



**RESPONSE TO QUEENSLAND GOVERNMENT
RETIREMENT VILLAGES ISSUES PAPER AUGUST 2012
on the Review of the *RETIREMENT VILLAGES ACT 1999***

**Prepared by
COTA Queensland**

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COTA Queensland

Address: Level 1, 25 Mary Street Brisbane Q 4000

Postal: PO Box 15525, City East 4002

Email address: policy@cotaqld.org.au

Telephone: (07) 3316 2999

www.cotaqld.org.au

Authorised by:

Name: Mark Tucker-Evans

Title: Chief Executive

Email address: mte@cotaqld.org.au

Telephone: (07) 3316 2903

Prepared by:

Name: Anna McCormack

Title: Policy Officer

Email address: anna.mccormack@cotaqld.org.au

Telephone: (07) 3316 2914

COTA QUEENSLAND – COUNCIL ON THE AGEING

COTA Queensland is a state based organisation committed to advancing the rights, needs and interests of older people in Queensland. It aims to help create a more just, equitable and caring community in which older people are actively involved and empowered and have access to appropriate support, services and care.

COTA Queensland bases its' policy principles on the World Health Organisation (WHO) policy pillars of Health, Security and Participation.

As one of the eight State and Territory COTAs that comprise the federation COTA Australia, our work is also guided by five principles:

- Maximising the social, economic and political participation of older Australians;
- Promoting positive views of ageing, rejecting ageism and challenging negative stereotypes;
- Promoting sustainable, fair and responsible policies;
- Focusing on protecting against and redressing disadvantage; and
- Protecting and extending services and programs that are used and valued by older Australians

COTA Queensland collaborates with other organisations addressing issues that impact upon older people. COTA undertakes community development with vulnerable older people, provides community education and awareness on health promotion issues and provides a statewide information and referral service. It undertakes research, policy development and advocacy on issues impacting on older people in Queensland.

COTA Queensland's objectives include (but are not limited to):

- Promoting policies, practices and services that advance well-being and justice for older people and redress injustice and disadvantage;
- Promoting the positive contribution of older people to their own well-being and a more caring and just community;
- Facilitating collaboration within and between older people's organisations, aged service agencies, Government, the private sector and community groups in working towards well being and social justice for older people;
- Promoting and engage in research of matters concerning older people;
- Advocating on behalf of the needs, rights and interests of older people, giving priority to those suffering injustice discrimination, disadvantage or disability;
- Participating as an active member of the COTA network throughout Australia.

COTA Queensland is aware of the broad range of housing issues that concern older people and maintains links with other organisations which work with and for older people to address housing issues. COTA has a strong awareness of the significance of housing to the development of good ageing policy.

COTA QUEENSLAND'S PRIORITIES FOR ACTION

Background

1. Queensland's Ageing Demographic Profile

Queensland's demographic profile is ageing with 545,800 people aged 65 years and over (or 12.3% of the population) in 2009, an increase of 81,200 people since 2004. The age distribution is not even across the State with the Fraser Coast (18.9%), Toowoomba (13.6%) and Moreton region (14.7%) all having significantly higher proportions of older people.

- The most rapidly growing group of older people is those aged over 85 years, with women outnumbering men by 2 to 1;
- Aboriginal and Torres Strait Islander people aged over 55 years are expected to double over the next decade although their life expectancy is still significantly shorter than non-Indigenous Australians;
- The older migrant population is ageing more rapidly than the Australian born population with the cultural and linguistic backgrounds and their pre-and post migrations experiences varying enormously; within this demographic, people from a refugee background, in particular, may have specific ageing experiences;
- People with an intellectual disability are living into their 60s and 70s, but with early onset age-related conditions such as dementia evident in their 50s; and
- The number of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people aged over 65 years is increasing as are their demands for services to meet their needs and lifestyles.

2. Retirement Villages in Australia

Retirement villages are the main form of service integrated housing (SIH) in Australia. SIH refers to:

'all forms of housing for people in later life where the housing provider deliberately makes available or arranges for one or more types of support and care, in conjunction with the housing provision.'¹

The retirement village sector has developed largely in a formal policy vacuum with little recognition of its significance as a housing choice for older Australians. With an estimated 130,000 residents, however, service integrated housing is comparable in size to the residential aged care sector which has a combined total for permanent and respite aged care of 165,000. Community care services support retirement village residents in a similar way to how they support older people living in the broader community.

With the exception of service integrated housing for specific vulnerable groups such as homeless people and those at risk of homelessness, the sector has had limited government involvement and leadership. Although several broad categories of service integrated housing can be identified in Australia, there are many different dimensions including tenure arrangements, dwelling form, level and types of service and age range.

¹ AHURI. Jones, Andrew et al. "Service integrated housing for Australians in later life", January 2010, p1

The proportion, and number, of Australians aged 65 and over living in retirement villages has been increasing for two decades. The trend is likely to continue, particularly from about 2020 when the early baby boomers will be in their 70s.

This submission should be read in conjunction with COTA's previous submission regarding Retirement Village closures submitted in October 2011.

Terms of Reference for Review

Introduction

In COTA's view, the contextual background of people's entry to retirement villages needs to be explained and considered by the Review. For many people the time when they begin retirement village living is one of turbulent change and they are particularly vulnerable because of this. People may be moving from large family homes where they lived for decades to a very different housing type and way of living in a suburb or town with which they have little or no familiarity. Friends and family may now not be as physically close as they once were, service providers and support agencies may need to change. This time of huge change and transition may exacerbate health conditions and vulnerability generally. The impacts of these changes are not as well understood as they could be. In this context, it is clear that retirement village legislation has a role to play in facilitating or negatively impacting older people's life transitions.

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

The Act requires retirement village operators to give prospective residents a 'Public Information Document' (PID) before they enter into a residence contract for a village. The Act also provides that where there is an inconsistency between the PID and the residence contract, the provision that is more beneficial to the resident prevails. Many residents however are not aware of this. While minimum requirements for a residence contract are provided in the Act, an improvement would be to ensure that all residence contracts are consistent with the PID. It may also be useful to provide scheme operators with a model PID that reflects best practice and has been simplified. The PID needs to be provided to the prospective resident early enough in the acquisition process to enable the prospective resident to compare with the PIDs of other retirement villages.

The PID is not necessarily easy for everyone to understand and it would be useful to produce a plain English version. Government also needs to ensure that copies are available in a range of community languages on an as required basis.

On a related matter, residents are not always able to understand their Residence Contract. COTA has spoken with residents who are unsure whether they have freehold, leasehold or licence title. Reports on Residence Contracts point out that while some are vague and general, others are complex and confusing. Residence Contracts need to be written in Plain

English and clearly state the kind of title the resident has. Contracts also need to be available in a range of community languages. It would be useful if operators were provided with a model Residence Contract that reflects best practice.

On a further related matter, while the provisions of the *Fair Trading Act 1989* override the trading practices in retirement villages, some residents may not understand this. Fair trading practices and the *Fair Trading Act 1989* need to be explained to prospective residents in plain English and a range of community languages. Training on the *Fair Trading Act 1989* (as well as the *Retirement Villages Act 1999*) should also be provided to scheme operators and their employees.

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

This is clumsy terminology - should 'increase' mean 'decrease'?

Retirement village residents are sometimes surprised by what they consider to be quite steep increases in general services charges. The concern about the increases is exacerbated because the residents have had little or no input to the decisions to increase. By contrast, people covered by the *Body Corporate and Community Management Act 1997* are responsible for these decisions through their Annual General Meeting. While the two different kinds of housing reflect different legal structures, the variation in decision making power is marked. General service charge increases can outstrip residents' capacity to pay, even if they were affordable when the resident first entered the retirement village. They need to be contained and linked to the CPI.

Residents' exit fees are a source of considerable tension and unhappiness for many retirement village residents. The exit fee, that is the amount that a resident must pay to the scheme operator under a residence contract when the resident leaves the retirement village and sells their home (or their licence), is the primary profit source for the scheme operators, along with the operator's share of capital gain they are entitled to from the re-sale or re-lease of units of accommodation. However, there are many different fee structures and these are frequently not well understood by residents and prospective residents. There needs to be improved consistency in the exit fee structures. And they need to be capped.

COTA Qld agrees with the concerns outlined by the Association of Residents of Queensland Retirement Villages (ARQRV) concerning the disempowering of residents by the way exit fee provisions are detailed in the Queensland legislation (see ARQRV undated submission to the review of the *Retirement Villages Act 1999*). When a Qld resident leaves their retirement village, the operator does not need to repay any of the resident's capital unless or until the unit re-sells. By contrast, the legislation in Victoria, Tasmania, New South Wales and the

Northern Territory include provision for payment to outgoing residents within six months in appropriate circumstances. COTA Qld recommends the adoption of this practice for Qld.

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.

This issue is covered in part by COTA Qld's previous submission on Retirement Villages (October 2011).

Operators are required to provide financial statements, including annual financial statements, to residents only upon request. Some residents have indicated that while they wish to peruse the financial statements, they are reluctant to request financial statements because the operators might think the residents are unhappy or suspicious of the financial dealings and this might result in adverse treatment. The automatic provision of regular financial statements to all residents as a matter of course and at least annually would improve financial transparency and accountability.

Residents should be involved in perusing and approving the annual budget prior to any implementation. Currently, residents do not have the right to approve annual budgets.

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

'Reinstatement work' when a resident leaves is not defined in the Act and this can lead to resident distress and extended disputation between resident and scheme operator about who accepts financial responsibility for particular pieces of work. 'Reinstatement work' needs to be clearly defined in the Act and it needs to be contrasted with 'refurbishment' which should be the scheme operator's responsibility. The cost of 'reinstatement work' could be shared between resident and operator.

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.

COTA Qld believes a mixed model of mandatory standards, best practice and an accreditation scheme provides the best outcomes for residents and operators alike. In COTA's view, matters affecting people's homes are too important to not be subject to mandatory standards. Basic resident rights must be protected through the Act and resident and operator responsibilities should also be protected through the Act. Where these areas of human activity are left to self-regulation, they frequently result in injustice and distress. At the same time, best practice standards, appropriately promoted and acknowledged, are likely to enhance the professionalism of the industry. The Government has committed to an accreditation system for the body corporate and community management industry because

it recognises the need to lift the professional standards within this industry. The same principle applies to the retirement village industry - an accreditation system would enhance its professionalism.

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.

COTA does not have a view on this matter but notes that retirement village closures are extremely rare in Queensland - an indication of the likely ongoing viability of villages.

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.

In COTA's view, as outlined above, retirement village residents should automatically receive regular, at least annual, financial statements and should be presented with a draft annual budget for approval at their AGM.

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

The dispute resolution process does not prohibit either party from being represented by a lawyer. Residents are generally unable to afford legal representation. COTA understands that scheme operators pass on the costs of their legal representation to all residents by increasing the general service charge. A dispute resolution process based on mediation that excludes legal representation is likely to be more affordable for residents and may also result in improved outcomes. In COTA's view the mediation dispute resolution process delivered to residential tenants, landlords and real estate agents by the Residential Tenancies Authority should be considered for its applicability to the retirement village industry.

Summary of Recommendations

- 1. Introduce a requirement for all residence contracts to be consistent with the Public Information Document.**
- 2. The Public Information Document must be provided to prospective residents at the outset of the acquisition process.**
- 3. Provide Queensland scheme operators with a model Public Information Document reflecting 'best practice'.**
- 4. Ensure the Public Information Document is simplified, is written in plain English and is available in a range of community languages as required.**
- 5. Provide Queensland scheme operators with a model Residence Contract reflecting 'best practice'.**
- 6. Ensure the Residence Contract is written in plain English and is available in a range of community languages as required.**
- 7. Ensure the provisions of the Fair Trading Act 1989 are outlined to residents in plain English and a range of community languages.**
- 8. Ensure operators and their employees are trained in both the *Retirement Villages Act 1999* and the *Fair Trading Act 1989*.**
- 9. Restrict increases in general service charges to CPI increases.**
- 10. Enhance the consistency in setting exit fees across retirement villages and cap them.**
- 11. Provide for exiting residents to be paid their share of the monies due to them within six months of leaving, in appropriate circumstances.**
- 12. Ensure that all residents are automatically provided with regular financial statements - these need to be issued at least annually.**
- 13. Ensure that residents are provided with a draft annual budget for approval at the AGM.**
- 14. 'Reinstatement work' and 'refurbishment work' need to be clearly defined in the Act and responsibilities assigned.**
- 15. Ensure the Act protects resident rights and clarifies resident and operator responsibilities.**
- 16. Support best practice initiatives within the retirement village industry and plan for an accreditation system.**

17. Introduce a mediation dispute resolution process based on the model delivered by the Residential Tenancies Authority.

Other Considerations

While retirement villages have been the fastest growing type of housing focusing on the needs of older Australians for the previous three decades, regulatory frameworks vary widely across jurisdictions. COTA Qld notes that the Productivity Commission Report into Aged Care, 'Caring for Older Australians', 2011, recommends that under the aegis of the Council of Australian Governments (COAG), State and Territory Governments should pursue nationally consistent retirement village legislation (Recommendation 12.5, p 322). COTA Qld supports this recommendation.