business opportunities.**

As residents start to move out, the remaining residents may struggle to afford maintenance, which would lead to a decline in value and affect exit entitlements. Industry viability could also be threatened by any resulting reduction in consumer confidence in the Industry. **Pro rata MRF and GSF fees. There still should be money in the CRF.**

[Re RVA_Issues Paper, Page 12](#)

19. Does the RVA provide sufficient certainty, accountability and transparency for residents in relation to their financial obligations in the event of their retirement village closing down?

NO

20. Should the exit entitlement calculation be adjusted in the event that a retirement village is closing?

YES

21. Are retirement village residents clear on how money in village funds, such as capital replacement or the like, are managed upon closure of a retirement village? Does the RVA need to be amended to provide increased clarity for residents and operators?

Where do the balances of GSF and MRF go?

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

22. Does the public information document and residence contract provide sufficient clarity of residents' rights and obligations when entering a retirement village?

No. User unfriendly document.

23. Is the RVA clear about the rights and obligations of retirement village scheme operators? If it is not, how could it be improved? **Requires complete overhaul of the RVA99.**

24. Is there sufficient clarity and certainty in relation to the rights and obligations of residents and operators to terminate a contract to reside in a retirement village, or to reinstate a unit after it is vacated or about resale obligations of a unit in a village after a resident leaves?

No. The Act is very confusing as it uses different rules for various periods. If a ruling is right then it should be retrospectively.

Re RVA_Issues Paper, Page 13

5. Consider whether the 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.

An object of the RVAct is to encourage the adoption of best practice standards by the retirement village industry.

The Act does not require accreditation of retirement villages, however, many villages currently participate in accreditation programs through the 'Australian Retirement Village Accreditation Scheme'. The international Retirement Community Accreditation Scheme (IRCAS) will launch a national retirement village accreditation program this year. **Independent?**

In the Productivity Commission's Caring for Older Australians inquiry it was identified that "current aged care standards focus more on meeting minimum standards rather than on continuous quality improvement. Also, the quality framework is not focused enough on outcomes for care recipients." **Irrelevant for ILUs.**

It could be argued that is not an option. **Self-regulation is not an option!**

25. How does the RVA currently encourage best practice in the operation of retirement villages, if at all?

It leaves an option: Best practice = operator's profit.

Re RVA_Issues Paper, Page 14

26. How are residents assured quality service provision by the RVA, if at all? Should best practice in retirement villages be achieved through mandatory accreditation, or are there other ways to ensure best practice? **Policing.**

27. Do you think that mandatory accreditation or standards that retirement villages - or providers of services within retirement villages - have to follow would improve the standard of care provided across the sector? **Yes, but only if policed.**

28. What are the advantages and disadvantages of mandatory accreditation of the retirement villages industry? **It only works when accreditation is carried out without prior notification.**

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

An objective of the RVA is to encourage the continued growth and viability of the retirement village industry in Queensland. This must be balanced with consumer protection, as the other key objective of the Act. The RVA aims to provide a clear regulatory framework to ensure certainty for future expansion of the industry.

The ageing Queensland population may increase the demand for accommodation options for older people, who are not a homogenous group. As one model, retirement villages will need to respond to increasing and changing demand. Consequently, the RVA must support innovation and expansion while preserving quality service provision. Through doing so, it will balance the needs of both industry and retirees.

In responding to this term of reference you may wish to consider the difference between for-profit and not-for-profit retirement villages, the registration process and the role of residents committees.

29. How does the RVA support or limit expansion of the retirement village industry?
30. Can you identify any requirements in the RVA that appear to be purely 'red tape' requirements, rather than essential provisions to regulate the industry?
31. Does the RVA support innovation within the industry, or is this limited by the Act?
32. What are some key factors that facilitate, or hinder, the viability of retirement villages?
33. Is there enough flexibility under the current RVA for different models of retirement villages that cater for the varying needs and desires of retirees?

Cannot be answered in just a few words. 'The Retirement Village Industry by Wim Boog 1/6/2010' and 'Submission by Wim Boog re Closing a retirement village 3/10/2011'(file attached in email) give some of the answers to Q29-33.

34. Is there a difference in the viability of for-profit and not-for-profit retirement villages?
Not-for-profit is viable, for-profit is not sustainable.

[Re RVA_Issues Paper, Page 15](#)

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

35. Do all retirement villages have residents committees? For those that do, how effective are they in helping residents be involved in budgetary, and other, decisions?

Not every village has a committee. Effectiveness depends on background of members and the willingness and ability to agree or disagree.

36. Are there appropriate provisions in the RVA for residents to be involved in decisions that affect their financial obligations? If not, what change would you like to see?

Everything relating to GSF, MRF and exit fee related issues must be re-written in the Act.

37. Is the level of power provided to residents by the RVA appropriate relative to their level of financial and personal investment in the retirement village?

Not when considering that the village has been paid for by the first residents.

38. Should resident participation be mandatory in retirement village 'decision-making Processes' for decisions that affect their financial obligations?

Yes, in a similar fashion as in Body Corporates.

39. Other than residents committees, how are residents involved in budgetary and other decisions affecting their financial obligations?

No involvement possible.

Re RVA_Issues Paper, Page 17

40. Did you receive adequate information about the dispute resolution process when you entered your retirement village?

Not to the extent that that process is user unfriendly and for the majority not an option.

41. How effectively are disputes resolved in your retirement village, either as an operator or resident?

Low efficiency with too many disruptive delays by the legal teams of the operator.

42. Should the RVA require that all retirement villages have an internal dispute resolution process, in addition to that provided by the Act?

Yes, but not in addition. It should replace with the aid of an Ombudsman.

During the Productivity Commission's inquiry 'Caring for Older Australians' concern was identified about retribution inhibiting "... the free flow of complaints from those receiving care or from their families and friends." This is a serious issue that may wish to comment on, with regard to the effectiveness of the dispute resolution process outlined above for residents of retirement villages. **It is a well known fact that many residents do not make comments because they fear retribution by management. Whatever the reason, it is a sorrow reality.**

43. Is the current dispute resolution process effective for the potentially vulnerable members of our community it is intended for **[A definite 'NO']**, or are there more appropriate options that should be developed? **That is a necessity.**

44. Are residents of retirement villages aware of their right to complain? Should this be included in the RVA? **Yes, but it will not change the reality of fear.**

45. How are residents protected from being victimized when they complain or use the dispute resolution process, if at all?

I don't think that attitude can be regulated.


46. How often are disputes resolved through a residents committee, rather than the formal process? It happens to some degree but often it becomes a long drawn process exceeding the term of a committee.

The next committee might not have the capacity to continue at the end of the previous committee.

47. Is QCAT effective in resolving disputes for residents of retirement villages?

In my experience, NO

Regards,

A handwritten signature in dark ink, appearing to be 'Wim Boog', written over a horizontal line.

Wim Boog

20 September 2012