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Retirement  
Village  
Association

# Review of the Queensland Retirement Villages Act - Submission To The Transport and Local Government Committee

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## Executive Summary

Queensland faces an enormous challenge in how to care and house an ever-increasing ageing population. To meet this challenge it is vital that a wide range of choice in retirement accommodation is available.

Population growth in older demographic segments, increasing numbers of seniors with co-morbidities and a long-term reduction in the number of taxpayers per retiree all highlight the need for the State Government to create an environment now to support Queensland seniors.

Seniors have, in their individual ways, contributed to the growth of our great nation and have earned the right to exercise choice when it comes to their own accommodation, service options and care in later life.

One such option is retirement village living, a service / accommodation model specifically developed for older people that has emerged over the past 30 years or more. Retirement villages now house more than five per cent of people aged over 65 years and more than ten per cent of those over 75 years.

The profile of the retirement village industry, in its current form, is diverse, spanning church and charitable operators, larger listed entities who often run multiple villages and smaller independent operators. They are diverse in terms of their individual offerings from independent living units in a variety of forms to serviced apartments where residents can receive an array of personal and nursing services. Also, residents can choose from a range of tenure and financial arrangements. Leasehold, loan / licence and strata schemes abound in the mix of registered retirement villages in Queensland. This mix of operators ensures both choice and economic diversity.

Nationally there are over 1,950 retirement villages with a construction value in excess of \$50 billion. Retirement villages accommodate around 160,000 or more residents older Australians. The industry now represents a critical element of housing and care options for older Australians and Queensland seniors.<sup>1</sup> The retirement village industry is a solution for all governments in delivering 'ageing in place'.

In Queensland, around 40,000 older people live in one of the 280 retirement villages that have been developed over the past 30 years. These villages comprise around 37,000 units and are a critical asset for the State.

## Future of Seniors Accommodation

Given the established popularity of the retirement village lifestyle and the growth plans of owners and operators, it is clear that retirement villages will continue to represent an essential component of housing and services for seniors in the future. To meet the looming demand for seniors housing, the retirement village industry is going to have to double in size in the next 20 years nationally – and in Queensland.

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<sup>1</sup> Jones Lang Lassalle, 2011.

Nationally, should retirement village housing stock not be available, there would be three clear socio-economic drawbacks:

1. 80,000 or more residents would have to be housed in standard residential stock (that in many cases would be too large, difficult to maintain, decrease stock available to younger families and heighten social isolation).
2. A need for more investment by government in health care, public housing and home-based care (a significant proportion of which is currently provided in retirement villages).
3. Direct and indirect economic impacts relating to employment opportunities, investment in infrastructure and the construction industry.

Such a future would serve older people poorly – not only would it limit options for seniors searching for age-appropriate accommodation that meets their physical and healthcare needs but it ignores the individual and community benefits retirement villages offer.

Retirement Villages have a great role to play as they:

- Enable people to downsize and live affordably as they age.
- Deliver purpose built communities with a full suite of infrastructure (taking pressure off other government funded infrastructure in the surrounding suburbs).
- Enable people to age near to the areas they live in or grew up in assisting them to maintain their networks and social connection.
- Contribute to the diversity of housing stock and density targets in suburbs (including inner urban areas).
- Provide a communal and supportive living environment for people who need it most.
- Reduce the economic burden across all levels of government in the delivery of housing and support for older people.

Attachment A includes a summary of individual and community benefits of retirement village living.

It is therefore vital that the retirement village industry is considered in conjunction with housing and aged and community care strategies: only through a fully integrated approach can we create a dynamic, consumer-driven industry that will stand the test of time.

## Future Challenges

In order to facilitate good outcomes for people seeking purpose built accommodation for seniors, the RVA's key focus is the identification of opportunities, both in the short-term and the longer-term, that would facilitate constructive industry growth for the benefit of not just Queenslanders, but for all older Australians.

There are three key challenges to housing and care provision for older people in Queensland that are inhibiting the supply of new accommodation. These are:

- Regulatory barriers and uncertainty.
- Taxation, rates and charges.
- Access to land, planning restrictions and access to capital.

In addressing the Committee's Terms of Reference, the RVA proposes reforms and initiatives aimed at dealing with these key challenges.

## Working Together to Meet Queensland Seniors Needs

Retirement villages offer a range of economic, housing, health, social, individual and community benefits.

The opportunity is available now for governments to support the industry's growth and recognise our ability to provide quality housing and care for the burgeoning numbers of older people across the community.

If the retirement village industry is not encouraged or supported by government in its endeavours to offer consumers more choice, local communities will face residential housing constraints and the accommodation and service options for Queensland seniors will be significantly curtailed.

A stagnant retirement village industry, which currently receives little or no government assistance, would result in a transfer of costs back to the public purse since governments would have to meet – and construct – the shortfall in appropriate housing.

This in turn would restrict the options available to Queensland seniors, not to mention hampering their access to the health and community benefits generated by a competitive retirement village industry.

## Certain Regulatory Environment Essential

The regulation of retirement villages in Queensland has changed and evolved over time – to the point that the Queensland retirement village industry is the most tightly regulated in the country. The RVA maintains that whole scale reform of the Act is unnecessary, the rights of residents are protected, and a

large majority of residents in Queensland are very happy with their accommodation choice and the resultant retirement lifestyle.

Independent research shows 95% of retirement village residents say village life meets or exceeds their expectations (mccrindle research, 2011). That means that around 38,000 of the 40,000 retirement village residents in Queensland are very happy. You can find out more about this research at [www.mccrindle.com.au](http://www.mccrindle.com.au)

There are some aspects of the regulatory environment that could be slightly amended to provide clarity for both residents and industry. This is particularly the case with the current Public Information Document (PID). These are detailed throughout this Submission.

It is also incumbent on the RVA to point out that any changes to the regulatory environment come with increased compliance costs that inevitably have an impact on residents and affordability. It also impacts significantly on investment and Queensland needs the retirement village industry to invest. Uncertainty will see continued stalled investment in the State.

The retirement village industry does welcome the Committee's interest in our industry and how best to accommodate and care for older Queenslanders. This review is an opportunity to look at whole of government, and intergovernmental, policy settings that can precipitate industry growth and ensure we all meet the accommodation and care challenges of our ageing population.

## RVA Recommendations

The following is drawn from the recommendations that appear throughout this Submission.

### Terms of Reference 1

That the Committee:

1. Does not recommend to the Government a full re-write or major reform of the current Act as the Act protects the rights of residents and appropriately balances the needs of residents and operators.
2. Recommends to the Government that the drafting issues identified in Attachment B be rectified, that the Government work with industry and residents to draft the necessary amendments, and that consultation occur on the final form of amendments.
3. Note the evidence relating to very low retirement village related Tribunal cases in Queensland and that this demonstrates the regulatory environment is delivering for retirement village residents.
4. Note the gamut of laws that exist to protect consumers in Queensland and that further laws are not necessary.
5. Recommend to the Government that a simplified PID be adopted as per Attachment C and that this be provided to all prospective residents along with a revised Government consumer guide to ensure they receive the information they need to make informed decisions.
6. Recommend to the Government that a forum between Government, industry and residents be established to simplify and rationalise the provisions in the RV Act relating to the PID requirements.
7. Recommend the Government readily provide copies of Retire Smart to operators and residents to ensure all residents receive the publication with the PID.
8. Recommend to the Government that Retire Smart be made freely available upon request – for industry, residents and prospective residents.

## Terms of Reference 2

That the Committee:

1. Note that any increase in regulation or compliance burdens will impact on affordability of seniors housing in Queensland. Further, that any proposed changes to the RV Act are submitted to an appropriate cost benefit analysis that assesses and reports on the economic impact and affordability impact.
2. Note that exit fees and deferred management fees are a key affordability tool for prospective Queensland seniors wishing to enter a retirement village.
3. Recommend to the Government that Government, industry, and resident work together to look at the mix of retirement living models that might be accommodated within the Act to ensure affordability and a wide range of options for Queensland seniors into the future.
4. Recommend to the Government that it consider planning reforms to meet looming seniors housing supply and affordability challenges in Queensland including: reforms to SPA such as a retirement village Code; retirement village zoning to encourage investment; and promoting the availability of land.
5. Recommend to the Government that it work with industry, including the RVA, in a creative collaboration to deliver more and better seniors housing.
6. Recommend to the Government that it lead a renewed partnership between Federal, State, local government and industry to work together to develop more age friendly and integrated housing communities.
7. Recommend a reduction in stamp duty payable on seniors housing such as retirement villages to encourage senior choice in accommodation.
8. Assess the current Federal Government's rent assistance scheme to determine the minor amendments necessary to ensure Queensland seniors can access to the scheme in order to move into a retirement village. And, consider recommending to the Government that it work with the Federal Government to change the schemes eligibility criteria.

9. Recommend the Government work to encourage the Federal Government through the COAG to remove current pension and assets testing disincentives to free up equity for seniors to invest in their future housing and care needs.
10. Investigate ways that seniors can be supported in financial literacy and in accessing the independent financial advice they need to make decisions about their future. This would include information about the impact of housing decisions on their overall financial position.
11. Recommend to the Government that all pensioners in Queensland have the same access to concessions and rebates regardless of where they choose to reside. Further, recommend the Government impress upon local Councils to provide council rate rebates to retirement villages in recognition of the reduced operational costs for Councils where retirement villages are located.
12. Note that the PID and cooling off periods offer extensive protection to prospective retirement village residents and are the most comprehensive in Australia.
13. Recommend to the Government the adoption of the *Guidelines – Maintenance Reserve Fund and Capital Replacement Fund at Attachment D* and that these form the basis of a regulation to prescribe model rules under section 113A of the Act. Further, that the Government consult with industry and residents about the final form of this regulation.

### Terms of Reference 3

That the Committee:

1. Note the existing provisions in the RV Act relating to financial oversight and disclosure are rigorous and provide residents with certainty, information and an appropriate role in decision-making.
2. Note that the Act enshrines an appropriate entitlement for retirement village residents with respect to seeking information and an estimate of their exit fees and entitlements.
3. Recommend that the Government observe the implications of section 53A to determine whether this poorly drafted and confusing section of the RV Act contributes to disputes.

4. Note the RVA's proposals in the Closure of Retirement Villages Submission at Attachment E and recommend the Government work with industry and residents to ensure the Act provides adequate certainty as to resident's financial obligations in the event that a village closes down.
5. Note the current provisions in the Act in relation to the death of a resident and that personal services charges are payable for 28 days only.

## Terms of Reference 4

That the Committee:

1. Recommend to the Government the insertion of section 83 from the NSW Retirement Villages Act to enhance the lifestyle of village residents in Queensland.

## Terms of Reference 5

That the Committee:

1. Consider recommending to the Government an increase in penalties prescribed in the Act for gross and multiple offences of the legislation.
2. Note the rigorous, independent and successful industry Accreditation scheme (ARVA) that is delivering for residents and that any move to a mandatory scheme will increase costs and therefore impact on residents and seniors housing affordability in Queensland.
3. Recommend to the Government that a provision similar to section 17 (1) in the NSW Retirement Villages Act be inserted into the Queensland Act to protect consumers from misleading advertising regarding retirement villages. Further, that the Government consult with industry and residents on the final form of this section prior to introduction into the Parliament.

## Terms of Reference 6

That the Committee:

1. Recommend the Government set in place a process for regular monitoring of the supply and demand for seniors housing – in particular retirement villages.

2. Recommends the Government work with the Federal Government to:
  - Ensure the Australian Housing and Urban Research Institute is resourced to measure the demand for, and supply of, aged friendly housing for seniors in NSW.
  - Enable the National Housing Supply Council to continue its annual 'State of Supply' report.
3. Recommend that the Government establish a regular forum between industry, residents and the Government to oversee the supply and demand work, and to discuss how all stakeholders can work together to meet looming seniors housing challenges.
4. Recommend that Government, industry and residents work together to determine new models of retirement village living and how the regulatory environment needs to be reformed in the future so they may be implemented to meet the needs of prospective residents.
5. Recommend to the Government that any amendments or reforms to the Act not be retrospective due to the impact this will have on industry investment in Queensland.
6. That the Committee analyse the regulatory burden placed on not-for-profit operators in light of their inclusion under the RV Act.

## Terms of Reference 7

That the Committee:

1. Note the extensive existing provisions within the RV Act that afford residents with an appropriate level of information, oversight and involvement in protecting their financial interest.
2. Note that resident contracts are the appropriate mechanism to protect the interests of retirement village residents.
3. Does not seek to recommend mandatory resident committees as it is incumbent upon a village community to determine whether they are necessary and whether there is enough resident interest to make them viable.

## Terms of Reference 8

That the Committee:

1. Note the low levels of disputation in Queensland and that the current dispute resolution system is working.

2. Note that the dispute resolution processes must continue to place significant emphasis on alternative means for resolution such as mediation.
3. Give consideration to a process for dealing with resident-to-resident disputes within a village being included in the Act and recommend to the Government that if it wishes to proceed with amendments on this matter to consult with the industry and residents about an appropriate response.
4. Recommend to the Government that QCAT report annually on its dispute handling procedures and outcomes including the following:
  - The number of dispute applications lodged.
  - The number of mediation cases and the number of cases resolved through mediation.
  - The number of disputes heard.
  - The number of disputes settled prior to a hearing.
5. Engage with QCAT about the effectiveness of the current dispute resolution system.
6. Give consideration to potential reforms to QCAT as outlined including ways to reduce frivolous claims, a process for claim amendment, and measures to ensure legal representatives and/or legal advice is readily available to QCAT and parties to disputes.

## Introduction

### Review Context

The Queensland Parliament referred a review of the *Retirement Villages Act 1999* to the Parliament's Transport, Housing and Local Government Committee on 2 August 2012.

Terms of reference for this inquiry are as follows:

1. Provides adequate fair trading practice protections for residents; including providing appropriate material to enable informed decisions to be made.
2. Does not include unnecessary restrictions and provisions which increase the affordability of living in a Retirement Village.
3. 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.
4. Provides sufficient clarity and certainty in relation to the rights and obligations of residents and scheme operators.
5. 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.
6. Adequately promotes innovation and expansion in the retirement village industry, avoids purely 'red tape' requirements, and facilitates the ongoing viability of villages.
7. Affords residents all reasonable opportunities to be involved, should they wish to be, in budgetary and other decisions affecting their financial obligations.
8. Adequately provides a timely, informal and cost-effective process for resolving disputes between residents and scheme operators.

The RVA's Submission seeks to address each of the Terms of Reference. It also takes into account issues raised in the Issues Paper released by the Committee in August 2012 under each of the relevant Terms of Reference.

### The RVA

The RVA is Australia's peak body for the retirement village industry. We represent 800 village and associate members nationally and play a critical role in the ongoing growth and sustainability of the retirement village industry.

With offices located in Brisbane, Sydney, Melbourne, the ACT, Adelaide and Perth, RVA membership consists of retirement village operators, managers, owners, developers, investors and industry specialists across Australia.

As the leading industry voice, the principal objectives of the RVA are to:

- Lead the building and growth of a sustainable and responsible industry.
- Advocate and strengthen our relationships with local, state and federal governments to ensure the best legislative outcomes for the retirement village industry.
- Encourage industry excellence and best practice through accreditation and facilitate quality improvement through an effective and relevant professional development program.
- Support and promote the benefits of retirement villages as the preferred choice of lifestyle for senior Australians.

You can find further information about the RVA and the retirement village industry in Queensland at [Attachment A](#).

## Retirement Villages in Context

The retirement village industry has grown significantly over the past three decades and has evolved to meet the needs of discerning and dynamic consumers aged 65 and over.

Initially, the industry was (and a number of operators still are) focussed on post-retiree markets looking for independent lifestyles including leisure and travel. Villages present a range of benefits for social interaction and communal living and prolonged independence.

Industry analysis now reveals that the profile of consumers has gradually changed over the past twenty or so years, as has the corresponding role of retirement villages.

People are now moving into retirement villages later in life and often staying for longer periods, because many of their care and support needs are met within a village. RVA research highlights that the average of age of a resident in a retirement village in Australia is 78 years old and the age of entry is 73.

Residents are therefore departing more frail and delaying (or even negating) a move into higher levels of aged care.

This concept of service-rich accommodation, such as provided by retirement villages, is also known as 'service integrated housing'.

A recent report by the Australian Housing and Urban Research Institute (AHURI)<sup>2</sup>, described service integrated housing as:

*... 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.*

The report states that interest in this form of housing has been driven by the ageing of the population and the impact of disability and frailty on the capacity of many individuals and households to manage tasks of daily life without support.

The report highlights that:

*... While the majority of those in need of assistance live in the general community with care from formal services and/or family or other informal carers, a proportion live in a range of purpose-built housing for older people that also provides varying levels of support and care services. Little systematic information is available on these forms of housing and the services they provide, but there is increasing recognition that as the period of later life for many Australians lengthens, and as the overall number of older Australians grows, greater consideration needs to be given to the range of housing and care choices available to older Australians.*

RVA members are committed to upholding models of high quality yet affordable housing that can maximise the delivery of flexible, customer-responsive care services: it makes sense, therefore, that retirement villages be recognised as a key element in the spectrum of housing and support services for seniors.

It is for this reason that the RVA was pleased the Federal Government and the Productivity Commission (PC) included retirement villages in its analysis of the aged care system. The industry maintains that two of the key recommendations of the PC work that were not adopted by the Federal Government namely consistent retirement village legislation across Australia, and ways to assist senior Australians to downsize, were a missed opportunity. Further, the RVA believes that they will have to occur in coming years to deal with the consequences of a rapidly ageing population that will seek purpose built accommodation with services such as retirement villages.

There are a number of critical constraints (discussed later in this Submission) that are a significant barrier to delivering more fit-for-purpose accommodation in Queensland.

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<sup>2</sup> Australian Housing and Urban Research Institute, *Service Integrated Housing for Australians in Later Life*, Final Report No. 141 (2010).

## The Role of Government and Retirement Villages

Each level of government plays a critical role in assisting the industry to continue to deliver accessible and well-located villages across Queensland.

One of the key objectives of the RVA is to advocate and strengthen our relationship with all governments to address the future housing crisis for an ageing population and enable people to have choice in their options for housing and ultimately, care. This is critical as the industry crosses all levels of government, each having a different but linked role.

At a local government level there is a great need to need to facilitate supply of retirement village accommodation, particularly in areas where there are limited or no opportunities. Often Council planning approaches and a lack of understanding regarding the low impact on local community infrastructure hinders the development of villages and the social and economic benefits retirement villages actually deliver.

Retirement villages have a great role to play.

At a Queensland State Government level there is an important role in establishing an environment in which the industry can flourish to deliver more housing for seniors and to ensure that the consumer is well protected (which it is under current legislation). A key role is in the development and implementation of planning policy, particularly to facilitate the delivery of affordable, inner urban, higher density, older-person specialist accommodation. The ACT Government has been very proactive in this regard. For some years it has been setting aside land for retirement villages and they are now coming to fruition. All stakeholders – particularly the ACT community, have positively received this.

The Commonwealth Government currently intersects most readily in the area of taxation. The industry is currently struggling with tax constraints that appear out of step with other economic and social policy that aims to deliver increased housing and care for older people. The industry would welcome GST free status, which would have considerable impact on the ability of the industry to continue to supply specific accommodation for older people in Queensland.

Further, it is contended that the Federal Government has an important role to play in the policy levers necessary to:

- Encourage seniors to downsize to appropriate accommodation.
- Consistent regulatory environment for retirement villages across Australia to stimulate investment, remove inconsistencies, reduce compliance burdens, and deliver long-term regulatory certainty.
- Set national targets for the supply of seniors housing.

## Addressing the Terms of Reference

### 1. Provides adequate fair trading practice protections for residents; including providing appropriate material to enable informed decisions to be made.

#### Village residents and consumer protection

The Retirement Villages Act (RV Act) promotes consumer protection and excellent fair trading practices. Indeed this is the very purpose of the Act. The Act contains a comprehensive range of provisions regulating all aspects of retirement village living and retirement village operations, the majority of which are directed at affording residents rights and protections. Furthermore, along with New South Wales, Queensland has the most comprehensive and consumer protectionist retirement village legislation in Australia.

There are similar standards in the Queensland RV Act, as per other consumer protection or fair trading laws and as per legislation in other jurisdictions. The RVA proposes there is no need for whole scale reform of the RV Act as there is no evidence that the current Act is not delivering for retirement village residents in Queensland.

There are some drafting errors or problems with the current Act that arose following amendments by the previous Queensland Government in 2006. The RVA would be pleased to discuss these with the Committee and Attachment B sets out these issues. These issues do not represent whole scale reform of the Act. It is the RVA's view that all stakeholders should work together in rectifying these issues.

Further, the RVA submits that any amendments to the RV Act should be made on the basis of empirical evidence that indicate a section of the legislation is not effective or inadequate and change is necessary.

An effective way to assess whether the Act is delivering for retirement village residents is to analyse available dispute data or Tribunal cases, which is the most representative form of complaints in villages that are provided for under Queensland's consumer protection system.

The number of disputes in Queensland that end in a reported decision of the Tribunal is currently, and historically, very low. This supports the view there is no need for a wide-ranging reform of the legislation. Below are some facts to support this assertion.

Reported QCAT decisions – retirement villages	om 1/6/12 – 30/6/12 – 3 reported decisions	11 – 8 reported decisions	10 – 2 reported decisions	Queensland Commercial and Consumer Tribunal - Retirement Villages List	Decisions	09 – 6 reported decisions	08 – 7 reported decisions	07 – 3 reported decisions
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Against the backdrop of the RV Act and the protection it affords Queensland seniors, there is a broad and comprehensive set of legislation and regulations that provide consumer protection to all members of the community, including older persons and retirees.

Moreover, there exist a variety of general consumer protection laws at both the State and Territory level, and at the Federal level. These laws provide far-ranging avenues and protections for all consumers, including retirement village residents. Here are some examples.

- Fair Trading Act 1989 (QUEENSLAND).
- Sale of Goods Act 1986 (QUEENSLAND).
- National Credit Code (as part of the National Consumer Protection Act 2009).
- Australian Consumer Law (as part of the Competition and Consumer Act 2010 (Federal)).

The Australian Consumer Law, a recently enhanced *Trade Practices Act 1974*, deals with issues such as misleading and deceptive conduct, unconscionable conduct and unfair contract terms.

In relation to retirement villages that are community title schemes, residents are also afforded protection via the *Body Corporate and Community Management Act 1997* (Queensland), the *Property Agents and Motor Dealers Act 2000* (Queensland) and the *Land Sales Act 1984* (Queensland).

In many cases, consumers (including village residents) are able to seek redress through low-cost dispute resolution avenues such as the Queensland Civil and Administrative Tribunal.

The RVA's Accreditation scheme is extremely important in ensuring retirement village residents have peace of mind when entering and living in a village. Accreditation is available to any village that can address the 27 rigorous standards as assessed by an independent committee, which includes residents.

Accreditation aims to improve all aspects of a village, from infrastructure, process and policy, as well as staff performance. This results in a higher quality of service being delivered to residents living in an Accredited village.

Further information about the RVA's Accreditation Scheme can be found later in this Submission and via the RVA's website [www.rva.com.au](http://www.rva.com.au).

The RVA contends that residents and prospective residents of retirement villages in Queensland are already accorded a high level of protection in their dealings with retirement village operators.

Our industry acknowledges that this is appropriate and proposes there is no need to introduce more or greater rights or protections for residents into the RV Act.

Importantly, the RVA believes that care needs to be taken to ensure the regulatory environment for industry and residents is not further complicated, nor duplicated.

## Effectiveness of Prospective Resident Information

The RVA strongly believes that the information provided to prospective retirement village residents in Queensland can and should be improved to ensure they are in a position to make an informed choice.

### **Public Information Document (PID)**

Feedback from prospective residents about the current PID is that it is too large (some 140 pages), complex and confusing. The RVA believes too believes that it is overly cumbersome. The first 18-19 pages provide a general overview of information in the Act and over complicate the document.

The PID is repetitive and confusing for many residents because the standard information in the front of the document does not specifically relate to the village the prospective resident is enquiring about.

Information within the PID needs to be simplified and the document needs to be shortened by removing the non-essential and repetitive content. The longer the document the more likely it will confuse a prospective resident or the prospective resident will simply not read the critical information necessary to make an informed decision, which is clearly the objective of all stakeholders within the industry.

Both Queensland peak industry bodies (the RVA and Leading Aged Services Australia (Queensland) (LASA)), in consultation with ARQRV, have worked constructively and proactively together to develop a simplified version of the PID that complies with the current legislation.

The RVA contends that this draft PID would provide immediate benefits to consumers. A copy of this draft PID is at Attachment C.

In terms of the draft PID at Attachment C, the following should be noted:

- The PID has been designed to complement a revised Queensland Government consumer guide and is to be provided with the current "Retire Smart" booklet. This booklet is an excellent a pocket guide to retirement living in Queensland and Part 1 (Generic Information) of the current prescribed Form 1 PID. By relocating all of the generic information in Part 1 of the current prescribed Form 1 PID, which merely summarises the RV Act into the consumer guide, the PID will be shorter, simpler and more readily understood.
- The content of the PID (assuming that the Queensland Government consumer guide at the date of the PID is incorporated into the PID by reference) satisfies the mandatory content requirements of the current Act (see sections 74 to 83), thereby avoiding any need to amend the Act itself.
- Duplication of information, which occurs in the current prescribed Form 1 PID has been removed.
- The format of the information included in the PID has been enhanced so that it is easier to read and understand. This includes, for example, the use of tick boxes and helpful notes about how to complete the form.
- The structure and layout of the PID has been altered so that 'decision critical' information is more clearly identified and understood, and prospective residents can more easily make comparisons between different retirement villages. In particular:
  - Critical information appears early and prominently.
  - All resident-specific or tailored information appears in one place (see Part B of the PID) rather than scattered throughout the PID as is the case with the current prescribed Form 1 PID.
  - Certain attachments to the PID are prescribed and these must appear in the same place (and be numbered the same way) in the PID for every village.
  - The scheme operator and the prospective resident, at the end of Part B of the PID, sign the PID.

If the Act were to be amended to rationalise the mandatory content requirements of the PID that are contained in the current Act (see sections 74 to 83), the PID could be simplified even further. This can be done without compromising the level of material disclosure to prospective residents. The RVA proposes that, along with the adoption of a simplified PID, that industry, residents and the Government work together to simplify the mandatory content requirements within the Act.

### **Other Excellent Consumer Focused Publications**

The RVA believes the Government's Retire Smart publication is excellent and of great value to prospective residents of retirement villages. This document should be promoted and should be more widely available, and the RVA will assist via its extensive village network.

This publication provides useful information in a simple format. It is recommended this publication be provided to prospective residents along with the PID.

Retire Smart is provided to industry for prospective residents although the number of copies able to be supplied has been severely limited and the RVA believes it should be freely available as a great information source.

The RVA produces a booklet entitled 'Your Questions Answered'. The Association has been proactive nationally in assisting prospective residents to access the information they need to make informed decisions. This booklet is reinforced by the RVA web site, which also includes relevant information – [www.rva.com.au](http://www.rva.com.au)

The booklet is currently being redeveloped to reflect contemporary information and is anticipated to be available in late 2012. All information is, however, available via the RVA website.

These publications ensure there is sufficient and comprehensive information available to prospective village residents in a simple and logical format that addresses the majority of questions that residents may have when making this important decision.

### **Retirement Village Act and Other Legislation**

It is difficult to compare the Queensland RV Act with legislation regulating other forms of accommodation in Queensland because they each have different objectives. The types of accommodation are vastly different in nature from retirement villages. Accommodation provided in a rental or hostel setting is completely different to a strata development or to a retirement village, which focuses on communal and supportive living. Retirement villages cater for older people specifically with different contractual relationships between resident and operator.

The separate legislation regulating each type of accommodation is appropriately materially different. The level of regulation required to ensure effective consumer protection differs in each case.

Given the long-term ('life time') tenure afforded to residents of retirement villages, combined with the fact that facilities and services are provided to them as part of the accommodation model, the Act regulates retirement villages to a significantly greater degree than the *Residential Tenancies and Rooming Accommodation Act 2008* (Queensland) and the *Body Corporate and Community Management Act 1997* (Queensland), which regulate rental / hostel accommodation and strata ownership respectively.

The RVA accepts that good policy and sound regulation is appropriate in the retirement village setting. It is submitted, however, that the current level of regulation is adequate without the need for material changes.

In particular, the RVA contends that it needs to be recognised that becoming a resident of a retirement village involves a decision to relinquish to the scheme operator a range of decision-making responsibilities that a person might otherwise have whilst living in their own home or in a rental or strata setting.

Under the typical retirement village model, the day-to-day management, administration and operation of the retirement village becomes the responsibility of the operator, affording residents the ability to relax and enjoy their retirement without being troubled by the plethora of day-to-day decisions faced by people living in the broader community.

In fact, this is precisely the benefit that the retirement village model offers over other forms of accommodation, and why around 40,000 seniors in Queensland choose this accommodation option.

It is essential that any reform of the Act respect the need for operators to have the necessary degree of freedom and flexibility to manage village facilities to ensure they can continue to invest and offer the highest standard of accommodation and lifestyle to residents. Ultimately, this will benefit all resident communities and ensure the continued viability of the industry in Queensland.

## Recommendations

That the Committee:

1. Does not recommend to the Government a full re-write or major reform of the current Act as the Act protects the rights of residents and appropriately balances the needs of residents and operators.

2. Recommends to the Government that the drafting issues identified in Attachment B be rectified, that the Government work with industry and residents to draft the necessary amendments, and that consultation occur on the final form of amendments.
3. Note the evidence relating to very low retirement village related Tribunal cases in Queensland and that this demonstrates the regulatory environment is delivering for retirement village residents.
4. Note the gamut of laws that exist to protect consumers in Queensland and that further laws are not necessary.
5. Recommend to the Government that a simplified PID be adopted as per Attachment C and that this be provided to all prospective residents along with a revised Government consumer guide to ensure they receive the information they need to make informed decisions.
6. Recommend to the Government that a forum between Government, industry and residents be established to simplify and rationalise the provisions in the RV Act relating to the PID requirements.
7. Recommend the Government readily provide copies of Retire Smart to operators and residents to ensure all residents receive the publication with the PID.
8. Recommend to the Government that Retire Smart be made freely available upon request – for industry, residents and prospective residents.

## **2. Does not include unnecessary restrictions and provisions which increase the affordability of living in a Retirement Village.**

### **Senior Housing Affordability Is An Issue**

Senior housing affordability is a major issue for the Queensland retirement village industry, Queensland seniors and the community as a whole. The rapidly ageing population is going to exacerbate this problem if steps are not taken to encourage industry investment and innovation in housing that is specific to the needs and circumstances of seniors.

From the outset, the RVA must put forward the proposition that any regulatory uncertainty, regulatory change or an increase to the current regulatory burden, will not only impact on investment, but will impact on affordability. Any increases in regulations result in increasing the compliance burden and therefore costs. Costs ultimately impact on the product offered and will

impact on residents, as any new cost to a business must be borne by the business in its entirety. This is a major hurdle for the sector in retaining affordability, which has always been a key driver for the industry.

Increasing costs to operators do materialise in the form of increasing costs to residents. They get passed on in a variety of ways – through charges, entry prices and / or a reduction in services. The RVA does not want to see this happen again in Queensland, particularly given the financial constraints we all face now.

With this in mind, and while the RVA does not believe there is a need for major reform of the Act, should the committee seek any changes and the RVA requests that it be mindful of the consequences for all.

## Affordable Retirement Living

The RV industry in Queensland is committed to ensuring there is choice in the market for older people.

Historically, there are aspects of retirement village living that are very affordable to seniors. The very model of village living delivers affordable services and living solutions that cannot be gained by living elsewhere. The economies of scale mean that seniors access services and the charges for these services are the actual cost. Operators do not derive any profit from this essential service delivery.

The accommodation model is all the more affordable because it is incumbent on operators to replace infrastructure and facilities when necessary. These are funded for the tenure of the resident.

Conversely, should an older person choose to stay in the family home, they do not have to repair their home and nor does it have to be maintained to a high standard. This commitment to maintaining a high standard of living by operators means that the re-sale of units later and the resultant capital gain share residents and operators enjoy, returns for all.

Exit fees / deferred management fees have been used by operators for decades to make retirement village living affordable as they enable the resident to delay the cost of many aspects of living until they sell the unit when they exit. The model means that operators bear all the development costs, particularly the common use infrastructure costs of things like building community halls, and therefore the risk.

The operator is essentially deferring any returns and often profit is not realised for over a decade. Prospective residents, if they have to pay all or part of the construction costs of the village up front, the accommodation would be priced out of their reach. Hence, exit fees and deferred management fees are a key affordability tools. Further information about exit fees can be found under Terms of Reference 3.

In addition, retirement village units are generally priced considerably below the medium house price of the suburb. This enables older people to sell their home, purchase a unit and then have some money left over to contribute to their future care needs and retirement lifestyle.

This aspect of the village model is, however, increasingly under threat. This is an affordability problem for governments, for-profits, not-for profit operators and all seniors.

The RVA's membership is 60% for-profit operators and 40% not-for-profit operators. Not-for-profit operators are therefore a significant part of the retirement village market and have an extremely important role to play in the provision of affordable seniors housing and services. For-profit operators too know they need to provide an affordable product or sales will be impacted.

Historically the church and charitable sector has continued to provide affordable and appropriate housing, shelter and care to aged persons. For some time now, the challenge of increasing the provision of affordable accommodation has been heightened.

There are a number of factors that are contributing to the lack of affordable seniors accommodation in Queensland and these are:

- The costs of developing or redeveloping retirement villages in locations that are suitable to the cohort i.e. that is close to public transport, shopping and community networks. If land does become available it is either price prohibitive or priced in such a way that accommodation is developed that it not affordable for many.
- The regulatory burden on not-for-profits is such as that they are left with less and less to reinvest back into the organisation for future housing developments. This is in part contributing to the stalled investment in seniors housing the State is experiencing. It should be noted that for-profit operators are also not investing due to the very long-term nature of seeing any returns.
- There are lack of incentives such as rental assistance that meant seniors are choosing to stay in the family home despite this being a sub-optimal accommodation option for their age – and contributing to the intergeneration equity problem whereby younger people in Queensland cannot access or afford their first home.
- There is inflexibility in the regulatory environment for the industry to try different models to meet the affordability issues in Queensland.

### **Exit Fees Explained**

The RVA notes the questions in the Issues Paper released by the Committee in relation to exit fees and provides the following in response.

Exit fees are an affordability tool as noted above. They are not the operator's profit and they constitute the primary source of income for operator's from which they pay the following:

- Capital replacement fund contributions.
- Capital improvement costs.
- The operator's share of reinstatement costs.
- The operator's share of general services charges of vacant units.
- Compliance costs.
- Corporate financing and operating costs.

Operators do not receive any income on their own account from the collection of general services charges and payment of village operating costs.

Another source of income for operators is capital gain income from the share of capital gain they are entitled to from the re-sale or re-lease of units in accordance with residence contracts.

Exit fees are calculated by applying a percentage either to the amount paid by the resident for their unit when they first moved in, or to the amount paid by the next resident. The percentage applied usually increases for each year of occupancy of a unit. The following table illustrates this.

<b>Period of time between the Commencement Date and the Exit Date (i.e. the period of occupation of the accommodation unit)</b>	<b>Exit Fee Percentage that applies</b>
1 year or less	7.5%
2 years or less but more than 1 year	15%
3 years or less but more than 2 years	20%
4 years or less but more than 3 years	25%
More than 4 years	30%

Retirement villages compete in a vigorous, competitive market and as a result exit fees vary considerably across the industry both in terms of the quantum percentage, the number of years involved, and whether the exit fee is calculated on the period of occupancy in days, months or years. The Act requires operators to disclose their exit fees and how they are calculated, thus enabling prospective residents to compare villages and exit fees before signing a contract.

For the purposes of raising equity or obtaining bank finance, retirement villages are valued by a cash flow approach to assess the current market value of the 'proprietary rights' attached to the scheme. The value of proprietary rights is determined by calculating the level of income derived from exit fees and capital gain income over an investment horizon of at least 20 years. Some proprietary rights are valued over 50 years. Clearly, if future exit fees are reduced, the valuation of retirement villages will be reduced and viability threatened.

### **Planning: Access to Appropriate and Affordable Land**

The RVA contends that lack of access to cost effective land is one of the key impediments to increasing the supply of seniors housing in Queensland. This is particularly important in terms of affordable housing options.

This has a number of impacts including:

- Proliferation of seniors housing in fringe areas, where land is cheaper but infrastructure, transport and community infrastructure is in shorter supply.
- Lack of housing in inner - urban areas, where many older people want to age in place. This is where they have familial and friend connections, and as well knowledge about local facilities that provides a sense of safety.
- It does not promote delivery of affordable housing options.
- It does not stimulate apartment style products in lower socio economic areas that may also meet government housing policy objectives.
- A lack of planning certainty for developers that mitigates against development as a consequence of long planning timeframes and increased costs.

The RVA believes the current planning system, which is ultimately controlled by the Queensland Government through the Sustainable Planning Act (SPA) and implemented at the local level, could accelerate planning processes for retirement villages to ensure housing is delivered in an appropriate range of formats for seniors - and in the locations where they wish to live and age.

Whilst the RVA believes the issue of seniors housing is so significant that a nationally driven, Commonwealth- lead set of planning targets (for a set quota of housing to meet demand in specific areas) would best ensure seniors are able to access appropriate housing across Australia, there are some immediate steps the Queensland Government can take to drive renewed investment in retirement villages.

Planning reforms that are targeted towards the delivery of seniors housing would assist the industry to deliver a wider range of products.

Such reforms could include:

- Initiatives to speed up planning timeframes.
- Addressing local government disparity in the way in which seniors housing is assessed (e.g. Code accessibility).
- Adding a requirement for land purchasers to include a percentage of land development targeted to seniors housing.
- Allowing different zonings for retirement villages to be accommodated in association with other relevant uses (for example, retail, commercial, mixed use).
- Ensuring seniors housing targets for all developments, but particularly in inner urban areas and transport oriented developments (i.e. development around major transport nodes).
- Governments working with industry to deliver inner urban solutions where the development of villages is most difficult and costly, including investigation of surplus government or brownfield sites that could accommodate seniors living.
- Introduce a seniors housing code in the SPA that recognises the low impact of retirement villages by allowing higher density (higher plot ratios and building heights and low set-backs), lowering car parking requirements, and lower headworks costs.

The RVA stands ready to the work with the Queensland Government in a creative collaboration to deliver more and better seniors housing.

### **Lack of Incentives: Rent Assistance**

The Federal Government has a rent assistance scheme that aims to assist people to find appropriate accommodation. The criteria for this scheme are restrictive and essentially encourage low-income seniors into sub-standard accommodation. Further information about the scheme can be found at <http://www.centrelink.gov.au/internet/internet.nsf/publications/co221.htm>.

It is recommended the Committee closely scrutinise eligibility for the rent assistance scheme and determine the minor amendments that may be required to assist Queensland seniors.

The RVA notes that this is a Federal scheme, however, we also note that the Queensland Government could take a leadership position and push for reform that can have a positive affordability impact for retirees in accessing housing.

## **Lack of Incentives: Encouraging Seniors to Downsize**

Housing is often seen as the fourth pillar of Australia's retirement income system, after pension income, voluntary savings and superannuation (Yates and Bradbury, 2009)<sup>3</sup>.

The RVA agrees with the Federal Government's Advisory Panel on the Economic Potential of Senior Australians and its assessment that:

*Much of the wealth of the current cohort of ageing Australians is locked up in ways that cannot be used to meet challenging circumstances, primarily as residential property, often in the post-war housing stock of a single house on a suburban block<sup>4</sup>*

Given the ageing population, all governments in Australia need to consider new and creative ways to support seniors to downsize from standard residential homes.

It is in the interest of retirees as they will no longer, for example, have the same home maintenance issues and nor will they have to potentially and expensively modify their existing home to cope with changed circumstances. There is also ample evidence to show that making the decision earlier makes it easier for seniors to adapt to the change and enjoy the resulting new lifestyle.

Implementing new and creative ways to support seniors to downsize is also important for governments and the broader community. It frees up standard residential stock for future generations, it should assist with housing affordability issues across housing market segments, and should Queensland seniors make the decision earlier and be in appropriate accommodation, they are more likely to live independently longer.

The Federal Government has received two pieces of significant advice about the ways in which seniors should be supported in downsizing to appropriate accommodation and to free up their existing equity to provide for their future care needs. The Productivity Commission's aged care reform report and the Advisory Panel have both observed that there are disincentives in the system that should be removed.

Key issues the RVA believes need to be addressed are the existing stamp duty arrangements, a focus on pension entitlement rather than overall financial position, and a lack of readily available and accessible advice for seniors in planning for their retirement and their future needs.

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<sup>3</sup> Advisory Panel on the Economic Potential of Senior Australians., *Realising the economic potential of senior Australians; enabling opportunity.*, Commonwealth of Australia., 2011., page 19.

<sup>4</sup> Advisory Panel on the Economic Potential of Senior Australians., *Realising the economic potential of senior Australians: enabling opportunity.*, 2011., page 3.

Stamp duty on properties adds to transaction costs and there is no doubt that this suppresses the number of transactions in the housing market. It can act as a deterrent to seniors making the decision to move to more suitable housing and can, in effect, reduce the supply of appropriate and affordable senior housing.

The RVA contends that there is a need to reform the stamp duty payable on seniors housing such as retirement villages to encourage senior choice in accommodation.

As the Federal Government's Advisory Panel has observed, the current retirement system provides a focus on pension entitlement rather than the overall financial position of Australian seniors. This is a further barrier to Queensland seniors accessing housing to maintain independent living. This means that a senior may be concerned that their pension entitlement will be reduced due to the increase in assessable assets derived from any gain in downsizing.

The RVA is cognisant of the fact this issue is primarily a Federal issue. On the other hand, should change occur, the benefits would flow to the Queensland Government and the Queensland community.

There are the village style living benefits as per Attachment A, and the broader economic and social benefits such as freeing up residential stock for younger generations, and providing greater accommodation and care choices for Queensland seniors.

Removal of the current pension and assets testing disincentives would provide the opportunity for seniors to contribute to their future housing and care needs.

In addition, the RVA contends that there is a need to ensure that Australian seniors have access to appropriate financial advice to enable to make decisions before or upon retirement. Advice regarding pension access should be readily available.

There remains an opportunity for the Queensland Government to lend its support to calls for a change to the pension asset test and to use forums such as the Council of Australian Governments (COAG) to press for reform.

### **Lack of Flexibility**

The ageing population, different needs and expectations of seniors, and the current prevailing aged care policy environment that promotes 'ageing in place' are all factors that are driving the industry's need to innovate to provide accommodation options. Given the ongoing impact of the global financial crisis on retirement incomes, the industry is very mindful of the need to provide affordable accommodation options.

In Queensland, the current legislation is geared to providing a regulatory environment for one model of retirement village. This stifles flexibility and inhibits industry's response to the affordability issue. The types of innovative senior housing models that operators may, but for the Act, wish to implement range from pure rental models to different combinations of ingoing contribution, rent and exit fees.

In order to provide for this necessary innovation, the Act needs to incorporate flexibility for operators to derive profit from any source that is contractually agreed with residents – and suits the resident's circumstances.

This issue is discussed further under terms of reference number 6.

### **Equal treatment for all Queensland pensioners**

The RVA strongly believes that all Queensland pensioners should receive equal treatment regardless of their accommodation choice or where they live. Pensioners living in retirement villages should also receive recognition for costs they pay that reduce the impost on their local Council.

There are two readily apparent examples that can be used to demonstrate this inequality:

- Pensioner water rebate. This rebate is available for pensioners living in standard residential homes and is not always available for retirement village pensioners. Access to this rebate varies according to local government legislation.
- Reduction in Council rates. Council rates are a significant cost of a retirement village. This is despite the maintenance and day-to-day operations of a retirement village being fully funded by monthly service fees paid by village residents. The Council is not responsible for any road works, maintenance, and provision of lighting or cleaning within the village. The operational costs of a retirement village are fully funded by the residents and they do not receive any government funding.

By living in a village, these seniors actually access fewer government provided services and infrastructure – such as recreational facilities.

As outlined above, seniors living in a village reduce costs for Councils however receive no dispensation for this.

When pensioners make plans for their accommodation and care needs, financial disincentives such as these can make a difference in that decision making. This should not continue to be a factor.

## Residents Protected

Prospective residents are afforded many protections through the current regulatory environment. At the point of considering entry into a retirement village, there are appropriate protections to insure against uninformed or inappropriate decision making. A summary of these protections is as follows.

### **Public Information Document (PID)**

The requirement that a prospective resident receives a PID, which includes all information relevant to making an informed choice, is an excellent way of assisting Queensland seniors. The PID includes information about:

- Entry into a village.
- Living in a village.
- Departing from a village including examples of how exit fees and exit entitlements are calculated.

Prospective residents must be provided with the PID prior to signing a binding agreement or contract.

The extent and degree of mandatory disclosure required as part of this process, is already the most extensive under any retirement village legislation in Australia.

### **Cooling off period**

All prospective village residents in Queensland are provided with a 14-day cooling off period, within which they may change their mind about their accommodation choice without any penalty.

Queensland's cooling off period provides the greatest protection of any cooling-off period in existing retirement village legislation in Australia. It is unable to be waived, attracts no penalty and is of the longest duration.

These protections, the PID and the Cooling off period, combine to ensure that a prospective resident is well equipped to make a fully informed choice about entry into a retirement village.

## Appropriate Funds Governance for All

The governance provisions built into the Act, dealing with the capital replacement fund and the maintenance reserve fund, are adequate and appropriate.

Both funds must be held in separate accounts set up for the particular purposes (sections 91 (1) and 97 (1)). Furthermore, the amounts that must be paid into the accounts, by whom the accounts must be paid, and the purposes for which funds are able to be withdrawn from the accounts, is clearly set out in the Act (sections 91 (2) to (5) and 97 (2) to (5)).

There is no evidence of there being any material level of complaint or concern with the basic governance provisions of the Act in relation to these funds.

It is noted that a source of disputation between operators and residents in the past in relation to these funds has centred around the classification of particular items of expenditure.

The basis of disputation has been whether particular items of expenditure constitute 'maintenance' or 'repair' of a capital item that must be funded from the maintenance reserve fund (contributed to by residents) or 'replacement' of a capital item that must be funded from the capital replacement fund (contributed to by the operator).

Section 113A of the Act makes provision for a regulation to be made that prescribes model rules about the classification of items of expenditure. No such regulation has ever been made.

In an example of industry leadership and commitment to effective self-regulation, the RVA and LASA collaborated to prepare and implement a set of guidelines for the classification of items of expenditure entitled *Guidelines – Maintenance Reserve Fund and Capital Replacement Fund*.

See Attachment D for a copy of these Guidelines.

Importantly, these Guidelines have significant support from village residents and have indeed been endorsed by the ARQRV. The Guidelines have largely been effective in putting an end to disputes about the classification of expenditure.

Whilst the industry is mindful of adding further layers of complexity or uncertainty, the RVA would support the Guidelines being adopted by the Government to provide residents with absolute certainty.

It is proposed the Committee recommend to the Government that the Guidelines at Attachment D be adopted to form the basis of a regulation prescribing model rules under section 113A of the Act.

## Recommendations

That the Committee:

1. Note that any increase in regulation or compliance burdens will impact on affordability of seniors housing in Queensland. Further, that any proposed changes to the RV Act are submitted to an appropriate cost benefit analysis that assesses and reports on the economic impact and affordability impact.
2. Note that exit fees and deferred management fees are a key affordability tool for prospective Queensland seniors wishing to enter a retirement village.
3. Recommend to the Government that Government, industry, and resident work together to look at the mix of retirement living models that might be accommodated within the Act to ensure affordability and a wide range of options for Queensland seniors into the future.
4. Recommend to the Government that it consider planning reforms to meet looming seniors housing supply and affordability challenges in Queensland including: reforms to SPA such as a retirement village Code; retirement village zoning to encourage investment; and promoting the availability of land.
5. Recommend to the Government that it work with industry, including the RVA, in a creative collaboration to deliver more and better seniors housing.
6. Recommend to the Government that it lead a renewed partnership between Federal, State, local government and industry to work together to develop more age friendly and integrated housing communities.
7. Recommend a reduction in stamp duty payable on seniors housing such as retirement villages to encourage senior choice in accommodation.
8. Assess the current Federal Government's rent assistance scheme to determine the minor amendments necessary to ensure Queensland seniors can access to the scheme in order to move into a retirement village. And, consider recommending to the Government that it work with the Federal Government to change the scheme's eligibility criteria.

9. Recommend the Government work to encourage the Federal Government through the COAG to remove current pension and assets testing disincentives to free up equity for seniors to invest in their future housing and care needs.
10. Investigate ways that seniors can be supported in financial literacy and in accessing the independent financial advice they need to make decisions about their future. This would include information about the impact of housing decisions on their overall financial position.
11. Recommend to the Government that all pensioners in Queensland have the same access to concessions and rebates regardless of where they choose to reside. Further, recommend the Government impress upon local Councils to provide council rate rebates to retirement villages in recognition of the reduced operational costs for Councils where retirement villages are located.
12. Note that the PID and cooling off periods offer extensive protection to prospective retirement village residents and are the most comprehensive in Australia.
13. Recommend to the Government the adoption of the *Guidelines – Maintenance Reserve Fund and Capital Replacement Fund at Attachment D* and that these form the basis of a regulation to prescribe model rules under section 113A of the Act. Further, that the Government consult with industry and residents about the final form of this regulation.

### **3. 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 RV Act provides extensive certainty, accountability and transparency for residents in relation to their financial obligations. Certainty is essential for residents and operators.

The village contract itself provides certainty and security. It is important for industry and resident confidence that any changes to the legislation do not impact on the contract to which the operator and resident have agreed. Residents should have confidence when they enter into a Residence Agreement that the integrity of the Agreement will be upheld. Retrospective changes to existing contracts through RV Act amendments can destroy confidence in the retirement village concept from residents, operators and investors.

## Resident Financial Obligation Certainty

The Act contains a range of provisions to ensure residents are fully informed about their financial obligations, both before choosing the retirement lifestyle afforded by the village, and during their occupancy.

Prior to entering village life, a prospective resident must receive a PID. This PID must set out the details of:

- The ingoing contribution.
- The general service charges (including contributions to the maintenance reserve fund), personal services charges, and other recurrent fees and charges.
- The exit fee (including worked mathematical examples).
- The exit entitlement (including worked mathematical examples).

Residents are provided with certainty and further informed through the following:

- A cap in accordance with the Consumer Price Index (CPI) on general services charges that provide for day-to-day living expenses. There are reasonable exceptions to this whereby costs are increased beyond the operator's control, for example, due to an increase in government rates. Residents also have the option of affecting greater increases and the resident community, by special resolution (75%), can vote in favor.
- The Act mandates consultation with resident committees about proposed budgets for general services charges and maintenance reserve fund contributions prior to the commencement of each financial year. This ensures residents do have a say in the budget for the village and enables the sharing of information.
- Section 107 A prohibits operators from increasing the charge for a particular service without considering whether there is a more cost-effective alternative to the general service. This provides good protection for residents.
- Sections 90, 90A, 90B, 91 and 108 of the Act prohibit the passing on by operators of expenditure for capital replacements, capital improvements and new facilities and services to resident, without the express approval of the resident concerned or the resident community. These provisions provide residents with a significant degree of certainty and control over costs, which is appropriate given the community nature and partnership arrangement incumbent in the retirement village model.

Importantly, the Act mandates quarterly and annual financial reporting about expenditure incurred in providing general services and a range of other information about the financial status and performance of the village. Section 112 (1) provides any resident with the right to receive a quarterly financial

statement and Section 113 requires that each resident be given an independently audited annual financial statement. Further, section 112 (4) entitles resident committees to receive explanations about expenditure excesses over budget estimates.

It should be noted that the RVA does believe that it is unrealistic for anyone, operator or resident, to expect absolute certainty about the costs of living of any environment. External changes to an operating environment can have a material impact on costs and are outside the control of operators. These can include changes to industrial relations or occupational, health and safety laws.

All of the above provisions do combine to provide a robust framework for ensuring that residents have as much certainty as can reasonably be expected about their financial obligations with regard to living in the village.

Existing obligations in this regard do place a burden on operators and any additional regulation in this area is unlikely to result in greater certainty for residents and will instead simply increase operating and management costs, which will ultimately result in a higher cost of living for residents.

### Exit Fee Information: Transparency and Availability

There are many different models in relation to the exit fee arrangements across the industry. Just as there are different contracts, different operators, and different types of villages. Older villages tend to have a different model to newer villages, and there are differences even across all villages with the same operator.

It is also very common for different contract arrangements for independent living units in one village, often reflective of the long history of some villages and contract conditions that were established for a particular time in the lifecycle of the village. What is important is that there is a fair and transparent PID. The RVA again refers members of the Committee to the draft PID at Attachment C.

When entering a village, a resident's potential exit fee and how this is calculated is transparent. This is part of ensuring residents are in a position to make an informed choice about their accommodation.

The Act enables residents who are already living in a village to request exit fee information and the current provisions provide balance between the needs of residents who might be considering exiting the village, and the needs to village operators to effectively manage the village and existing resources.

Section 54 of the Act enshrines this appropriate balance. It requires the resident to state that they are considering leaving the village and providing that only one estimate is required to be given to the resident in any 6 month period, the process to obtain an estimate is triggered and it is subsequently provided to a resident.

The Act does not require the resident to actually terminate their right to reside if they request an estimate of their exit entitlement, and their request for an estimate does not have any legal consequences other than triggering the requirement for the operator to provide the resident with that estimate.

Calculating an exit entitlement involves the operator reviewing the terms of the resident's contract and the PID, and establishing and calculating a range of financial data including:

- The resale value of the unit (this may require valuations to be undertaken and paid for).
- Reinstatement costs.
- Costs of sale.
- Outstanding service charges.
- Exit fees.
- Capital gain and loss sharing.

Given the resources, time and cost involved, it would be burdensome should this be extended to enable residents to ask for this information at any time.

It is very reasonable that a resident be given the right to request a formal estimate in circumstances where they are considering leaving the village. If that right were to be unqualified, there is a risk that a certain percentage of residents would unreasonably request this information, placing an excessive burden on operators and detracting from the time and resources available for other aspects of village management that benefit the resident community as a whole.

The RVA contends the RV Act should not be amended in this regard.

## Exit Fees, Section 53A and Ongoing Uncertainty

The RVA contends that the insertion of section 53A into the Act on 1 March 2012 is not a 'clarification' in relation to calculating exit fees.

This section actually changed the law to introduce a mandatory daily pro-rata calculation of exit fees. Furthermore, the industry believes section 53A does not provide residents with any more certainty or transparency in relation to their financial obligations.

In relation to contracts entered into after section 53A commenced, the Act is clear and certain. It is clear that, for those contracts, exit fees worked out having regard to the length of the resident's occupation of their accommodation are to be worked out on a daily basis.

Introduction of 53A has, however, created much uncertainty in relation to contracts entered into prior to the section's commencement.

Section 53A requires the exit fees payable under those contracts to be worked out on a pro rata daily basis unless the contract provides '*a way of working out the exit fee that is not on a daily basis*'.

Unfortunately, section 53A gives virtually no guidance other than one example formula (which is also confusing) as to when a contract will be taken to provide '*a way of working out the exit fee that is not on a daily basis*'.

It is unclear what is required to render any particular exit fee clause in a residence contract a type that provides for the working out of the exit fee 'on a daily basis'. This section is unsatisfactorily vague for operators and residents, and is capable of resulting in disputes.

Since the 2012 amendment, there have not been any reported decisions of the QCAT on section 53A or about exit fees generally. The absence of litigation, however, should not be taken as an indication that section 53A is clear and unambiguous, as the amendment has only been in place for a short period of time. There has been insufficient time for the amendment to be properly tested.

## Village Closure and Certainty for Residents

The Issues Paper released by the Committee seeks comment on the adequacy of the RV Act in providing for residents in the event that a village closes down. It is the RVA's view that the Act does not provide adequate certainty as to residents' financial obligations in the event that a village closes.

In October 2011, the RVA provided a Submission to a Ministerial Working Party on this matter and this Submission is at [Attachment E](#). The RVA would welcome a discussion with the Committee about these matters.

## Death and Termination of Contracts

Obviously the death of an older person is distressing for their family and their community. This is especially so within a village situation, which is a micro-community.

Village operators are mindful about how this is handled as it does go to the ongoing culture within the village and given the partnership model of retirement living, a good culture is essential for residents and operators.

The commentary in the Issues Paper is incorrect when it states that the estate of a resident who dies may be to pay personal services charges for up to two months afterwards. As section 102 of the Act provides, a resident who passes away is liable to pay a personal services charge up to 28 days after the contract is terminated. Section 55 of the Act provides that the contract terminates automatically on the death of a resident.

Therefore, under section 102 the personal services charges are only payable for 28 days after the death of a resident. This is actually advantageous for the resident's estate.

## Recommendations

That the Committee:

1. Note the existing provisions in the RV Act relating to financial oversight and disclosure are rigorous and provide residents with certainty, information and an appropriate role in decision-making.
2. Note that the Act enshrines an appropriate entitlement for retirement village residents with respect to seeking information and an estimate of their exit fees and entitlements.
3. Recommend that the Government observe the implications of section 53A to determine whether this poorly drafted and confusing section of the RV Act contributes to disputes.
4. Note the RVA's proposals in the Closure of Retirement Villages Submission at Attachment E and recommend the Government work with industry and residents to ensure the Act provides adequate certainty as to resident's financial obligations in the event that a village closes down.
5. Note the current provisions in the Act in relation to the death of a resident and that personal services charges are payable for 28 days only.

## 4. Provides sufficient clarity and certainty in relation to the rights and obligations of residents and scheme operators.

The PID, the Government's Retire Smart publication and the resident contract all provide sufficient information to prospective retirement village residents. The role and responsibilities of retirement village operators are clear.

As above, the RVA believes simplifying the document will strengthen the PID and ensure it is clearer for prospective residents. See the draft PID at Attachment C.

## Reform Proposal: Protecting Resident Rights

The RVA believes that the RV Act could be strengthened in relation to resident rights when there are disputes between residents within a village.

As promulgated later in this Submission, it is not uncommon for there to be disputes between residents of a village.

A proposal the Committee may wish to consider is to insert Section 83 of the NSW Retirement Village Act into the RVRV Act (Queensland) shown below. This, combined with reforms to the dispute resolution process, should enhance the community living experience afforded by retirement villages for all residents.

### **83 Residents to respect rights of other persons**

(1) It is a term of every residence contract that the resident will respect the rights of other residents of, and other persons in, the village.

(2) In particular, a resident:

(a) must not interfere, or cause or permit any interference, with the reasonable peace, comfort or privacy of another resident, and  
(b) must respect the rights of the operator of the village, and agents and employees of the operator, to work in an environment free from harassment or intimidation, and

(c) must not act in a manner that adversely affects the occupational health and safety of persons working in the village.

(3) If the operator of the retirement village is of the opinion that a resident of the village has contravened any provision of this section, the operator may apply to the Tribunal for (and the Tribunal may make) an order directing the resident to comply with this section.

## Recommendation

That the Committee:

1. Recommend to the Government the insertion of section 83 from the NSW Retirement Villages Act to enhance the lifestyle of village residents in Queensland.

## 5. 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 RVA contends that the RV Act both discourages poor or bad practices through penalties and also provides a minimum standard for operators. The Act could actually go further and include some stronger penalties for gross and multiple offences of the legislation such as gross neglect of village maintenance, continuing abuses of residents' rights and misuse of resident's funds.

In terms of quality service provision, the Act ensures that promised services are provided through the residence contract. Residents have bargaining power when they enter a village. There is a contract negotiation process and prospective residents have the freedom to enter into a contract, negotiate terms, compare contracts between villages, or decide not to move into a particular village – or indeed to stay in their family home.

### Industry Accreditation Is Best Practice

The RVA, in the interests of best practice service delivery, lifting standards across the RV industry and due to a commitment to continuous improvement, introduced an industry Accreditation scheme (ARVA).

Accreditation is a detailed comparison of a village's services and operations against a set of national standards.

The ARVA Scheme's initial application is a two-part process:

1. The first part involves a self-assessment where the applicant Village measures its own conformance against the ARVA Standards.
2. The second part is an on site survey carried out by an independent accreditation survey team.

There are 27 Standards that are divided into four sections:

- Section 1      Resident Services and Lifestyle.
- Section 2      Organisational Management.
- Section 3      Human Resources.
- Section 4      Physical Resource Environment.

Each Standard has been given a number, a title, a statement of requirements and a list of criteria. It is expected that in order to achieve conformance with

the Standard, each of the requirements and criteria will be addressed and met except where a Standard is not applicable.

The Standards aim to be realistic, fair and transparent. They are minimum standards designed to ensure the protection of residents. This includes promotion of health and wellbeing and enhancement of quality of life within a village.

The Scheme is based upon the principle of 'Continuous Improvement' across all facets of management. Continuous improvement completes the quality cycle and ensures that standards of service improve over time. Accreditation through ARVA requires a commitment to continuous improvement.

ARVA has been going from strength to strength since its introduction. The RVA is pleased to communicate that the 2011/2012 financial year saw the largest number of accreditation surveys presented to the National Accreditation Committee (NAC), which highlights the industry's increasing interest and commitment to Accreditation.

A total of 81 RVA villages were granted accreditation in the 2011/12 financial year compared to 57 the previous financial year. The industry's two largest operators, AVEO and Lend Lease, are on track to have all the villages they own accredited in 2012.

In the interests of ensuring this Scheme remains a key driver of quality and best practice, the RVA is well advanced in an exciting project with an independent certification agency to review the current standards and certification methodology in line with international quality standards JAZ-ANZ. This project will result in far greater structure, independence and enhanced resident benefits. The RVA looks forward to updating the Committee in due course about this development.

Attachment F includes the Accreditation Handbook and you can find further information about the ARVA on our website at [www.rva.com.au](http://www.rva.com.au)

The RVA notes that the Issues Paper released by the Committee seeks commentary with regards to compulsory industry accreditation. The retirement village industry is very concerned about this prospect given the strength of the current Accreditation Scheme, the fact that industry is well serviced by independent and knowledgeable experts to assess villages and the impact mandatory Accreditation may have on village residents.

A mandatory scheme would increase costs to operators and therefore residents.

The RVA understands that Accreditation is one of the best ways to increase standards and the more villages that are accredited, the higher the standard across the industry. It does raise the bar – but this also comes at a cost to the

village. It also has the potential to impact on affordability of seniors housing in Queensland.

What the RVA would like to see is for Accreditation to become the point of difference for prospective residents. The Association knows that in part it is incumbent upon the industry to market the scheme, encourage operators to take part, and, as well, encourage operators to use their Accreditation as part of their village marketing. This is something the Association is very committed to and is currently placing additional resources into this activity.

## New Proposal: Advertising Retirement Villages

Retirement villages provide a unique and appropriate lifestyle for Queensland seniors. They are specifically regulated through the Act and best practice and quality is guided through industry accreditation.

It is not uncommon in Queensland for various forms of accommodation aimed at older or retired persons to hold themselves out as being a 'retirement village' when they are not registered, or required to be registered, under the Act because they do not satisfy the criteria in the Act for being a retirement village.

The RVA contends that this is undermining the viability of genuine retirement villages in Queensland that are registered under the Act and that are incurring the costs of the rigorous compliance regime imposed by the Act. Whilst this practice continues, not only will the operators of facilities that are not genuine retirement villages enjoy an unfair financial advantage, but consumers are at risk of being misled and disappointed by entering these facilities. They may be led to believe they will enjoy the benefits that result from the compliance regime imposed by the Act and the standards upheld through industry accreditation.

In NSW, the Retirement Villages Act makes it an offence for a person who manages or controls a complex containing residential premises to knowingly represent that the complex is a retirement village unless the complex is a retirement village within the meaning of the Act (section 17 (1)).

To discourage this misleading practice, and to assist the viability of the bona fide retirement village industry in Queensland, it is recommended that a similar provision be included in the Queensland Act.

## Recommendations

That the Committee:

1. Consider recommending to the Government an increase in penalties prescribed in the Act for gross and multiple offences of the legislation.

2. Note the rigorous, independent and successful industry Accreditation scheme (ARVA) that is delivering for residents and that any move to a mandatory scheme will increase costs and therefore impact on residents and seniors housing affordability in Queensland.
3. Recommend to the Government that a provision similar to section 17 (1) in the NSW Retirement Villages Act be inserted into the Queensland Act to protect consumers from misleading advertising regarding retirement villages. Further, that the Government consult with industry and residents on the final form of this section prior to introduction into the Parliament.

## **6. Adequately promotes innovation and expansion in the retirement village industry, avoids purely 'red tape' requirements, and facilitates the ongoing viability of villages.**

### **Retirement Village Construction in Queensland**

The construction and therefore supply of retirement villages in Queensland has stalled in recent years. Around 100 construction projects are currently being undertaken at existing villages but 25 of these are currently on hold for the foreseeable future.

Over the last decade, retirement village construction activity in Queensland has been particularly disappointing. Only 10% of existing retirement villages in the State were built in this time.

Significant investment is going to need to occur to meet the needs of an ageing population.

### **Measuring Senior Housing Demand and Supply**

As discussed in the Executive Summary, Australia faces a looming challenge in providing appropriate and affordable accommodation for our ageing population. The RVA has presented some analysis above of the recent retirement village construction trends and made some evidence based predictions on the potential impact should this continue.

This evidence is not dissimilar to the data emerging on the housing industry generally. Australian Bureau of Statistics figures released last month confirmed very worrying trends in housing construction.

The RVA contends that in order for any government to properly plan the extent of seniors housing that is needed into the future, there should be

ongoing and comprehensive work on measuring seniors housing demand and supply. The RVA is very pleased that the NSW Government recently announced, in its whole of government Ageing Strategy, that it would do just this.

It is proposed that the Committee recommend to the Government that it measure senior housing demand and supply – and in particular the construction of new retirement villages in Queensland. In addition, the RVA believes there is a need to ensure the Australian Housing and Urban Research Institute is resourced to measure supply and demand across Australia.

In this regard, the National Housing Supply Council's annual 'State of Supply' report is essential and the RVA recommends the Queensland Government's ongoing support for this initiative.

## Regular Dialogue Between Industry and Government

In meeting the seniors housing supply and services challenges, the RVA stands ready to work with the Government to ensure innovation and consumer driven strategies. The Industry proposes that a regular dialogue be established between the Government and industry to oversee the supply and demand work proposed above, and to discuss how industry and government can work together to meet the looming challenges.

## Regulatory Environment Hinders Industry Expansion and Innovation

The retirement village industry across Australia, and indeed in Queensland, is constantly changing and evolving to meet the needs of seniors. This evolution is likely to speed up as the population ages and the regulatory environment needs to keep pace.

The ageing population, different needs and expectations of seniors, and the current prevailing aged care policy environment that promotes 'ageing in place' are all factors that are driving the industry's need to innovate to provide accommodation options. Following the global financial crisis, in particular, industry is very keen to address current and pending seniors affordability issues but the current entrenched model and thinking restricts innovation in this area.

In Queensland, the current legislation is geared to providing a regulatory environment for one model of retirement village. It has been designed to entrench what is seen to be the 'standard' financial model for villages and by doing so it stifles flexibility and inhibits the industry's ability to respond to the changing needs of the market.

The basic model that is entrenched in the Act involves:

- An ingoing contribution (equivalent to the market value purchase price).
- The charging of recurrent charges for the provision of general services whilst the resident resides in the village on a cost-recovery basis, without a profit component to the village operator.
- The payment of an exit entitlement to the resident when they leave the village, comprising repayment of the ingoing contribution, from which is deducted an exist fee.

Under this model, the operator's source of revenue is the exit fee.

This model is entrenched in a broad combination of provisions in the Act. For example, the Act envisages that the resident will pay an ingoing contribution, receive an exit entitlement and pay an exit fee.

More particularly, it assumes that the operator must levy general services charges on a purely 'cost-recovery' basis by incorporating an extensive range of provisions that entrench a budgeting process that limits the amount an operator is able to recover for the provisions of services to the actual cost of providing them (presumably on the assumption that the source of profit is the exit fee).

The result is that the operator's ability to innovate by introducing alternative financial models is severely limited by this 'one size fits all' approach.

For example, the Act presents significant challenges and irregularities for an operator who seeks to implement a model under which any or all of the following applies:

- Residents not being required to pay an ingoing contribution to enter the village (in which case the village would potentially not even qualify as a 'retirement village' regulated under the Act).
- The inclusion of a 'profit' component in a rent or similar recurrent payment, increased in accordance with increases in an index other than CPI (for example, increases in the aged pension) or some other review mechanism agreed between the parties. For example, fixed percentage increases and/or market reviews. This rent might be in lieu of general services charges, which the Act restricts to being a cost-recovery charge and limits increases to CPI, unless the resident community otherwise consents.
- Residents do not receive an exit entitlement or pay an exit fee.

The types of innovative senior housing models that operators may, but for the Act, wish to implement range from pure rental models to different combinations of ingoing contribution, rent and exit fees.

In order to provide for this necessary innovation, the Act needs to incorporate flexibility for operators to derive profit from any source that is contractually agreed with residents – and suits the resident's circumstances.

There is no reason why this should not be able to be achieved, provided full and accurate disclosure is required to be provided to prospective residents before they make the decision to enter the village. A resident's rights can be protected regardless of the retirement living model they choose.

As the RV Act has become more prescriptive, the standard financial model described above has become more and more entrenched, and the ability of operators to cater for the changing requirements of the marketplace has further diminished. There is a need to review elements of the Act that entrench this model with a view to affording operators flexibility to adopt alternative models, whilst protecting consumers.

The current regulatory environment is hindering innovation and expansion of the retirement village industry in Queensland.

## Factors Hindering the Viability of Retirement Villages

An uncertain and changing regulatory environment hinders investment and expansion of the retirement village industry.

One of the biggest issues that effects industry investment is legislative amendments that strike at the heart of the bargains between operators and existing residents by having reforms operate retrospectively, to the financial disadvantage of operators.

Indeed, when the 1999 Act was formulated, the then Minister, the Hon. Judy Spence, acknowledged the imperative of not compromising the growth and viability of the industry by introducing legislation that operated retrospectively.

Accordingly, the Act was carefully drafted to ensure that those features of the Act that were capable of having a financial impact on operators only operated prospectively. It is for this reason that the Act states, in numerous places, that its provisions do not apply to 'existing' residence contracts.

The significant impact such legislation has on investment in the Queensland retirement village industry cannot be underestimated. There is no greater discouragement to investment in an industry than an uncertain and changing legislative environment. It diminishes the attractiveness of potential investors in the sectors, makes investments by financial institutions such as banks a riskier proposition, and for developers, increases the attractiveness of constructing standard residential stock whereby profit is realised immediately upon sale.

Whilst the RVA does not believe any significant reforms are necessary to the Act, it is recommended that should reforms be proposed, that these reforms are not retrospective. The latest reforms in Queensland, that saw retrospective changes to contracts, came with a significant cost to an industry already struggling. Any further changes will cost the industry, and will severely undermine future investments in Queensland.

## Differences in Viability

For-profit and not-for-profit retirement village operators all face similar challenges in meeting the needs of Queensland seniors. They cater for different markets and both have struggled in recent years to address affordability issues and to meet market demands.

Prior to 2002, church and charitable operators were exempt from many parts of the RV Act. These exemptions recognised the important role the church and charitable sector plays in the overall provision of age appropriate housing and care services. The flexibility this offered meant that many residents, regardless of their ability to pay an upfront ingoing contribution, could be catered for.

It is recommended the Committee consider proposing the removal of any unnecessary regulatory burdens placed on charitable operators because it is having a negative impact by minimising the affordable models and options that this sector could otherwise provide

Both for-profit and not-for-profit operators have an important place in the Retirement Village industry in Queensland.

## Recommendations

That the Committee:

1. Recommend the Government set in place a process for regular monitoring of the supply and demand for seniors housing – in particular retirement villages.
2. Recommends the Government work with the Federal Government to:
  - Ensure the Australian Housing and Urban Research Institute is resourced to measure the demand for, and supply of, aged friendly housing for seniors in NSW.
  - Enable the National Housing Supply Council to continue its annual 'State of Supply' report.

3. Recommend that the Government establish a regular forum between industry, residents and the Government to oversee the supply and demand work, and to discuss how all stakeholders can work together to meet looming seniors housing challenges.
4. Recommend that Government, industry and residents work together to determine new models of retirement village living and how the regulatory environment needs to be reformed in the future so they may be implemented to meet the needs of prospective residents.
5. Recommend to the Government that any amendments or reforms to the Act not be retrospective due to the impact this will have on industry investment in Queensland.
6. That the Committee analyse the regulatory burden placed on not-for-profit operators in light of their inclusion under the RV Act.

## **7. Affords residents all reasonable opportunities to be involved, should they wish to be, in budgetary and other decisions affecting their financial obligations.**

All residents in retirement villages can be involved in all aspects of village life should they so choose.

### **Extensive Resident Involvement Opportunities**

Residents are given an appropriate level of involvement in decisions that affect their financial obligations.

Village residents enjoy a range of rights to participate in decisions regarding the operation of their village:

- Via the residents committee, a right to be given a copy of the draft budgets for the financial year for the general services charges, maintenance reserve fund and capital replacement fund (sections 93 (3), 99(3) and 102 A (3) and to meet with the operator to discuss those draft budgets (section 129B).
- A right to vote on a special resolution about whether to approve increases in general services charges above the CPI percentage increase for the relevant financial year (after taking into account section 107 items (section 106).
- A right to vote on a special resolution about whether to introduce a new service for which a services charge is to be made or may be made (section 108).

- A right to vote on a special resolution about whether to approve a capital improvement, the cost of which all residents of the village will be jointly responsible (section 90B).
- A right to receive quarterly financial statements (section 112 (1)).
- Via the residents committee, a right to receive explanations about expenditure excesses over budget estimates (section 112 (4)).
- A right to receive audited annual financial statements about the income, expenditure, assets and liabilities of the village (section 113).
- A right to vote on a special resolution about whether to approve an insurance excess exceeding the prescribed maximum (section 110).

The above sections of the Act provide an appropriate level of control to residents about financial matters relating to the operation of their village and are consistent with the partnership model engendered in the retirement village industry.

As mentioned earlier, becoming a resident of a retirement village involves a decision to relinquish to the operator a range of decision-making responsibilities about the day-to-day management, administration and operation of the village. This is essential in order for the operator to provide the lifestyle represented to residents – and to comply with the contractual promises made by operators to residents when they entered the village.

The RVA believes the Act strikes an appropriate balance between the need to protect residents from excessive cost of living increases and the imperative for the operator to manage the village to the highest standard.

Affording individual residents direct control over decisions that affect their financial obligations and/or interest in their property, would risk operators being placed in a position where they are unable to fulfil their contractual obligations to other residents and would compromise the interests of the broader residents community at a village. This is not to say operators would not encourage dialogue and consultation with residents, however there are complex financial and capital decisions in a village that operators have great experience in that cannot be purely left to village residents. Moreover, for many people this is the exact reason they move into a village – to have this aspect managed for them. This is just the type of community that most residents seek when they elect to reside in a retirement village.

The very nature of the RV model affords residents with a significant level of power. In particular, where both operator and resident share the capital gain, both have an interest in the investment being maintained, and in the culture of the village being a happy one. It is a true partnership model.

## Resident Committees

Not all villages have resident committees. The vast majority of operators do, however, encourage their existence and support them in an advisory and financial capacity to assist communications and decision making in the village. These committees are voluntary and it depends on a particular village resident cohort as to whether they want and see a need for a committee.

Resident committees are generally very effective in dealing with retirement village operators and as a go between with residents.

The RVA believes the Act should not prescribe mandatory resident participation and/or the establishment of a resident committee.

As demonstrated above, there are significant opportunities for residents to engage in the business of their retirement village should they so choose. Some residents want to participate and others do not. Many choose the retirement village lifestyle, as they no longer want the burden of having to think about things like maintenance and services. This is why they moved out of the family home in the first place.

Resident contracts are the mechanism for ensuring the operator fulfils obligations and residents, in the main, are comfortable with this arrangement. They are afforded more opportunities to participate, have oversight and make decisions that in other forms of retirement accommodation such as apartment living.

## Recommendations

That the Committee:

1. Note the extensive existing provisions within the RV Act that afford residents with an appropriate level of information, oversight and involvement in protecting their financial interest.
2. Note that resident contracts are the appropriate mechanism to protect the interests of retirement village residents.
3. Does not seek to recommend mandatory resident committees as it is incumbent upon a village community to determine whether they are necessary and whether there is enough resident interest to make them viable.

## **8. Adequately provides a timely, informal and cost-effective process for resolving disputes between residents and scheme operators.**

The RVA believes the current dispute resolution process enshrined in the Act is comprehensive and working. The low level of disputation referred to earlier in this Submission is the most significant case in point.

Information is available to residents; they understand it and they use the process. Retire Smart, the Government's excellent publication provides information about the dispute resolution process.

A simplified PID that also includes information about dispute resolution would enhance the information to prospective residents.

Importantly, the industry Accreditation scheme (ARVA) requires villages to have internal dispute policies – another reason for governments, residents and industry to support this scheme.

### **Queensland's Comprehensive Dispute Resolution Process**

Importantly, Section 154 of the Act mandates preliminary negotiation of retirement village disputes at the village level before a dispute may proceed to mediation or the Tribunal.

The continuation of this compulsory preliminary negotiation is supported as experience indicates that many disputes are able to be resolved at this stage without proceeding into a formal process.

Accordingly, there is no need for villages to have an internal dispute resolution policy in addition to that provided for by the Act. Having said that, many villages have one as a matter of course or good practice.

Part 9 of the Act sets out a comprehensive dispute resolution process. This process includes:

- Mandatory preliminary negotiation at the village level (section 154). This enables an effective internal dispute resolution process and provides residents and operators with a signal and a way of dealing with disputes before they might escalate.
- The ability to apply for a mediation conference with the QCAT (sections 155-165). Again, this provides an avenue for both residents and operators to effectively deal with a dispute prior to possible escalation. Should this fail, an application may be made to the Tribunal for a hearing of the dispute.
- A hearing of the dispute by the tribunal and the making of appropriate orders (Part 10).

## Effective Resident Awareness and Engagement

The RVA contends that retirement village residents in Queensland are aware of their rights in terms of making a complaint to an operator or in terms of taking a complaint through a formal process.

Information advising of a resident's rights to make complaints and apply for resolution of disputes is set out in the PID given to each resident before entry into a village. It is also mandatory that a resident's dispute resolution rights be set out in the resident's contract.

Additionally, residents' rights to make complaints are highlighted in 'Retire Smart'.

There is a high level of awareness within retirement village communities about complaint rights, particularly in villages with active resident communities.

## Victimisation and Process for Resolution

Victimization and harassment has the potential to occur in any environment, particularly those involving community living with large numbers of people.

In the event that a resident believes they are being victimized or harassed by the operator, the resident has various options available to address the situation. These include: raising the issue with their resident committee; complaining to the Department administering the Act; and / or applying to the QCAT.

Residents also have the right to seek an urgent hearing at QCAT.

What is not covered by the Act, are incidences of victimization or harassment occurring between residents in village communities.

For the RVA, this is of greater concern, as there is no external process for resolving such issues when they do occur and in many cases they are the most difficult issue for an operator to resolve, as they require a level of thoughtful and experienced 'conciliation' between other warring parties. In some cases where resident-to-resident disputes arise, the harmonious environment in a village can be damaged, sometimes irreparably.

Resident-to-resident disputes do not currently constitute a 'retirement village dispute' within the meaning of the Act, and accordingly an aggrieved resident currently would not have available to him or her the Act's dispute resolution mechanisms in these circumstances.

A possible way this could be addressed would be to include in the Act an obligation on the residents of retirement villages not to behave in ways that unreasonably interfere with the peace, comfort and quiet enjoyment of their fellow residents, or that result in a resident being harassed or intimidated.

Accompanying this obligation could be a new right for an aggrieved resident to apply to the QCAT for relief. Also, a provision could be added to the Act making such repeated behaviour an additional ground for an operator to terminate the offending resident's right to reside in the village under section 53 of the Act.

## Effectiveness of QCAT

There is insufficient data available to industry or residents to properly assess the effectiveness of QCAT in resolving disputes. For example, there is no information available on how many retirement village dispute applications have been lodged, how many have proceeded to mediation, how many have been resolved through mediation, how many have proceeded to a hearing or how many have been settled prior to a hearing. The industry encourages the Government to make this data available.

Despite the lack of public data about QCAT's involvement in resolving disputes, the industry considers QCAT to be generally effective as a forum for resolving disputes. It plays an active role in the management of cases by making orders for the parties to comply, with a strict timetable for various steps to be taken by each party in the proceedings. Also, the strong emphasis QCAT places on alternative means of dispute resolution in its processes (such as compulsory mediation and compulsory conferences chaired by a member of QCAT) is endorsed by the RVA.

## QCAT: Potential Reforms

As stated above, the RVA does generally believe the QCAT to be effective. Members that hear matters are familiar with the retirement village business. There is, however, room for improvement and the following are some potential reforms the Committee might like to consider:

- QCAT affords residents with the ability to litigate claims at no cost and without the risk of costs awarded against them should their claim be unsuccessful. There is no deterrent within the current system to unmeritorious or frivolous claims being brought by residents. This can result in considerable cost and inconvenience to operators.

- QCAT attempts to ensure that proceedings are conducted in an informal manner and the RVA believes this to be a sound objective. It can mean, however, that residents are often permitted to change their claims throughout the course of a dispute without formally amending their claim. This is frustrating and unfair for operators – and would certainly not be permitted in a more formal court setting. An effective process for amendments to claims could be introduced without impacting on the desirable informal nature of proceedings.
- QCAT, unlike its predecessor the Commercial and Consumer Tribunal, has demonstrated a reluctance to grant leave for a party to a dispute to have legal representation. This reluctance has been witnessed at all stages of the process – mediation, directions hearings and the Tribunal hearing itself. This is resulting in the following:
  - Village managers taking a significantly increased role in representing operators at disputes. This takes them away from their management of a village.
  - The failure of appropriate legal arguments to be presented and of the real issues to be properly addressed by QCAT. It can also delay consideration of matters while parties and Tribunal members seek advice regarding the applicable law.
  - Tribunal matters taking longer, and increasing costs to operators and the Government, as parties clarify issues.

## Recommendations

That the Committee:

1. Note the low levels of disputation in Queensland and that the current dispute resolution system is working.
2. Note that the dispute resolution processes must continue to place significant emphasis on alternative means for resolution such as mediation.
3. Give consideration to a process for dealing with resident-to-resident disputes within a village being included in the Act and recommend to the Government that if it wishes to proceed with amendments on this matter to consult with the industry and residents about an appropriate response.
4. Recommend to the Government that QCAT report annually on its dispute handling procedures and outcomes including the following:
  - The number of dispute applications lodged.
  - The number of mediation cases and the number of cases resolved through mediation.
  - The number of disputes heard.
  - The number of disputes settled prior to a hearing.

5. Engage with QCAT about the effectiveness of the current dispute resolution system.
6. Give consideration to potential reforms to QCAT as outlined including ways to reduce frivolous claims, a process for claim amendment, and measures to ensure legal representatives and/or legal advice is readily available to QCAT and parties to disputes.

## List of Attachments

<b>Attachment A</b>	Information about the RVA, the retirement village industry in Australia and in Queensland, and the individual and community benefits of retirement villages.
<b>Attachment B</b>	Retirement Villages Amendment Act 2006 ('Amendment Act'): Drafting Issues
<b>Attachment C</b>	Draft Public Information Document (a separate document to this Submission).
<b>Attachment D</b>	Guidelines – Maintenance Reserve Fund and Capital Replacement Fund (a separate document to this Submission).
<b>Attachment E</b>	Response Submission to Discussion Paper: Closure of Retirement Villages, October 2011 (a separate document to this Submission).
<b>Attachment F</b>	Accreditation Handbook (a separate document to this Submission).

## **The Retirement Village Association: Key Facts**

The Retirement Village Association (RVA) is Australia's peak body for the retirement village industry.

The RVA represents over 800 villages and associate members nationally.

Membership consists of retirement village operators, managers, owners, developers, investors, and industry specialists across Australia.

Members include FKP Aveo, Lend Lease Primelife, Australian Unity, Southern Cross Care, Catholic Health, and Anglican Aged Care.

The RVA has regional offices located in Brisbane, Sydney, Canberra, Melbourne, Adelaide and Perth.

As the leading industry voice, the principle objectives of the RVA are to:

- Lead the building and growth of a sustainable and responsible industry.
- Advocate and strengthen our relationships with all governments to ensure the best outcomes for the retirement village industry.
- Encourage industry excellence and best practice through accreditation and facilitate quality improvement through an effective and relevant professional development program.
- Support and promote the benefits of retirement villages as 'the preferred choice of lifestyle for senior Australians'.

The Retirement Village industry is made up of around 60% of for profit operators and 40% not-for-profit operators.

## **Retirement Villages in Queensland: Key Facts**

Queensland retirement village operators, managers, owners, developers are represented by the RVA and we have an office in Brisbane. We are the peak body for QUEENSLAND retirement village industry.

Our members in Queensland include Aveo, Lend Lease, Churches of Christ Care.

There are more around 280 retirement villages in Queensland with over 37,000 units. There are over 40,000 people in Queensland living in retirement villages.

Around 100 construction projects are currently being undertaken at existing villages in the State although 25 of these are currently on hold.

Queensland retirement village construction activity has been disappointing in the last decade with only around 11% of existing villages being built in this time<sup>5</sup>. Retirement village construction in Queensland has now stalled.

The RVA is made up of around 60% for-profit operators and 40% not-for-profit operators.

As the leading industry voice, the objectives of the RVA are:

- Lead the building and growth of a sustainable and responsible industry.
- Advocate and strengthen relationships with governments to ensure the best outcomes for the retirement village industry.
- Encourage industry excellence and best practice through accreditation and professional development.
- Support and promote the benefits of retirement villages as 'the preferred choice of lifestyle for senior Australians'.

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<sup>5</sup> Ibid. (insert JJJ reference)

## The Retirement Village Industry in Australia

<b>Economic contribution</b>	<p>Economic modelling by KMPG-Econtech shows the retirement village sector contributes up to:</p> <ul style="list-style-type: none"> <li>• \$4.7 billion in turnover across the Australian economy, comprising the operations of retirement villages and in the broader economy.</li> <li>• \$2.8 billion to Australia's GDP.</li> <li>• 30,000 jobs across retirement villages, construction and other sectors supporting retirement villages.<sup>6</sup></li> </ul>
<b>Villages in Australia</b>	<p>There are 1,850 retirement villages in Australia with a construction value in excess of \$50 billion.</p>
<b>Australians in retirement villages</b>	<p>There are over 160,000 Australians living independently in a retirement village. Retirement villages now house more than 5% of people aged over 65. They house more than 20% of those over 75. There are similar numbers of Australians in retirement villages as in residential care.</p>
<b>Village construction has stalled</b>	<p>The estimated number of new villages under construction has declined from 109 in April 2008 to 46 in October 2010. The estimated number of units under construction in new villages declined from 10 655 in April 2008 to 4510 in October 2010.</p>
<b>Consequences of stalled construction</b>	<p>Should current construction trends continue, there will be a national shortfall of retirement village units within 10 years.</p>

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<sup>6</sup> KPMG., Retirement Village Association., 24 October 2011

## Individual and Community Benefits of Retirement Villages

<b>Ageing in place</b>	Villages support individuals to continue living independently for as long as possible, which is what seniors want. This also results in delayed entry to hospitals and residential care.
<b>Connection</b>	Villages enable access to social networks with significant health and wellbeing benefits.
<b>Support services and senior friendly facilities</b>	Villages offer services, site monitoring and other forms of care in purpose built facilities.
<b>Quality of life focus</b>	Villages focus on quality of life and encourage physical and mental activity.
<b>Active ageing</b>	Villages provide access to on-site facilities and programs that encourage activity, healthy lifestyles, and connectedness. These facilities relieve pressure on local community services.
<b>Community benefits</b>	Villages maintain and enhance the character of the local community by establishing multiple close networks e.g. health, exercise, volunteering.
<b>Safety</b>	Villages provide a safe and monitored environment e.g. call systems, 24 hour monitoring and first aid.
<b>Senior friendly infrastructure and design</b>	Villages provide senior friendly infrastructure that relieves pressure on families, carers and government resources.

Retirement Villages Amendment Act 2006 ('Amendment Act')

Drafting Issues

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
<b>Clauses 25, 26</b>	<b>Sections 61</b> (Who pays for work in freehold title scheme), <b>62</b> (Who pays for work in leasehold or licence scheme)	<b>Issue 1</b>	<p>In sections 61 and 62 the replacement of the words '<i>cost of reinstatement</i>' with the words '<i>cost of labour and materials for the reinstatement work</i>' is confusing.</p> <p>These words, being more restrictive than the words they have replaced, could be interpreted as suggesting that the cost of replacing items such as stove tops, hot water systems and similar goods, equipment and appliances are not able to be recovered from the former resident as part of a reinstatement on the basis that they are neither in the nature of 'labour' or 'materials'.</p> <p>The new definition of 'reinstatement work' in the Dictionary (refer clause 64 of the Amendment Act) refers to '<i>the <b>replacements</b> or repairs that are reasonably necessary to be done to reinstate the accommodation unit..</i>'. This definition clearly extends to the replacement of goods, equipment and appliances in the unit as reinstatement work.</p> <p>Furthermore, under the new clause 58 (refer clause 23 of the Amendment Act) the operator and former resident are to agree on the 'reinstatement work' (as defined) to be done to the unit. This is consistent with the intention that the costs to be borne by the former resident are not to be limited to simply the cost of labour and materials involved in the reinstatement but are to extend to the costs of replacing goods, equipment or appliances that are reasonably necessary to reinstate the unit.</p> <p>Accordingly, to suggest that the operation of sections 61 and 62 be limited solely to the recovery of the labour and materials involved with the reinstatement is inconsistent with both the definition of 'reinstatement work' and section 58.</p> <p>The Explanatory Notes to the Amendment Act do not indicate an intention to introduce such a limitation. They indicate that the amendment was meant to clarify</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
			<p>that reinstatement costs <i>'are for both labour and materials'</i>. These words do not suggest that the aim was to limit the types of costs to labour costs and material costs only.</p> <p>In any case this is no logical justification for such a limitation.</p> <p>Therefore, sections 61 and 62 should be amended to reinstate the expression <i>'cost of reinstatement'</i>.</p>
		<b>Issue 2</b>	<p>In the case of former residents who entered in a residence contract before the Amendment Act, under the previous section 62 the former resident and the operator were to share reinstatement costs in the same proportion as they shared the <i>'sale proceeds of the right to reside in the unit on its sale'</i>. Under the amended section 62(2)(c)(ii) this has been changed to the proportion in which they share the <i>'gross ingoing contribution on the sale of the right to reside, as provided for in the residence contract'</i> (with gross ingoing contribution being defined as the ingoing contribution before any deductions are made).</p> <p>The Explanatory Notes to the Amendment Act states that the intention of the charge was to <i>'more accurately describe the re-sale proceeds of the right to reside'</i>.</p> <p>The drafting did not achieve improved transparency and clarity for residents and industry and therefore it should be reviewed in consultation with all stakeholders.</p> <p>On a strict legal analysis, under most residence contracts in leasehold/ licence schemes the operator is legally entitled to the whole of the new ingoing contribution because it is the party granting the new residence right to the new resident. The operator then pays to the resident a separate amount which, whilst it might be calculated by reference to the amount of the new ingoing contribution, is not strictly at</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
			<p>law a share of that ingoing contribution. The reverse is the case in freehold schemes where the resident is legally entitled to the whole of the resale price and agrees to pay a separate amount to the operator in the form of the exit fee.</p> <p>The drafting needs to be amended to refer to the proportion which the amount the resident receives in accordance with their residence contract (on the one hand) bears to the amount of the ingoing contribution paid by the new resident (on the other hand).</p>
		<b>Issue 3</b>	<p>Section 62(4) provides that if the scheme operator must pay the cost of reinstatement work, it must be paid out of the scheme operator's capital replacement fund.</p> <p>A corresponding amendment to section 91(3) is required to allow the fund to be applied in paying for such reinstatement work. The ability in section 94(3)(a) to apply the fund for replacing the village's capital items is not sufficient because reinstatement work will include, but is not limited to expenditure to replace capital items (it also involves 'repairs').</p>
<b>Clause 29</b>	<b>Section 68</b> (Costs of selling)	<b>Issue 4</b>	<p>Previously the former resident and the operator were to share the costs of sale in the same proportion as they share the '<i>sale proceeds of the right to reside in the unit on its sale</i>'. In the amended section 68 this has been changed to the proportion in which they share the '<i>gross ingoing contribution on the sale of the right to reside, as provided for in the residence contract</i>' (with gross ingoing contribution being defined as the ingoing contribution before any deductions are made).</p> <p>For the same reasons set out in the comments on Issue 2 for section 62 above this amendment does not provide transparency and certainty for residents and industry. The industry will welcome consultation with all stakeholders about this issue. The drafting needs to be amended to refer to the proportion, which the amount the</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
			resident receives in accordance with their residence contract (on the one hand) bears to the amount of the ingoing contribution paid by the new resident (on the other hand).
<b>Clause 30</b>	<p><b>Section 70B</b> (Relative's right to reside after death or vacation) and related sections</p> <p>in conjunction with:</p> <p><b>Section 15</b> (What is an exit fee)</p> <p><b>Section 56</b> (Interpretation for div 5)</p>	<b>Issue 5</b>	<p>The drafting of the new section 70B and related sections has some major deficiencies in relation to the balancing of rights between the former resident, and the relative and the operator in the 3 month period during which the relative has the right to reside in the former resident's unit.</p> <p>Section 70B(4) states that '<i>During the 3 months, the relative has all the rights and liabilities of a resident under the Act</i>'. This means that the relative is given the rights and obligations under the Act in addition to the former resident, which is totally impractical in many instances. For example, the section is capable of being interpreted to remove the right of the former resident or their estate to be solely involved in voting on resolutions at residents' meetings. Do both the former resident and the relative have a right to vote? This is totally unworkable and could not have been intended. Either section 70B(4) needs to be qualified to preserve the rights of the former resident in respect of a number of rights under the Act or the section needs to be re-drafted to specify precisely which of the sections affording rights and liabilities to residents are to apply to the relative as well.</p>
	<p><b>Section 60</b> (Scheme operator and former resident to agree on resale value of accommodation unit)</p>	<b>Issue 6</b>	<p>Under the new section 15(2)(b), if a relative resides in a unit under section 70B(2) the exit fee will calculated as at the <i>sooner</i> of:</p> <ul style="list-style-type: none"> <li>(a) the day the relative vacates the unit; and</li> <li>(b) the end of the 3 month period after the relative's right to reside terminates.</li> </ul> <p>This drafting does not to deal with the situation where the relative fails to deliver up vacant possession at the end of the 3 month period in circumstances where they do</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
	<p><b>Section 64</b> (Units not sold within 6 months)</p> <p><b>Section 66</b> (Updating agreed resale value)</p>		<p>not enter into a new residence contract. In this case it would be fair and reasonable for the exit fee to continue accruing until the relative actually gives up vacant possession given that they would be in occupation unlawfully. This is the relevant date that applies is the typical situation where there is no relative living in a unit (see section 15(2)(a)).</p> <p>To address this inequity, the section should provide that the exit fee continues to accrue until the last to occur of the events in paragraphs (b)(i) and (b)(ii) of section 15(2), unless the resident elects to enter into a residence contract on or before end of the 3 month period. In this case, the exit fee should be calculated up until the date the new residence contract commences (which could be prior to the end of this 3 month period).</p>
		<b>Issue 7</b>	<p>The way reinstatement of units has been dealt with in the circumstance where a relative resides in a unit under section 70B(2) is problematic. If a relative has a right to live in the unit for 3 months under section 70B(2) then under the amended section 56(1) the 'termination date' which triggers the reinstatement process is not the date the former resident's right to reside terminates (as would usually be the case) but the date the relative advises the scheme operator (under section 70B(5)) that they want to enter into a residence contract for the accommodation unit. From this date, the relative steps into the shoes of the former resident for the purposes of agreeing with the operator the extent and cost of the reinstatement work to be done to the unit (section 58(4)).</p> <p>Unfortunately the circumstances where the relative has a right to stay on for 3 months but either:</p> <p>(a) does not take up the right to reside for the 3 month period at all; or</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
			<p>(b) takes up the right to reside but does not have the right to enter into a residence contract under section 70B(5) because the unit is a freehold unit; or</p> <p>(c) takes up the right to reside (in a leasehold/licence scheme) but decides not to enter into a residence contract under section 70B(5),</p> <p>are simply not dealt with.</p> <p>This 'gap' is a clear oversight in the drafting. Unless this 'gap' is rectified significant confusion will result.</p>
		<b>Issue 8</b>	<p>Furthermore, whilst the relative who decides to enter into a new residence contract is given the right to agree with the operator on the extent of reinstatement, it is still the former resident or their estate who will be obliged to pay the relevant share of the costs of the work (under section 62). This is extremely unfair to the former resident (or the beneficiaries of the former resident's estate, if the former resident has died) and is likely to give rise to justifiable complaints by former residents or their beneficiaries, particularly when the relevant relative is not a beneficiary of the form resident's estate. For example, a relative may be motivated to encourage the operator to undertake a more extensive reinstatement than usual on the basis that the former resident or their estate will bear the cost.</p>
		<b>Issue 9</b>	<p>As with reinstatement, the trigger for the operator and former resident having to negotiate and agree on the resale value of the unit under section 60 will not be the date the former resident's right to reside terminates (as would usually be the case) but the date the relative advises the scheme operator (under section 70B(5)) that they want to enter into a residence contract for the accommodation unit (see section 56(1)). The same 'gap' identified in Issue 7 above exists in the application of section</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
			<p>56(1) to section 60.</p> <p>Even if the relative does take up the right to reside under section 70B(2) and decides to enter into a residence contract, there is a problem with the drafting. Under section 70B the relative must advise the operator at least 14 days before the end of the 3 month period that they want to enter into a residence contract. The 30 day period for reaching agreement before the operator must get a valuation will run from the date the resident advises the operator (section 60).</p> <p>However, under section 70B the operator must enter into the contract with the relative before the end of the 3 month period. Of course, it will not be possible for the operator to contract with the relative before the resale value is agreed with the former resident or their estate. Also, at this stage the reinstatement work will not have been agreed with the relative (let alone have been completed) which will make it difficult to include in the resale value and the settlement figures. The timing in these provisions is simply all wrong and must be rectified if section 70B is to be at all workable in practice.</p>
		<b>Issue 10</b>	<p>Sections 64 and 66 both operate by reference to a former resident's right to reside not being sold within 6 months after this 'termination date'. The same 'gap' identified in Issue 7 about exists in the application of section 56(1) to these sections.</p>
		<b>Issue 11</b>	<p>Under section 70B(6) the residence contract entered into by the relative who elects to stay after the initial 3 month period must be <i>'on the same terms as would be offered to any potential resident...., as adjusted to include any agreement between the relative and the scheme operator about reinstatement work for the accommodation unit'</i>. It is not clear what this 'adjustment' means, particularly in light of the fact that the former resident will be responsible for relevant reinstatement costs. Some guidance as to</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
			the intended nature of the adjustment is required.
		<b>Issue 12</b>	<p>A significant problem is presented by the fact that the operation of the cooling-off period will operate for the new contract the relative enters into under section 70B(5). It is sensible and justifiable that no cooling-off period apply.</p> <p>Whilst the cooling-off period operates a situation is likely where the relative enters into the a new residence contract on the last day of the 3 month period under section 70B(2), settles the contract and then has 14 days within which to rescind the contract and depart the unit. During this time the new ingoing contribution will need to be held in trust under section 46 until the cooling-off period expires.</p> <p>Under the amended section 63 the operator has to pay the former resident the exit entitlement within 14 days of the day the relative settled the new contract, which will be the same day as the cooling-off period expires. If the relative does not rescind, the proceeds will need to be withdrawn from trust and the exit entitlement paid to the former resident on the same day – a very difficult timeframe for operators to meet.</p> <p>Of more concern is the fact that if the relative does rescind, the operator will still have to pay the former resident's exit entitlement as the contract had settled before the cooling-off period expired, thereby triggering the obligation to pay the exit entitlement within 14 days under section 63.</p> <p>The obvious solution to these problems is for the cooling-off period not to operate in the case of a contract entered into under section 70B(5). Given that the relative will have been living in the unit for over 6 months already the removal of the cooling-off period is entirely reasonable.</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
<b>Clause 44</b>	<b>Section 104</b> (Working out and paying general services charges for former residents)	<b>Issue 13</b>	<p>Previously the former resident and the operator were to share general services charges after 90 days of the former resident vacating in the same proportion as they share the '<i>sale proceeds of the right to reside in the unit on its sale</i>' (section 104(2)). In the amended section 104(2)(b) this has been changed to the proportion in which they share the '<i>gross ingoing contribution on the sale of the right to reside, as provided for in the residence contract</i>' (with gross ingoing contribution being defined as the ingoing contribution before any deductions are made).</p> <p>The drafting did not achieve improved transparency and clarity for residents and industry and therefore it should be reviewed in consultation with all stakeholders.</p> <p>The drafting needs to be amended to refer to the proportion, which the amount the resident receives in accordance with their residence contract (on the one hand) bears to the amount of the ingoing contribution paid by the new resident (on the other hand).</p>
<b>Clause 45</b>	<b>Section 105</b> (General services charges for unsold right to reside in accommodation units)	<b>Issue 14</b>	<p>The new section 105(2) states that the scheme operator must pay any amount it pays on account of general services charges under section 105(1) into the maintenance reserve fund. This is incorrect. Only a small component of the general services charges is to be applied to the maintenance reserve fund. The majority of general services charges must be paid into the operating account to pay operating costs.</p>
<b>Clause 46</b>	<b>Section 106</b> (Increasing charges for general services)	<b>Issue 15</b>	<p>The new section 106 contains some significant drafting problems.</p> <p>The definition of '<i>CPI percentage increase</i>' for a financial year requires a comparison between the CPIs published for the quarters ending immediately before the start of the financial year and immediately before the end of the financial year. These</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
			<p>references should be to the <i>previous</i> financial year. Also, the CPI for the quarter ending immediately before the end of the previous year (ie for the previous March quarter) is not published until September, so it will not be available in June when it is needed. The definition should refer to the CPI last published at the time the June quarter commences.</p>
		<b>Issue 16</b>	<p>Paragraph (a) in the definition of '<i>total of general services charges</i>' implies that a charge for a general service may be increased by more than the CPI percentage increase for the financial year if the retirement village residents approve the increase by special resolution at a residents meeting. However, there is no provision in section 106 or elsewhere, which actually provides that a general service charge can be increased in this way. Paragraph (a) needs to have similar words added at the end as appear at the end of paragraph (b) ie '<i>...and that is allowed under section #.</i>' A new section then needs to be added that permits a charge for a general service to be increased in the way foreshadowed.</p>
<b>Clause 49</b>	<b>Section 108</b> (New services to be approved by majority of residents)	<b>Issue 17</b>	<p>Section 108 (as amended) provides that residents may be charged a services charge for a new service under certain circumstances. Where the public information document stated it was proposed to be supplied then the charge can be made without the need for a special resolution. However, no mention of the ability to make these additional services charges is mentioned in section 106. The definition of '<i>total of general services charges</i>' in section 106 needs to have an additional paragraph (c) added to the following effect:</p> <p><i>"(c) a charge for a general service allowed under section 108."</i></p>
<b>Clause 57</b>	<b>Section 132</b>	<b>Issue 18</b>	<p>In the new section 132(4) the words '<i>by the residents committee</i>' need to be inserted</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
	(Voting)		immediately after the words ' <i>meeting called</i> ' in the first line as it is clearly intended to refer to a meeting called under section 132(3)(b) only.
<b>Clause 64</b>	<b>Dictionary</b> – definition of 'cooling-off period'	<b>Issue 19</b>	<p>The changed definition of 'cooling-off period' seriously disadvantages both operators and residents.</p> <p>The new definition provides that if a residence contract is subject to a later event happening or another contract being entered into, the cooling-off period starts on the day the later event happens or the other contract is entered into.</p> <p>The result is that if a residence contract is subject to the prospective resident selling their existing home (an extremely common circumstance in the retirement villages industry) the cooling-off period will <i>not</i> commence when the contract is signed (as was the case previously) but when the resident's home is eventually sold.</p> <p>This puts operators in the position of not being able to secure a binding agreement from a prospective resident to take a unit for the weeks or months while the resident's home is being marketed. In effect, the prospective resident will get the benefit of a cost free 'option' to take up a right to reside in the relevant unit which they need only decide whether to exercise when their home is eventually sold.</p> <p>More importantly, operators will be disinclined to settle the sale of the right to reside with the new resident before the cooling-off period ends as that settlement will trigger the obligation to pay the departing resident their exit entitlement within a further 14 days (under section 63). Operators rely on the ingoing contribution received from the new resident to pay out the exit entitlement to the departing resident. Therefore, operators will want to be sure that the new resident will not be in a position to rescind (and require re-payment of the new ingoing contribution they have paid) before the</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
			<p>obligation to pay out the departing resident is triggered.</p> <p>Ultimately, the resident will be disadvantaged. The day their home is sold is the very day the resident will want to settle the purchase or lease of their unit and enter into possession of the unit as they will no longer have a home in which to live. However, operators will sensibly want to wait 14 days for the cooling-off period to expire before allowing the resident to occupy, thereby avoiding a situation where the resident takes up occupation of the unit and then decides to rescind during the cooling off period.</p> <p>This will mean that residents will be put to the inconvenience and stress of having to find temporary accommodation after they settle the sale of their existing home pending expiry of the 14 day cooling off period.</p> <p>Significant concerns also arise in the case of agreements to lease/licence (for leasehold and licence units) and off-the-plan sale contracts (for freehold title units) used by operators for staged developments of units. Such agreements or contracts are widely used to obtain binding pre-commitments from prospective residents to lease or purchase units under construction in villages, often to satisfy the pre-conditions of financiers to draw downs of development funding. The agreement or contract binds a resident to enter into a lease of the selected unit or purchase the unit when construction is complete. They are often drafted as being subject to completion of construction of the unit within a agreed time frame and , in the case of freehold title, registration of the plan creating the unit as a separate title.</p> <p>Under the previous definition of 'cooling-off period' the 14 day cooling off period would have commenced when the agreement or contract was signed. After expiry of the cooling-off period, the operator would commence construction of the unit in the knowledge that the prospective resident was bound to settle the lease or purchase when construction was complete. In many cases, the operator would also draw down</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
			<p>on development funding that a financier was prepared to make available upon receiving evidence that the operator had secured a sufficient number of binding pre-commitments.</p> <p>However, under the new definition the cooling-off period will not commence until the unit is completed and/or the title is created. This renders it impossible for operators to obtain binding pre-commitments for units in future stages. It is grossly uncommercial to expect operators to commit funds to constructing further stages of villages in a situation where they are prevented from securing binding contracts from prospective residents. Even if operators were prepared to assume the commercial risks of doing so, in many cases they will be unable to secure development funding from financiers who will almost certainly require evidence of binding pre-commitments (that are unable to be rescinded by the prospective residents) as a condition of making the funds available for construction to commence.</p> <p>The changed definition of 'cooling-off' period needs to be urgently reviewed to address the above concerns.</p>

September | 2012



Retirement  
Village  
Association

# Review of the Queensland Retirement Villages Act - Submission To The Transport and Local Government Committee

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## Executive Summary

Queensland faces an enormous challenge in how to care and house an ever-increasing ageing population. To meet this challenge it is vital that a wide range of choice in retirement accommodation is available.

Population growth in older demographic segments, increasing numbers of seniors with co-morbidities and a long-term reduction in the number of taxpayers per retiree all highlight the need for the State Government to create an environment now to support Queensland seniors.

Seniors have, in their individual ways, contributed to the growth of our great nation and have earned the right to exercise choice when it comes to their own accommodation, service options and care in later life.

One such option is retirement village living, a service / accommodation model specifically developed for older people that has emerged over the past 30 years or more. Retirement villages now house more than five per cent of people aged over 65 years and more than ten per cent of those over 75 years.

The profile of the retirement village industry, in its current form, is diverse, spanning church and charitable operators, larger listed entities who often run multiple villages and smaller independent operators. They are diverse in terms of their individual offerings from independent living units in a variety of forms to serviced apartments where residents can receive an array of personal and nursing services. Also, residents can choose from a range of tenure and financial arrangements. Leasehold, loan / licence and strata schemes abound in the mix of registered retirement villages in Queensland. This mix of operators ensures both choice and economic diversity.

Nationally there are over 1,950 retirement villages with a construction value in excess of \$50 billion. Retirement villages accommodate around 160,000 or more residents older Australians. The industry now represents a critical element of housing and care options for older Australians and Queensland seniors.<sup>1</sup> The retirement village industry is a solution for all governments in delivering 'ageing in place'.

In Queensland, around 40,000 older people live in one of the 280 retirement villages that have been developed over the past 30 years. These villages comprise around 37,000 units and are a critical asset for the State.

## Future of Seniors Accommodation

Given the established popularity of the retirement village lifestyle and the growth plans of owners and operators, it is clear that retirement villages will continue to represent an essential component of housing and services for seniors in the future. To meet the looming demand for seniors housing, the retirement village industry is going to have to double in size in the next 20 years nationally – and in Queensland.

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<sup>1</sup> Jones Lang Lassalle, 2011.

Nationally, should retirement village housing stock not be available, there would be three clear socio-economic drawbacks:

1. 80,000 or more residents would have to be housed in standard residential stock (that in many cases would be too large, difficult to maintain, decrease stock available to younger families and heighten social isolation).
2. A need for more investment by government in health care, public housing and home-based care (a significant proportion of which is currently provided in retirement villages).
3. Direct and indirect economic impacts relating to employment opportunities, investment in infrastructure and the construction industry.

Such a future would serve older people poorly – not only would it limit options for seniors searching for age-appropriate accommodation that meets their physical and healthcare needs but it ignores the individual and community benefits retirement villages offer.

Retirement Villages have a great role to play as they:

- Enable people to downsize and live affordably as they age.
- Deliver purpose built communities with a full suite of infrastructure (taking pressure off other government funded infrastructure in the surrounding suburbs).
- Enable people to age near to the areas they live in or grew up in assisting them to maintain their networks and social connection.
- Contribute to the diversity of housing stock and density targets in suburbs (including inner urban areas).
- Provide a communal and supportive living environment for people who need it most.
- Reduce the economic burden across all levels of government in the delivery of housing and support for older people.

Attachment A includes a summary of individual and community benefits of retirement village living.

It is therefore vital that the retirement village industry is considered in conjunction with housing and aged and community care strategies: only through a fully integrated approach can we create a dynamic, consumer-driven industry that will stand the test of time.

## Future Challenges

In order to facilitate good outcomes for people seeking purpose built accommodation for seniors, the RVA's key focus is the identification of opportunities, both in the short-term and the longer-term, that would facilitate constructive industry growth for the benefit of not just Queenslanders, but for all older Australians.

There are three key challenges to housing and care provision for older people in Queensland that are inhibiting the supply of new accommodation. These are:

- Regulatory barriers and uncertainty.
- Taxation, rates and charges.
- Access to land, planning restrictions and access to capital.

In addressing the Committee's Terms of Reference, the RVA proposes reforms and initiatives aimed at dealing with these key challenges.

## Working Together to Meet Queensland Seniors Needs

Retirement villages offer a range of economic, housing, health, social, individual and community benefits.

The opportunity is available now for governments to support the industry's growth and recognise our ability to provide quality housing and care for the burgeoning numbers of older people across the community.

If the retirement village industry is not encouraged or supported by government in its endeavours to offer consumers more choice, local communities will face residential housing constraints and the accommodation and service options for Queensland seniors will be significantly curtailed.

A stagnant retirement village industry, which currently receives little or no government assistance, would result in a transfer of costs back to the public purse since governments would have to meet – and construct – the shortfall in appropriate housing.

This in turn would restrict the options available to Queensland seniors, not to mention hampering their access to the health and community benefits generated by a competitive retirement village industry.

## Certain Regulatory Environment Essential

The regulation of retirement villages in Queensland has changed and evolved over time – to the point that the Queensland retirement village industry is the most tightly regulated in the country. The RVA maintains that whole scale reform of the Act is unnecessary, the rights of residents are protected, and a

large majority of residents in Queensland are very happy with their accommodation choice and the resultant retirement lifestyle.

Independent research shows 95% of retirement village residents say village life meets or exceeds their expectations (mccrindle research, 2011). That means that around 38,000 of the 40,000 retirement village residents in Queensland are very happy. You can find out more about this research at [www.mccrindle.com.au](http://www.mccrindle.com.au)

There are some aspects of the regulatory environment that could be slightly amended to provide clarity for both residents and industry. This is particularly the case with the current Public Information Document (PID). These are detailed throughout this Submission.

It is also incumbent on the RVA to point out that any changes to the regulatory environment come with increased compliance costs that inevitably have an impact on residents and affordability. It also impacts significantly on investment and Queensland needs the retirement village industry to invest. Uncertainty will see continued stalled investment in the State.

The retirement village industry does welcome the Committee's interest in our industry and how best to accommodate and care for older Queenslanders. This review is an opportunity to look at whole of government, and intergovernmental, policy settings that can precipitate industry growth and ensure we all meet the accommodation and care challenges of our ageing population.

## RVA Recommendations

The following is drawn from the recommendations that appear throughout this Submission.

### Terms of Reference 1

That the Committee:

1. Does not recommend to the Government a full re-write or major reform of the current Act as the Act protects the rights of residents and appropriately balances the needs of residents and operators.
2. Recommends to the Government that the drafting issues identified in Attachment B be rectified, that the Government work with industry and residents to draft the necessary amendments, and that consultation occur on the final form of amendments.
3. Note the evidence relating to very low retirement village related Tribunal cases in Queensland and that this demonstrates the regulatory environment is delivering for retirement village residents.
4. Note the gamut of laws that exist to protect consumers in Queensland and that further laws are not necessary.
5. Recommend to the Government that a simplified PID be adopted as per Attachment C and that this be provided to all prospective residents along with a revised Government consumer guide to ensure they receive the information they need to make informed decisions.
6. Recommend to the Government that a forum between Government, industry and residents be established to simplify and rationalise the provisions in the RV Act relating to the PID requirements.
7. Recommend the Government readily provide copies of Retire Smart to operators and residents to ensure all residents receive the publication with the PID.
8. Recommend to the Government that Retire Smart be made freely available upon request – for industry, residents and prospective residents.

## Terms of Reference 2

That the Committee:

1. Note that any increase in regulation or compliance burdens will impact on affordability of seniors housing in Queensland. Further, that any proposed changes to the RV Act are submitted to an appropriate cost benefit analysis that assesses and reports on the economic impact and affordability impact.
2. Note that exit fees and deferred management fees are a key affordability tool for prospective Queensland seniors wishing to enter a retirement village.
3. Recommend to the Government that Government, industry, and resident work together to look at the mix of retirement living models that might be accommodated within the Act to ensure affordability and a wide range of options for Queensland seniors into the future.
4. Recommend to the Government that it consider planning reforms to meet looming seniors housing supply and affordability challenges in Queensland including: reforms to SPA such as a retirement village Code; retirement village zoning to encourage investment; and promoting the availability of land.
5. Recommend to the Government that it work with industry, including the RVA, in a creative collaboration to deliver more and better seniors housing.
6. Recommend to the Government that it lead a renewed partnership between Federal, State, local government and industry to work together to develop more age friendly and integrated housing communities.
7. Recommend a reduction in stamp duty payable on seniors housing such as retirement villages to encourage senior choice in accommodation.
8. Assess the current Federal Government's rent assistance scheme to determine the minor amendments necessary to ensure Queensland seniors can access to the scheme in order to move into a retirement village. And, consider recommending to the Government that it work with the Federal Government to change the schemes eligibility criteria.

9. Recommend the Government work to encourage the Federal Government through the COAG to remove current pension and assets testing disincentives to free up equity for seniors to invest in their future housing and care needs.
10. Investigate ways that seniors can be supported in financial literacy and in accessing the independent financial advice they need to make decisions about their future. This would include information about the impact of housing decisions on their overall financial position.
11. Recommend to the Government that all pensioners in Queensland have the same access to concessions and rebates regardless of where they choose to reside. Further, recommend the Government impress upon local Councils to provide council rate rebates to retirement villages in recognition of the reduced operational costs for Councils where retirement villages are located.
12. Note that the PID and cooling off periods offer extensive protection to prospective retirement village residents and are the most comprehensive in Australia.
13. Recommend to the Government the adoption of the *Guidelines – Maintenance Reserve Fund and Capital Replacement Fund at Attachment D* and that these form the basis of a regulation to prescribe model rules under section 113A of the Act. Further, that the Government consult with industry and residents about the final form of this regulation.

### Terms of Reference 3

That the Committee:

1. Note the existing provisions in the RV Act relating to financial oversight and disclosure are rigorous and provide residents with certainty, information and an appropriate role in decision-making.
2. Note that the Act enshrines an appropriate entitlement for retirement village residents with respect to seeking information and an estimate of their exit fees and entitlements.
3. Recommend that the Government observe the implications of section 53A to determine whether this poorly drafted and confusing section of the RV Act contributes to disputes.

4. Note the RVA's proposals in the Closure of Retirement Villages Submission at Attachment E and recommend the Government work with industry and residents to ensure the Act provides adequate certainty as to resident's financial obligations in the event that a village closes down.
5. Note the current provisions in the Act in relation to the death of a resident and that personal services charges are payable for 28 days only.

## Terms of Reference 4

That the Committee:

1. Recommend to the Government the insertion of section 83 from the NSW Retirement Villages Act to enhance the lifestyle of village residents in Queensland.

## Terms of Reference 5

That the Committee:

1. Consider recommending to the Government an increase in penalties prescribed in the Act for gross and multiple offences of the legislation.
2. Note the rigorous, independent and successful industry Accreditation scheme (ARVA) that is delivering for residents and that any move to a mandatory scheme will increase costs and therefore impact on residents and seniors housing affordability in Queensland.
3. Recommend to the Government that a provision similar to section 17 (1) in the NSW Retirement Villages Act be inserted into the Queensland Act to protect consumers from misleading advertising regarding retirement villages. Further, that the Government consult with industry and residents on the final form of this section prior to introduction into the Parliament.

## Terms of Reference 6

That the Committee:

1. Recommend the Government set in place a process for regular monitoring of the supply and demand for seniors housing – in particular retirement villages.

2. Recommends the Government work with the Federal Government to:
  - Ensure the Australian Housing and Urban Research Institute is resourced to measure the demand for, and supply of, aged friendly housing for seniors in NSW.
  - Enable the National Housing Supply Council to continue its annual 'State of Supply' report.
3. Recommend that the Government establish a regular forum between industry, residents and the Government to oversee the supply and demand work, and to discuss how all stakeholders can work together to meet looming seniors housing challenges.
4. Recommend that Government, industry and residents work together to determine new models of retirement village living and how the regulatory environment needs to be reformed in the future so they may be implemented to meet the needs of prospective residents.
5. Recommend to the Government that any amendments or reforms to the Act not be retrospective due to the impact this will have on industry investment in Queensland.
6. That the Committee analyse the regulatory burden placed on not-for-profit operators in light of their inclusion under the RV Act.

## Terms of Reference 7

That the Committee:

1. Note the extensive existing provisions within the RV Act that afford residents with an appropriate level of information, oversight and involvement in protecting their financial interest.
2. Note that resident contracts are the appropriate mechanism to protect the interests of retirement village residents.
3. Does not seek to recommend mandatory resident committees as it is incumbent upon a village community to determine whether they are necessary and whether there is enough resident interest to make them viable.

## Terms of Reference 8

That the Committee:

1. Note the low levels of disputation in Queensland and that the current dispute resolution system is working.

2. Note that the dispute resolution processes must continue to place significant emphasis on alternative means for resolution such as mediation.
3. Give consideration to a process for dealing with resident-to-resident disputes within a village being included in the Act and recommend to the Government that if it wishes to proceed with amendments on this matter to consult with the industry and residents about an appropriate response.
4. Recommend to the Government that QCAT report annually on its dispute handling procedures and outcomes including the following:
  - The number of dispute applications lodged.
  - The number of mediation cases and the number of cases resolved through mediation.
  - The number of disputes heard.
  - The number of disputes settled prior to a hearing.
5. Engage with QCAT about the effectiveness of the current dispute resolution system.
6. Give consideration to potential reforms to QCAT as outlined including ways to reduce frivolous claims, a process for claim amendment, and measures to ensure legal representatives and/or legal advice is readily available to QCAT and parties to disputes.

## Introduction

### Review Context

The Queensland Parliament referred a review of the *Retirement Villages Act 1999* to the Parliament's Transport, Housing and Local Government Committee on 2 August 2012.

Terms of reference for this inquiry are as follows:

1. Provides adequate fair trading practice protections for residents; including providing appropriate material to enable informed decisions to be made.
2. Does not include unnecessary restrictions and provisions which increase the affordability of living in a Retirement Village.
3. 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.
4. Provides sufficient clarity and certainty in relation to the rights and obligations of residents and scheme operators.
5. 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.
6. Adequately promotes innovation and expansion in the retirement village industry, avoids purely 'red tape' requirements, and facilitates the ongoing viability of villages.
7. Affords residents all reasonable opportunities to be involved, should they wish to be, in budgetary and other decisions affecting their financial obligations.
8. Adequately provides a timely, informal and cost-effective process for resolving disputes between residents and scheme operators.

The RVA's Submission seeks to address each of the Terms of Reference. It also takes into account issues raised in the Issues Paper released by the Committee in August 2012 under each of the relevant Terms of Reference.

### The RVA

The RVA is Australia's peak body for the retirement village industry. We represent 800 village and associate members nationally and play a critical role in the ongoing growth and sustainability of the retirement village industry.

With offices located in Brisbane, Sydney, Melbourne, the ACT, Adelaide and Perth, RVA membership consists of retirement village operators, managers, owners, developers, investors and industry specialists across Australia.

As the leading industry voice, the principal objectives of the RVA are to:

- Lead the building and growth of a sustainable and responsible industry.
- Advocate and strengthen our relationships with local, state and federal governments to ensure the best legislative outcomes for the retirement village industry.
- Encourage industry excellence and best practice through accreditation and facilitate quality improvement through an effective and relevant professional development program.
- Support and promote the benefits of retirement villages as the preferred choice of lifestyle for senior Australians.

You can find further information about the RVA and the retirement village industry in Queensland at [Attachment A](#).

## Retirement Villages in Context

The retirement village industry has grown significantly over the past three decades and has evolved to meet the needs of discerning and dynamic consumers aged 65 and over.

Initially, the industry was (and a number of operators still are) focussed on post-retiree markets looking for independent lifestyles including leisure and travel. Villages present a range of benefits for social interaction and communal living and prolonged independence.

Industry analysis now reveals that the profile of consumers has gradually changed over the past twenty or so years, as has the corresponding role of retirement villages.

People are now moving into retirement villages later in life and often staying for longer periods, because many of their care and support needs are met within a village. RVA research highlights that the average of age of a resident in a retirement village in Australia is 78 years old and the age of entry is 73.

Residents are therefore departing more frail and delaying (or even negating) a move into higher levels of aged care.

This concept of service-rich accommodation, such as provided by retirement villages, is also known as 'service integrated housing'.

A recent report by the Australian Housing and Urban Research Institute (AHURI)<sup>2</sup>, described service integrated housing as:

*... 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.*

The report states that interest in this form of housing has been driven by the ageing of the population and the impact of disability and frailty on the capacity of many individuals and households to manage tasks of daily life without support.

The report highlights that:

*... While the majority of those in need of assistance live in the general community with care from formal services and/or family or other informal carers, a proportion live in a range of purpose-built housing for older people that also provides varying levels of support and care services. Little systematic information is available on these forms of housing and the services they provide, but there is increasing recognition that as the period of later life for many Australians lengthens, and as the overall number of older Australians grows, greater consideration needs to be given to the range of housing and care choices available to older Australians.*

RVA members are committed to upholding models of high quality yet affordable housing that can maximise the delivery of flexible, customer-responsive care services: it makes sense, therefore, that retirement villages be recognised as a key element in the spectrum of housing and support services for seniors.

It is for this reason that the RVA was pleased the Federal Government and the Productivity Commission (PC) included retirement villages in its analysis of the aged care system. The industry maintains that two of the key recommendations of the PC work that were not adopted by the Federal Government namely consistent retirement village legislation across Australia, and ways to assist senior Australians to downsize, were a missed opportunity. Further, the RVA believes that they will have to occur in coming years to deal with the consequences of a rapidly ageing population that will seek purpose built accommodation with services such as retirement villages.

There are a number of critical constraints (discussed later in this Submission) that are a significant barrier to delivering more fit-for-purpose accommodation in Queensland.

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<sup>2</sup> Australian Housing and Urban Research Institute, *Service Integrated Housing for Australians in Later Life*, Final Report No. 141 (2010).

## The Role of Government and Retirement Villages

Each level of government plays a critical role in assisting the industry to continue to deliver accessible and well-located villages across Queensland.

One of the key objectives of the RVA is to advocate and strengthen our relationship with all governments to address the future housing crisis for an ageing population and enable people to have choice in their options for housing and ultimately, care. This is critical as the industry crosses all levels of government, each having a different but linked role.

At a local government level there is a great need to need to facilitate supply of retirement village accommodation, particularly in areas where there are limited or no opportunities. Often Council planning approaches and a lack of understanding regarding the low impact on local community infrastructure hinders the development of villages and the social and economic benefits retirement villages actually deliver.

Retirement villages have a great role to play.

At a Queensland State Government level there is an important role in establishing an environment in which the industry can flourish to deliver more housing for seniors and to ensure that the consumer is well protected (which it is under current legislation). A key role is in the development and implementation of planning policy, particularly to facilitate the delivery of affordable, inner urban, higher density, older-person specialist accommodation. The ACT Government has been very proactive in this regard. For some years it has been setting aside land for retirement villages and they are now coming to fruition. All stakeholders – particularly the ACT community, have positively received this.

The Commonwealth Government currently intersects most readily in the area of taxation. The industry is currently struggling with tax constraints that appear out of step with other economic and social policy that aims to deliver increased housing and care for older people. The industry would welcome GST free status, which would have considerable impact on the ability of the industry to continue to supply specific accommodation for older people in Queensland.

Further, it is contended that the Federal Government has an important role to play in the policy levers necessary to:

- Encourage seniors to downsize to appropriate accommodation.
- Consistent regulatory environment for retirement villages across Australia to stimulate investment, remove inconsistencies, reduce compliance burdens, and deliver long-term regulatory certainty.
- Set national targets for the supply of seniors housing.

## Addressing the Terms of Reference

### 1. Provides adequate fair trading practice protections for residents; including providing appropriate material to enable informed decisions to be made.

#### Village residents and consumer protection

The Retirement Villages Act (RV Act) promotes consumer protection and excellent fair trading practices. Indeed this is the very purpose of the Act. The Act contains a comprehensive range of provisions regulating all aspects of retirement village living and retirement village operations, the majority of which are directed at affording residents rights and protections. Furthermore, along with New South Wales, Queensland has the most comprehensive and consumer protectionist retirement village legislation in Australia.

There are similar standards in the Queensland RV Act, as per other consumer protection or fair trading laws and as per legislation in other jurisdictions. The RVA proposes there is no need for whole scale reform of the RV Act as there is no evidence that the current Act is not delivering for retirement village residents in Queensland.

There are some drafting errors or problems with the current Act that arose following amendments by the previous Queensland Government in 2006. The RVA would be pleased to discuss these with the Committee and Attachment B sets out these issues. These issues do not represent whole scale reform of the Act. It is the RVA's view that all stakeholders should work together in rectifying these issues.

Further, the RVA submits that any amendments to the RV Act should be made on the basis of empirical evidence that indicate a section of the legislation is not effective or inadequate and change is necessary.

An effective way to assess whether the Act is delivering for retirement village residents is to analyse available dispute data or Tribunal cases, which is the most representative form of complaints in villages that are provided for under Queensland's consumer protection system.

The number of disputes in Queensland that end in a reported decision of the Tribunal is currently, and historically, very low. This supports the view there is no need for a wide-ranging reform of the legislation. Below are some facts to support this assertion.

Reported QCAT decisions – retirement villages	om 1/6/12 – 30/6/12 – 3 reported decisions	11 – 8 reported decisions	10 – 2 reported decisions	Queensland Commercial and Consumer Tribunal - Retirement Villages List	Decisions	09 – 6 reported decisions	08 – 7 reported decisions	07 – 3 reported decisions
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Against the backdrop of the RV Act and the protection it affords Queensland seniors, there is a broad and comprehensive set of legislation and regulations that provide consumer protection to all members of the community, including older persons and retirees.

Moreover, there exist a variety of general consumer protection laws at both the State and Territory level, and at the Federal level. These laws provide far-ranging avenues and protections for all consumers, including retirement village residents. Here are some examples.

- Fair Trading Act 1989 (QUEENSLAND).
- Sale of Goods Act 1986 (QUEENSLAND).
- National Credit Code (as part of the National Consumer Protection Act 2009).
- Australian Consumer Law (as part of the Competition and Consumer Act 2010 (Federal)).

The Australian Consumer Law, a recently enhanced *Trade Practices Act 1974*, deals with issues such as misleading and deceptive conduct, unconscionable conduct and unfair contract terms.

In relation to retirement villages that are community title schemes, residents are also afforded protection via the *Body Corporate and Community Management Act 1997* (Queensland), the *Property Agents and Motor Dealers Act 2000* (Queensland) and the *Land Sales Act 1984* (Queensland).

In many cases, consumers (including village residents) are able to seek redress through low-cost dispute resolution avenues such as the Queensland Civil and Administrative Tribunal.

The RVA's Accreditation scheme is extremely important in ensuring retirement village residents have peace of mind when entering and living in a village. Accreditation is available to any village that can address the 27 rigorous standards as assessed by an independent committee, which includes residents.

Accreditation aims to improve all aspects of a village, from infrastructure, process and policy, as well as staff performance. This results in a higher quality of service being delivered to residents living in an Accredited village.

Further information about the RVA's Accreditation Scheme can be found later in this Submission and via the RVA's website [www.rva.com.au](http://www.rva.com.au).

The RVA contends that residents and prospective residents of retirement villages in Queensland are already accorded a high level of protection in their dealings with retirement village operators.

Our industry acknowledges that this is appropriate and proposes there is no need to introduce more or greater rights or protections for residents into the RV Act.

Importantly, the RVA believes that care needs to be taken to ensure the regulatory environment for industry and residents is not further complicated, nor duplicated.

## Effectiveness of Prospective Resident Information

The RVA strongly believes that the information provided to prospective retirement village residents in Queensland can and should be improved to ensure they are in a position to make an informed choice.

### **Public Information Document (PID)**

Feedback from prospective residents about the current PID is that it is too large (some 140 pages), complex and confusing. The RVA believes too believes that it is overly cumbersome. The first 18-19 pages provide a general overview of information in the Act and over complicate the document.

The PID is repetitive and confusing for many residents because the standard information in the front of the document does not specifically relate to the village the prospective resident is enquiring about.

Information within the PID needs to be simplified and the document needs to be shortened by removing the non-essential and repetitive content. The longer the document the more likely it will confuse a prospective resident or the prospective resident will simply not read the critical information necessary to make an informed decision, which is clearly the objective of all stakeholders within the industry.

Both Queensland peak industry bodies (the RVA and Leading Aged Services Australia (Queensland) (LASA)), in consultation with ARQRV, have worked constructively and proactively together to develop a simplified version of the PID that complies with the current legislation.

The RVA contends that this draft PID would provide immediate benefits to consumers. A copy of this draft PID is at Attachment C.

In terms of the draft PID at Attachment C, the following should be noted:

- The PID has been designed to complement a revised Queensland Government consumer guide and is to be provided with the current "Retire Smart" booklet. This booklet is an excellent a pocket guide to retirement living in Queensland and Part 1 (Generic Information) of the current prescribed Form 1 PID. By relocating all of the generic information in Part 1 of the current prescribed Form 1 PID, which merely summarises the RV Act into the consumer guide, the PID will be shorter, simpler and more readily understood.
- The content of the PID (assuming that the Queensland Government consumer guide at the date of the PID is incorporated into the PID by reference) satisfies the mandatory content requirements of the current Act (see sections 74 to 83), thereby avoiding any need to amend the Act itself.
- Duplication of information, which occurs in the current prescribed Form 1 PID has been removed.
- The format of the information included in the PID has been enhanced so that it is easier to read and understand. This includes, for example, the use of tick boxes and helpful notes about how to complete the form.
- The structure and layout of the PID has been altered so that 'decision critical' information is more clearly identified and understood, and prospective residents can more easily make comparisons between different retirement villages. In particular:
  - Critical information appears early and prominently.
  - All resident-specific or tailored information appears in one place (see Part B of the PID) rather than scattered throughout the PID as is the case with the current prescribed Form 1 PID.
  - Certain attachments to the PID are prescribed and these must appear in the same place (and be numbered the same way) in the PID for every village.
  - The scheme operator and the prospective resident, at the end of Part B of the PID, sign the PID.

If the Act were to be amended to rationalise the mandatory content requirements of the PID that are contained in the current Act (see sections 74 to 83), the PID could be simplified even further. This can be done without compromising the level of material disclosure to prospective residents. The RVA proposes that, along with the adoption of a simplified PID, that industry, residents and the Government work together to simplify the mandatory content requirements within the Act.

### **Other Excellent Consumer Focused Publications**

The RVA believes the Government's Retire Smart publication is excellent and of great value to prospective residents of retirement villages. This document should be promoted and should be more widely available, and the RVA will assist via its extensive village network.

This publication provides useful information in a simple format. It is recommended this publication be provided to prospective residents along with the PID.

Retire Smart is provided to industry for prospective residents although the number of copies able to be supplied has been severely limited and the RVA believes it should be freely available as a great information source.

The RVA produces a booklet entitled 'Your Questions Answered'. The Association has been proactive nationally in assisting prospective residents to access the information they need to make informed decisions. This booklet is reinforced by the RVA web site, which also includes relevant information – [www.rva.com.au](http://www.rva.com.au)

The booklet is currently being redeveloped to reflect contemporary information and is anticipated to be available in late 2012. All information is, however, available via the RVA website.

These publications ensure there is sufficient and comprehensive information available to prospective village residents in a simple and logical format that addresses the majority of questions that residents may have when making this important decision.

### **Retirement Village Act and Other Legislation**

It is difficult to compare the Queensland RV Act with legislation regulating other forms of accommodation in Queensland because they each have different objectives. The types of accommodation are vastly different in nature from retirement villages. Accommodation provided in a rental or hostel setting is completely different to a strata development or to a retirement village, which focuses on communal and supportive living. Retirement villages cater for older people specifically with different contractual relationships between resident and operator.

The separate legislation regulating each type of accommodation is appropriately materially different. The level of regulation required to ensure effective consumer protection differs in each case.

Given the long-term ('life time') tenure afforded to residents of retirement villages, combined with the fact that facilities and services are provided to them as part of the accommodation model, the Act regulates retirement villages to a significantly greater degree than the *Residential Tenancies and Rooming Accommodation Act 2008* (Queensland) and the *Body Corporate and Community Management Act 1997* (Queensland), which regulate rental / hostel accommodation and strata ownership respectively.

The RVA accepts that good policy and sound regulation is appropriate in the retirement village setting. It is submitted, however, that the current level of regulation is adequate without the need for material changes.

In particular, the RVA contends that it needs to be recognised that becoming a resident of a retirement village involves a decision to relinquish to the scheme operator a range of decision-making responsibilities that a person might otherwise have whilst living in their own home or in a rental or strata setting.

Under the typical retirement village model, the day-to-day management, administration and operation of the retirement village becomes the responsibility of the operator, affording residents the ability to relax and enjoy their retirement without being troubled by the plethora of day-to-day decisions faced by people living in the broader community.

In fact, this is precisely the benefit that the retirement village model offers over other forms of accommodation, and why around 40,000 seniors in Queensland choose this accommodation option.

It is essential that any reform of the Act respect the need for operators to have the necessary degree of freedom and flexibility to manage village facilities to ensure they can continue to invest and offer the highest standard of accommodation and lifestyle to residents. Ultimately, this will benefit all resident communities and ensure the continued viability of the industry in Queensland.

## Recommendations

That the Committee:

1. Does not recommend to the Government a full re-write or major reform of the current Act as the Act protects the rights of residents and appropriately balances the needs of residents and operators.

2. Recommends to the Government that the drafting issues identified in Attachment B be rectified, that the Government work with industry and residents to draft the necessary amendments, and that consultation occur on the final form of amendments.
3. Note the evidence relating to very low retirement village related Tribunal cases in Queensland and that this demonstrates the regulatory environment is delivering for retirement village residents.
4. Note the gamut of laws that exist to protect consumers in Queensland and that further laws are not necessary.
5. Recommend to the Government that a simplified PID be adopted as per Attachment C and that this be provided to all prospective residents along with a revised Government consumer guide to ensure they receive the information they need to make informed decisions.
6. Recommend to the Government that a forum between Government, industry and residents be established to simplify and rationalise the provisions in the RV Act relating to the PID requirements.
7. Recommend the Government readily provide copies of Retire Smart to operators and residents to ensure all residents receive the publication with the PID.
8. Recommend to the Government that Retire Smart be made freely available upon request – for industry, residents and prospective residents.

## **2. Does not include unnecessary restrictions and provisions which increase the affordability of living in a Retirement Village.**

### **Senior Housing Affordability Is An Issue**

Senior housing affordability is a major issue for the Queensland retirement village industry, Queensland seniors and the community as a whole. The rapidly ageing population is going to exacerbate this problem if steps are not taken to encourage industry investment and innovation in housing that is specific to the needs and circumstances of seniors.

From the outset, the RVA must put forward the proposition that any regulatory uncertainty, regulatory change or an increase to the current regulatory burden, will not only impact on investment, but will impact on affordability. Any increases in regulations result in increasing the compliance burden and therefore costs. Costs ultimately impact on the product offered and will

impact on residents, as any new cost to a business must be borne by the business in its entirety. This is a major hurdle for the sector in retaining affordability, which has always been a key driver for the industry.

Increasing costs to operators do materialise in the form of increasing costs to residents. They get passed on in a variety of ways – through charges, entry prices and / or a reduction in services. The RVA does not want to see this happen again in Queensland, particularly given the financial constraints we all face now.

With this in mind, and while the RVA does not believe there is a need for major reform of the Act, should the committee seek any changes and the RVA requests that it be mindful of the consequences for all.

## Affordable Retirement Living

The RV industry in Queensland is committed to ensuring there is choice in the market for older people.

Historically, there are aspects of retirement village living that are very affordable to seniors. The very model of village living delivers affordable services and living solutions that cannot be gained by living elsewhere. The economies of scale mean that seniors access services and the charges for these services are the actual cost. Operators do not derive any profit from this essential service delivery.

The accommodation model is all the more affordable because it is incumbent on operators to replace infrastructure and facilities when necessary. These are funded for the tenure of the resident.

Conversely, should an older person choose to stay in the family home, they do not have to repair their home and nor does it have to be maintained to a high standard. This commitment to maintaining a high standard of living by operators means that the re-sale of units later and the resultant capital gain share residents and operators enjoy, returns for all.

Exit fees / deferred management fees have been used by operators for decades to make retirement village living affordable as they enable the resident to delay the cost of many aspects of living until they sell the unit when they exit. The model means that operators bear all the development costs, particularly the common use infrastructure costs of things like building community halls, and therefore the risk.

The operator is essentially deferring any returns and often profit is not realised for over a decade. Prospective residents, if they have to pay all or part of the construction costs of the village up front, the accommodation would be priced out of their reach. Hence, exit fees and deferred management fees are a key affordability tools. Further information about exit fees can be found under Terms of Reference 3.

In addition, retirement village units are generally priced considerably below the medium house price of the suburb. This enables older people to sell their home, purchase a unit and then have some money left over to contribute to their future care needs and retirement lifestyle.

This aspect of the village model is, however, increasingly under threat. This is an affordability problem for governments, for-profits, not-for profit operators and all seniors.

The RVA's membership is 60% for-profit operators and 40% not-for-profit operators. Not-for-profit operators are therefore a significant part of the retirement village market and have an extremely important role to play in the provision of affordable seniors housing and services. For-profit operators too know they need to provide an affordable product or sales will be impacted.

Historically the church and charitable sector has continued to provide affordable and appropriate housing, shelter and care to aged persons. For some time now, the challenge of increasing the provision of affordable accommodation has been heightened.

There are a number of factors that are contributing to the lack of affordable seniors accommodation in Queensland and these are:

- The costs of developing or redeveloping retirement villages in locations that are suitable to the cohort i.e. that is close to public transport, shopping and community networks. If land does become available it is either price prohibitive or priced in such a way that accommodation is developed that it not affordable for many.
- The regulatory burden on not-for-profits is such as that they are left with less and less to reinvest back into the organisation for future housing developments. This is in part contributing to the stalled investment in seniors housing the State is experiencing. It should be noted that for-profit operators are also not investing due to the very long-term nature of seeing any returns.
- There are lack of incentives such as rental assistance that meant seniors are choosing to stay in the family home despite this being a sub-optimal accommodation option for their age – and contributing to the intergeneration equity problem whereby younger people in Queensland cannot access or afford their first home.
- There is inflexibility in the regulatory environment for the industry to try different models to meet the affordability issues in Queensland.

### **Exit Fees Explained**

The RVA notes the questions in the Issues Paper released by the Committee in relation to exit fees and provides the following in response.

Exit fees are an affordability tool as noted above. They are not the operator's profit and they constitute the primary source of income for operator's from which they pay the following:

- Capital replacement fund contributions.
- Capital improvement costs.
- The operator's share of reinstatement costs.
- The operator's share of general services charges of vacant units.
- Compliance costs.
- Corporate financing and operating costs.

Operators do not receive any income on their own account from the collection of general services charges and payment of village operating costs.

Another source of income for operators is capital gain income from the share of capital gain they are entitled to from the re-sale or re-lease of units in accordance with residence contracts.

Exit fees are calculated by applying a percentage either to the amount paid by the resident for their unit when they first moved in, or to the amount paid by the next resident. The percentage applied usually increases for each year of occupancy of a unit. The following table illustrates this.

<b>Period of time between the Commencement Date and the Exit Date (i.e. the period of occupation of the accommodation unit)</b>	<b>Exit Fee Percentage that applies</b>
1 year or less	7.5%
2 years or less but more than 1 year	15%
3 years or less but more than 2 years	20%
4 years or less but more than 3 years	25%
More than 4 years	30%

Retirement villages compete in a vigorous, competitive market and as a result exit fees vary considerably across the industry both in terms of the quantum percentage, the number of years involved, and whether the exit fee is calculated on the period of occupancy in days, months or years. The Act requires operators to disclose their exit fees and how they are calculated, thus enabling prospective residents to compare villages and exit fees before signing a contract.

For the purposes of raising equity or obtaining bank finance, retirement villages are valued by a cash flow approach to assess the current market value of the 'proprietary rights' attached to the scheme. The value of proprietary rights is determined by calculating the level of income derived from exit fees and capital gain income over an investment horizon of at least 20 years. Some proprietary rights are valued over 50 years. Clearly, if future exit fees are reduced, the valuation of retirement villages will be reduced and viability threatened.

### **Planning: Access to Appropriate and Affordable Land**

The RVA contends that lack of access to cost effective land is one of the key impediments to increasing the supply of seniors housing in Queensland. This is particularly important in terms of affordable housing options.

This has a number of impacts including:

- Proliferation of seniors housing in fringe areas, where land is cheaper but infrastructure, transport and community infrastructure is in shorter supply.
- Lack of housing in inner - urban areas, where many older people want to age in place. This is where they have familial and friend connections, and as well knowledge about local facilities that provides a sense of safety.
- It does not promote delivery of affordable housing options.
- It does not stimulate apartment style products in lower socio economic areas that may also meet government housing policy objectives.
- A lack of planning certainty for developers that mitigates against development as a consequence of long planning timeframes and increased costs.

The RVA believes the current planning system, which is ultimately controlled by the Queensland Government through the Sustainable Planning Act (SPA) and implemented at the local level, could accelerate planning processes for retirement villages to ensure housing is delivered in an appropriate range of formats for seniors - and in the locations where they wish to live and age.

Whilst the RVA believes the issue of seniors housing is so significant that a nationally driven, Commonwealth- lead set of planning targets (for a set quota of housing to meet demand in specific areas) would best ensure seniors are able to access appropriate housing across Australia, there are some immediate steps the Queensland Government can take to drive renewed investment in retirement villages.

Planning reforms that are targeted towards the delivery of seniors housing would assist the industry to deliver a wider range of products.

Such reforms could include:

- Initiatives to speed up planning timeframes.
- Addressing local government disparity in the way in which seniors housing is assessed (e.g. Code accessibility).
- Adding a requirement for land purchasers to include a percentage of land development targeted to seniors housing.
- Allowing different zonings for retirement villages to be accommodated in association with other relevant uses (for example, retail, commercial, mixed use).
- Ensuring seniors housing targets for all developments, but particularly in inner urban areas and transport oriented developments (i.e. development around major transport nodes).
- Governments working with industry to deliver inner urban solutions where the development of villages is most difficult and costly, including investigation of surplus government or brownfield sites that could accommodate seniors living.
- Introduce a seniors housing code in the SPA that recognises the low impact of retirement villages by allowing higher density (higher plot ratios and building heights and low set-backs), lowering car parking requirements, and lower headworks costs.

The RVA stands ready to the work with the Queensland Government in a creative collaboration to deliver more and better seniors housing.

### **Lack of Incentives: Rent Assistance**

The Federal Government has a rent assistance scheme that aims to assist people to find appropriate accommodation. The criteria for this scheme are restrictive and essentially encourage low-income seniors into sub-standard accommodation. Further information about the scheme can be found at <http://www.centrelink.gov.au/internet/internet.nsf/publications/co221.htm>.

It is recommended the Committee closely scrutinise eligibility for the rent assistance scheme and determine the minor amendments that may be required to assist Queensland seniors.

The RVA notes that this is a Federal scheme, however, we also note that the Queensland Government could take a leadership position and push for reform that can have a positive affordability impact for retirees in accessing housing.

## **Lack of Incentives: Encouraging Seniors to Downsize**

Housing is often seen as the fourth pillar of Australia's retirement income system, after pension income, voluntary savings and superannuation (Yates and Bradbury, 2009)<sup>3</sup>.

The RVA agrees with the Federal Government's Advisory Panel on the Economic Potential of Senior Australians and its assessment that:

*Much of the wealth of the current cohort of ageing Australians is locked up in ways that cannot be used to meet challenging circumstances, primarily as residential property, often in the post-war housing stock of a single house on a suburban block<sup>4</sup>*

Given the ageing population, all governments in Australia need to consider new and creative ways to support seniors to downsize from standard residential homes.

It is in the interest of retirees as they will no longer, for example, have the same home maintenance issues and nor will they have to potentially and expensively modify their existing home to cope with changed circumstances. There is also ample evidence to show that making the decision earlier makes it easier for seniors to adapt to the change and enjoy the resulting new lifestyle.

Implementing new and creative ways to support seniors to downsize is also important for governments and the broader community. It frees up standard residential stock for future generations, it should assist with housing affordability issues across housing market segments, and should Queensland seniors make the decision earlier and be in appropriate accommodation, they are more likely to live independently longer.

The Federal Government has received two pieces of significant advice about the ways in which seniors should be supported in downsizing to appropriate accommodation and to free up their existing equity to provide for their future care needs. The Productivity Commission's aged care reform report and the Advisory Panel have both observed that there are disincentives in the system that should be removed.

Key issues the RVA believes need to be addressed are the existing stamp duty arrangements, a focus on pension entitlement rather than overall financial position, and a lack of readily available and accessible advice for seniors in planning for their retirement and their future needs.

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<sup>3</sup> Advisory Panel on the Economic Potential of Senior Australians., *Realising the economic potential of senior Australians; enabling opportunity.*, Commonwealth of Australia., 2011., page 19.

<sup>4</sup> Advisory Panel on the Economic Potential of Senior Australians., *Realising the economic potential of senior Australians: enabling opportunity.*, 2011., page 3.

Stamp duty on properties adds to transaction costs and there is no doubt that this suppresses the number of transactions in the housing market. It can act as a deterrent to seniors making the decision to move to more suitable housing and can, in effect, reduce the supply of appropriate and affordable senior housing.

The RVA contends that there is a need to reform the stamp duty payable on seniors housing such as retirement villages to encourage senior choice in accommodation.

As the Federal Government's Advisory Panel has observed, the current retirement system provides a focus on pension entitlement rather than the overall financial position of Australian seniors. This is a further barrier to Queensland seniors accessing housing to maintain independent living. This means that a senior may be concerned that their pension entitlement will be reduced due to the increase in assessable assets derived from any gain in downsizing.

The RVA is cognisant of the fact this issue is primarily a Federal issue. On the other hand, should change occur, the benefits would flow to the Queensland Government and the Queensland community.

There are the village style living benefits as per Attachment A, and the broader economic and social benefits such as freeing up residential stock for younger generations, and providing greater accommodation and care choices for Queensland seniors.

Removal of the current pension and assets testing disincentives would provide the opportunity for seniors to contribute to their future housing and care needs.

In addition, the RVA contends that there is a need to ensure that Australian seniors have access to appropriate financial advice to enable to make decisions before or upon retirement. Advice regarding pension access should be readily available.

There remains an opportunity for the Queensland Government to lend its support to calls for a change to the pension asset test and to use forums such as the Council of Australian Governments (COAG) to press for reform.

### **Lack of Flexibility**

The ageing population, different needs and expectations of seniors, and the current prevailing aged care policy environment that promotes 'ageing in place' are all factors that are driving the industry's need to innovate to provide accommodation options. Given the ongoing impact of the global financial crisis on retirement incomes, the industry is very mindful of the need to provide affordable accommodation options.

In Queensland, the current legislation is geared to providing a regulatory environment for one model of retirement village. This stifles flexibility and inhibits industry's response to the affordability issue. The types of innovative senior housing models that operators may, but for the Act, wish to implement range from pure rental models to different combinations of ingoing contribution, rent and exit fees.

In order to provide for this necessary innovation, the Act needs to incorporate flexibility for operators to derive profit from any source that is contractually agreed with residents – and suits the resident's circumstances.

This issue is discussed further under terms of reference number 6.

### **Equal treatment for all Queensland pensioners**

The RVA strongly believes that all Queensland pensioners should receive equal treatment regardless of their accommodation choice or where they live. Pensioners living in retirement villages should also receive recognition for costs they pay that reduce the impost on their local Council.

There are two readily apparent examples that can be used to demonstrate this inequality:

- Pensioner water rebate. This rebate is available for pensioners living in standard residential homes and is not always available for retirement village pensioners. Access to this rebate varies according to local government legislation.
- Reduction in Council rates. Council rates are a significant cost of a retirement village. This is despite the maintenance and day-to-day operations of a retirement village being fully funded by monthly service fees paid by village residents. The Council is not responsible for any road works, maintenance, and provision of lighting or cleaning within the village. The operational costs of a retirement village are fully funded by the residents and they do not receive any government funding.

By living in a village, these seniors actually access fewer government provided services and infrastructure – such as recreational facilities.

As outlined above, seniors living in a village reduce costs for Councils however receive no dispensation for this.

When pensioners make plans for their accommodation and care needs, financial disincentives such as these can make a difference in that decision making. This should not continue to be a factor.

## Residents Protected

Prospective residents are afforded many protections through the current regulatory environment. At the point of considering entry into a retirement village, there are appropriate protections to insure against uninformed or inappropriate decision making. A summary of these protections is as follows.

### **Public Information Document (PID)**

The requirement that a prospective resident receives a PID, which includes all information relevant to making an informed choice, is an excellent way of assisting Queensland seniors. The PID includes information about:

- Entry into a village.
- Living in a village.
- Departing from a village including examples of how exit fees and exit entitlements are calculated.

Prospective residents must be provided with the PID prior to signing a binding agreement or contract.

The extent and degree of mandatory disclosure required as part of this process, is already the most extensive under any retirement village legislation in Australia.

### **Cooling off period**

All prospective village residents in Queensland are provided with a 14-day cooling off period, within which they may change their mind about their accommodation choice without any penalty.

Queensland's cooling off period provides the greatest protection of any cooling-off period in existing retirement village legislation in Australia. It is unable to be waived, attracts no penalty and is of the longest duration.

These protections, the PID and the Cooling off period, combine to ensure that a prospective resident is well equipped to make a fully informed choice about entry into a retirement village.

## Appropriate Funds Governance for All

The governance provisions built into the Act, dealing with the capital replacement fund and the maintenance reserve fund, are adequate and appropriate.

Both funds must be held in separate accounts set up for the particular purposes (sections 91 (1) and 97 (1)). Furthermore, the amounts that must be paid into the accounts, by whom the accounts must be paid, and the purposes for which funds are able to be withdrawn from the accounts, is clearly set out in the Act (sections 91 (2) to (5) and 97 (2) to (5)).

There is no evidence of there being any material level of complaint or concern with the basic governance provisions of the Act in relation to these funds.

It is noted that a source of disputation between operators and residents in the past in relation to these funds has centred around the classification of particular items of expenditure.

The basis of disputation has been whether particular items of expenditure constitute 'maintenance' or 'repair' of a capital item that must be funded from the maintenance reserve fund (contributed to by residents) or 'replacement' of a capital item that must be funded from the capital replacement fund (contributed to by the operator).

Section 113A of the Act makes provision for a regulation to be made that prescribes model rules about the classification of items of expenditure. No such regulation has ever been made.

In an example of industry leadership and commitment to effective self-regulation, the RVA and LASA collaborated to prepare and implement a set of guidelines for the classification of items of expenditure entitled *Guidelines – Maintenance Reserve Fund and Capital Replacement Fund*.

See Attachment D for a copy of these Guidelines.

Importantly, these Guidelines have significant support from village residents and have indeed been endorsed by the ARQRV. The Guidelines have largely been effective in putting an end to disputes about the classification of expenditure.

Whilst the industry is mindful of adding further layers of complexity or uncertainty, the RVA would support the Guidelines being adopted by the Government to provide residents with absolute certainty.

It is proposed the Committee recommend to the Government that the Guidelines at Attachment D be adopted to form the basis of a regulation prescribing model rules under section 113A of the Act.

## Recommendations

That the Committee:

1. Note that any increase in regulation or compliance burdens will impact on affordability of seniors housing in Queensland. Further, that any proposed changes to the RV Act are submitted to an appropriate cost benefit analysis that assesses and reports on the economic impact and affordability impact.
2. Note that exit fees and deferred management fees are a key affordability tool for prospective Queensland seniors wishing to enter a retirement village.
3. Recommend to the Government that Government, industry, and resident work together to look at the mix of retirement living models that might be accommodated within the Act to ensure affordability and a wide range of options for Queensland seniors into the future.
4. Recommend to the Government that it consider planning reforms to meet looming seniors housing supply and affordability challenges in Queensland including: reforms to SPA such as a retirement village Code; retirement village zoning to encourage investment; and promoting the availability of land.
5. Recommend to the Government that it work with industry, including the RVA, in a creative collaboration to deliver more and better seniors housing.
6. Recommend to the Government that it lead a renewed partnership between Federal, State, local government and industry to work together to develop more age friendly and integrated housing communities.
7. Recommend a reduction in stamp duty payable on seniors housing such as retirement villages to encourage senior choice in accommodation.
8. Assess the current Federal Government's rent assistance scheme to determine the minor amendments necessary to ensure Queensland seniors can access to the scheme in order to move into a retirement village. And, consider recommending to the Government that it work with the Federal Government to change the scheme's eligibility criteria.

9. Recommend the Government work to encourage the Federal Government through the COAG to remove current pension and assets testing disincentives to free up equity for seniors to invest in their future housing and care needs.
10. Investigate ways that seniors can be supported in financial literacy and in accessing the independent financial advice they need to make decisions about their future. This would include information about the impact of housing decisions on their overall financial position.
11. Recommend to the Government that all pensioners in Queensland have the same access to concessions and rebates regardless of where they choose to reside. Further, recommend the Government impress upon local Councils to provide council rate rebates to retirement villages in recognition of the reduced operational costs for Councils where retirement villages are located.
12. Note that the PID and cooling off periods offer extensive protection to prospective retirement village residents and are the most comprehensive in Australia.
13. Recommend to the Government the adoption of the *Guidelines – Maintenance Reserve Fund and Capital Replacement Fund at Attachment D* and that these form the basis of a regulation to prescribe model rules under section 113A of the Act. Further, that the Government consult with industry and residents about the final form of this regulation.

### **3. 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 RV Act provides extensive certainty, accountability and transparency for residents in relation to their financial obligations. Certainty is essential for residents and operators.

The village contract itself provides certainty and security. It is important for industry and resident confidence that any changes to the legislation do not impact on the contract to which the operator and resident have agreed. Residents should have confidence when they enter into a Residence Agreement that the integrity of the Agreement will be upheld. Retrospective changes to existing contracts through RV Act amendments can destroy confidence in the retirement village concept from residents, operators and investors.

## Resident Financial Obligation Certainty

The Act contains a range of provisions to ensure residents are fully informed about their financial obligations, both before choosing the retirement lifestyle afforded by the village, and during their occupancy.

Prior to entering village life, a prospective resident must receive a PID. This PID must set out the details of:

- The ingoing contribution.
- The general service charges (including contributions to the maintenance reserve fund), personal services charges, and other recurrent fees and charges.
- The exit fee (including worked mathematical examples).
- The exit entitlement (including worked mathematical examples).

Residents are provided with certainty and further informed through the following:

- A cap in accordance with the Consumer Price Index (CPI) on general services charges that provide for day-to-day living expenses. There are reasonable exceptions to this whereby costs are increased beyond the operator's control, for example, due to an increase in government rates. Residents also have the option of affecting greater increases and the resident community, by special resolution (75%), can vote in favor.
- The Act mandates consultation with resident committees about proposed budgets for general services charges and maintenance reserve fund contributions prior to the commencement of each financial year. This ensures residents do have a say in the budget for the village and enables the sharing of information.
- Section 107 A prohibits operators from increasing the charge for a particular service without considering whether there is a more cost-effective alternative to the general service. This provides good protection for residents.
- Sections 90, 90A, 90B, 91 and 108 of the Act prohibit the passing on by operators of expenditure for capital replacements, capital improvements and new facilities and services to resident, without the express approval of the resident concerned or the resident community. These provisions provide residents with a significant degree of certainty and control over costs, which is appropriate given the community nature and partnership arrangement incumbent in the retirement village model.

Importantly, the Act mandates quarterly and annual financial reporting about expenditure incurred in providing general services and a range of other information about the financial status and performance of the village. Section 112 (1) provides any resident with the right to receive a quarterly financial

statement and Section 113 requires that each resident be given an independently audited annual financial statement. Further, section 112 (4) entitles resident committees to receive explanations about expenditure excesses over budget estimates.

It should be noted that the RVA does believe that it is unrealistic for anyone, operator or resident, to expect absolute certainty about the costs of living of any environment. External changes to an operating environment can have a material impact on costs and are outside the control of operators. These can include changes to industrial relations or occupational, health and safety laws.

All of the above provisions do combine to provide a robust framework for ensuring that residents have as much certainty as can reasonably be expected about their financial obligations with regard to living in the village.

Existing obligations in this regard do place a burden on operators and any additional regulation in this area is unlikely to result in greater certainty for residents and will instead simply increase operating and management costs, which will ultimately result in a higher cost of living for residents.

### Exit Fee Information: Transparency and Availability

There are many different models in relation to the exit fee arrangements across the industry. Just as there are different contracts, different operators, and different types of villages. Older villages tend to have a different model to newer villages, and there are differences even across all villages with the same operator.

It is also very common for different contract arrangements for independent living units in one village, often reflective of the long history of some villages and contract conditions that were established for a particular time in the lifecycle of the village. What is important is that there is a fair and transparent PID. The RVA again refers members of the Committee to the draft PID at Attachment C.

When entering a village, a resident's potential exit fee and how this is calculated is transparent. This is part of ensuring residents are in a position to make an informed choice about their accommodation.

The Act enables residents who are already living in a village to request exit fee information and the current provisions provide balance between the needs of residents who might be considering exiting the village, and the needs to village operators to effectively manage the village and existing resources.

Section 54 of the Act enshrines this appropriate balance. It requires the resident to state that they are considering leaving the village and providing that only one estimate is required to be given to the resident in any 6 month period, the process to obtain an estimate is triggered and it is subsequently provided to a resident.

The Act does not require the resident to actually terminate their right to reside if they request an estimate of their exit entitlement, and their request for an estimate does not have any legal consequences other than triggering the requirement for the operator to provide the resident with that estimate.

Calculating an exit entitlement involves the operator reviewing the terms of the resident's contract and the PID, and establishing and calculating a range of financial data including:

- The resale value of the unit (this may require valuations to be undertaken and paid for).
- Reinstatement costs.
- Costs of sale.
- Outstanding service charges.
- Exit fees.
- Capital gain and loss sharing.

Given the resources, time and cost involved, it would be burdensome should this be extended to enable residents to ask for this information at any time.

It is very reasonable that a resident be given the right to request a formal estimate in circumstances where they are considering leaving the village. If that right were to be unqualified, there is a risk that a certain percentage of residents would unreasonably request this information, placing an excessive burden on operators and detracting from the time and resources available for other aspects of village management that benefit the resident community as a whole.

The RVA contends the RV Act should not be amended in this regard.

## Exit Fees, Section 53A and Ongoing Uncertainty

The RVA contends that the insertion of section 53A into the Act on 1 March 2012 is not a 'clarification' in relation to calculating exit fees.

This section actually changed the law to introduce a mandatory daily pro-rata calculation of exit fees. Furthermore, the industry believes section 53A does not provide residents with any more certainty or transparency in relation to their financial obligations.

In relation to contracts entered into after section 53A commenced, the Act is clear and certain. It is clear that, for those contracts, exit fees worked out having regard to the length of the resident's occupation of their accommodation are to be worked out on a daily basis.

Introduction of 53A has, however, created much uncertainty in relation to contracts entered into prior to the section's commencement.

Section 53A requires the exit fees payable under those contracts to be worked out on a pro rata daily basis unless the contract provides '*a way of working out the exit fee that is not on a daily basis*'.

Unfortunately, section 53A gives virtually no guidance other than one example formula (which is also confusing) as to when a contract will be taken to provide '*a way of working out the exit fee that is not on a daily basis*'.

It is unclear what is required to render any particular exit fee clause in a residence contract a type that provides for the working out of the exit fee 'on a daily basis'. This section is unsatisfactorily vague for operators and residents, and is capable of resulting in disputes.

Since the 2012 amendment, there have not been any reported decisions of the QCAT on section 53A or about exit fees generally. The absence of litigation, however, should not be taken as an indication that section 53A is clear and unambiguous, as the amendment has only been in place for a short period of time. There has been insufficient time for the amendment to be properly tested.

## Village Closure and Certainty for Residents

The Issues Paper released by the Committee seeks comment on the adequacy of the RV Act in providing for residents in the event that a village closes down. It is the RVA's view that the Act does not provide adequate certainty as to residents' financial obligations in the event that a village closes.

In October 2011, the RVA provided a Submission to a Ministerial Working Party on this matter and this Submission is at [Attachment E](#). The RVA would welcome a discussion with the Committee about these matters.

## Death and Termination of Contracts

Obviously the death of an older person is distressing for their family and their community. This is especially so within a village situation, which is a micro-community.

Village operators are mindful about how this is handled as it does go to the ongoing culture within the village and given the partnership model of retirement living, a good culture is essential for residents and operators.

The commentary in the Issues Paper is incorrect when it states that the estate of a resident who dies may be to pay personal services charges for up to two months afterwards. As section 102 of the Act provides, a resident who passes away is liable to pay a personal services charge up to 28 days after the contract is terminated. Section 55 of the Act provides that the contract terminates automatically on the death of a resident.

Therefore, under section 102 the personal services charges are only payable for 28 days after the death of a resident. This is actually advantageous for the resident's estate.

## Recommendations

That the Committee:

1. Note the existing provisions in the RV Act relating to financial oversight and disclosure are rigorous and provide residents with certainty, information and an appropriate role in decision-making.
2. Note that the Act enshrines an appropriate entitlement for retirement village residents with respect to seeking information and an estimate of their exit fees and entitlements.
3. Recommend that the Government observe the implications of section 53A to determine whether this poorly drafted and confusing section of the RV Act contributes to disputes.
4. Note the RVA's proposals in the Closure of Retirement Villages Submission at Attachment E and recommend the Government work with industry and residents to ensure the Act provides adequate certainty as to resident's financial obligations in the event that a village closes down.
5. Note the current provisions in the Act in relation to the death of a resident and that personal services charges are payable for 28 days only.

## 4. Provides sufficient clarity and certainty in relation to the rights and obligations of residents and scheme operators.

The PID, the Government's Retire Smart publication and the resident contract all provide sufficient information to prospective retirement village residents. The role and responsibilities of retirement village operators are clear.

As above, the RVA believes simplifying the document will strengthen the PID and ensure it is clearer for prospective residents. See the draft PID at Attachment C.

## Reform Proposal: Protecting Resident Rights

The RVA believes that the RV Act could be strengthened in relation to resident rights when there are disputes between residents within a village.

As promulgated later in this Submission, it is not uncommon for there to be disputes between residents of a village.

A proposal the Committee may wish to consider is to insert Section 83 of the NSW Retirement Village Act into the RVRV Act (Queensland) shown below. This, combined with reforms to the dispute resolution process, should enhance the community living experience afforded by retirement villages for all residents.

### **83 Residents to respect rights of other persons**

(1) It is a term of every residence contract that the resident will respect the rights of other residents of, and other persons in, the village.

(2) In particular, a resident:

(a) must not interfere, or cause or permit any interference, with the reasonable peace, comfort or privacy of another resident, and  
(b) must respect the rights of the operator of the village, and agents and employees of the operator, to work in an environment free from harassment or intimidation, and

(c) must not act in a manner that adversely affects the occupational health and safety of persons working in the village.

(3) If the operator of the retirement village is of the opinion that a resident of the village has contravened any provision of this section, the operator may apply to the Tribunal for (and the Tribunal may make) an order directing the resident to comply with this section.

## Recommendation

That the Committee:

1. Recommend to the Government the insertion of section 83 from the NSW Retirement Villages Act to enhance the lifestyle of village residents in Queensland.

## 5. 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 RVA contends that the RV Act both discourages poor or bad practices through penalties and also provides a minimum standard for operators. The Act could actually go further and include some stronger penalties for gross and multiple offences of the legislation such as gross neglect of village maintenance, continuing abuses of residents' rights and misuse of resident's funds.

In terms of quality service provision, the Act ensures that promised services are provided through the residence contract. Residents have bargaining power when they enter a village. There is a contract negotiation process and prospective residents have the freedom to enter into a contract, negotiate terms, compare contracts between villages, or decide not to move into a particular village – or indeed to stay in their family home.

### Industry Accreditation Is Best Practice

The RVA, in the interests of best practice service delivery, lifting standards across the RV industry and due to a commitment to continuous improvement, introduced an industry Accreditation scheme (ARVA).

Accreditation is a detailed comparison of a village's services and operations against a set of national standards.

The ARVA Scheme's initial application is a two-part process:

1. The first part involves a self-assessment where the applicant Village measures its own conformance against the ARVA Standards.
2. The second part is an on site survey carried out by an independent accreditation survey team.

There are 27 Standards that are divided into four sections:

- Section 1      Resident Services and Lifestyle.
- Section 2      Organisational Management.
- Section 3      Human Resources.
- Section 4      Physical Resource Environment.

Each Standard has been given a number, a title, a statement of requirements and a list of criteria. It is expected that in order to achieve conformance with

the Standard, each of the requirements and criteria will be addressed and met except where a Standard is not applicable.

The Standards aim to be realistic, fair and transparent. They are minimum standards designed to ensure the protection of residents. This includes promotion of health and wellbeing and enhancement of quality of life within a village.

The Scheme is based upon the principle of 'Continuous Improvement' across all facets of management. Continuous improvement completes the quality cycle and ensures that standards of service improve over time. Accreditation through ARVA requires a commitment to continuous improvement.

ARVA has been going from strength to strength since its introduction. The RVA is pleased to communicate that the 2011/2012 financial year saw the largest number of accreditation surveys presented to the National Accreditation Committee (NAC), which highlights the industry's increasing interest and commitment to Accreditation.

A total of 81 RVA villages were granted accreditation in the 2011/12 financial year compared to 57 the previous financial year. The industry's two largest operators, AVEO and Lend Lease, are on track to have all the villages they own accredited in 2012.

In the interests of ensuring this Scheme remains a key driver of quality and best practice, the RVA is well advanced in an exciting project with an independent certification agency to review the current standards and certification methodology in line with international quality standards JAZ-ANZ. This project will result in far greater structure, independence and enhanced resident benefits. The RVA looks forward to updating the Committee in due course about this development.

Attachment F includes the Accreditation Handbook and you can find further information about the ARVA on our website at [www.rva.com.au](http://www.rva.com.au)

The RVA notes that the Issues Paper released by the Committee seeks commentary with regards to compulsory industry accreditation. The retirement village industry is very concerned about this prospect given the strength of the current Accreditation Scheme, the fact that industry is well serviced by independent and knowledgeable experts to assess villages and the impact mandatory Accreditation may have on village residents.

A mandatory scheme would increase costs to operators and therefore residents.

The RVA understands that Accreditation is one of the best ways to increase standards and the more villages that are accredited, the higher the standard across the industry. It does raise the bar – but this also comes at a cost to the

village. It also has the potential to impact on affordability of seniors housing in Queensland.

What the RVA would like to see is for Accreditation to become the point of difference for prospective residents. The Association knows that in part it is incumbent upon the industry to market the scheme, encourage operators to take part, and, as well, encourage operators to use their Accreditation as part of their village marketing. This is something the Association is very committed to and is currently placing additional resources into this activity.

## New Proposal: Advertising Retirement Villages

Retirement villages provide a unique and appropriate lifestyle for Queensland seniors. They are specifically regulated through the Act and best practice and quality is guided through industry accreditation.

It is not uncommon in Queensland for various forms of accommodation aimed at older or retired persons to hold themselves out as being a 'retirement village' when they are not registered, or required to be registered, under the Act because they do not satisfy the criteria in the Act for being a retirement village.

The RVA contends that this is undermining the viability of genuine retirement villages in Queensland that are registered under the Act and that are incurring the costs of the rigorous compliance regime imposed by the Act. Whilst this practice continues, not only will the operators of facilities that are not genuine retirement villages enjoy an unfair financial advantage, but consumers are at risk of being misled and disappointed by entering these facilities. They may be led to believe they will enjoy the benefits that result from the compliance regime imposed by the Act and the standards upheld through industry accreditation.

In NSW, the Retirement Villages Act makes it an offence for a person who manages or controls a complex containing residential premises to knowingly represent that the complex is a retirement village unless the complex is a retirement village within the meaning of the Act (section 17 (1)).

To discourage this misleading practice, and to assist the viability of the bona fide retirement village industry in Queensland, it is recommended that a similar provision be included in the Queensland Act.

## Recommendations

That the Committee:

1. Consider recommending to the Government an increase in penalties prescribed in the Act for gross and multiple offences of the legislation.

2. Note the rigorous, independent and successful industry Accreditation scheme (ARVA) that is delivering for residents and that any move to a mandatory scheme will increase costs and therefore impact on residents and seniors housing affordability in Queensland.
3. Recommend to the Government that a provision similar to section 17 (1) in the NSW Retirement Villages Act be inserted into the Queensland Act to protect consumers from misleading advertising regarding retirement villages. Further, that the Government consult with industry and residents on the final form of this section prior to introduction into the Parliament.

## **6. Adequately promotes innovation and expansion in the retirement village industry, avoids purely 'red tape' requirements, and facilitates the ongoing viability of villages.**

### **Retirement Village Construction in Queensland**

The construction and therefore supply of retirement villages in Queensland has stalled in recent years. Around 100 construction projects are currently being undertaken at existing villages but 25 of these are currently on hold for the foreseeable future.

Over the last decade, retirement village construction activity in Queensland has been particularly disappointing. Only 10% of existing retirement villages in the State were built in this time.

Significant investment is going to need to occur to meet the needs of an ageing population.

### **Measuring Senior Housing Demand and Supply**

As discussed in the Executive Summary, Australia faces a looming challenge in providing appropriate and affordable accommodation for our ageing population. The RVA has presented some analysis above of the recent retirement village construction trends and made some evidence based predictions on the potential impact should this continue.

This evidence is not dissimilar to the data emerging on the housing industry generally. Australian Bureau of Statistics figures released last month confirmed very worrying trends in housing construction.

The RVA contends that in order for any government to properly plan the extent of seniors housing that is needed into the future, there should be

ongoing and comprehensive work on measuring seniors housing demand and supply. The RVA is very pleased that the NSW Government recently announced, in its whole of government Ageing Strategy, that it would do just this.

It is proposed that the Committee recommend to the Government that it measure senior housing demand and supply – and in particular the construction of new retirement villages in Queensland. In addition, the RVA believes there is a need to ensure the Australian Housing and Urban Research Institute is resourced to measure supply and demand across Australia.

In this regard, the National Housing Supply Council's annual 'State of Supply' report is essential and the RVA recommends the Queensland Government's ongoing support for this initiative.

## Regular Dialogue Between Industry and Government

In meeting the seniors housing supply and services challenges, the RVA stands ready to work with the Government to ensure innovation and consumer driven strategies. The Industry proposes that a regular dialogue be established between the Government and industry to oversee the supply and demand work proposed above, and to discuss how industry and government can work together to meet the looming challenges.

## Regulatory Environment Hinders Industry Expansion and Innovation

The retirement village industry across Australia, and indeed in Queensland, is constantly changing and evolving to meet the needs of seniors. This evolution is likely to speed up as the population ages and the regulatory environment needs to keep pace.

The ageing population, different needs and expectations of seniors, and the current prevailing aged care policy environment that promotes 'ageing in place' are all factors that are driving the industry's need to innovate to provide accommodation options. Following the global financial crisis, in particular, industry is very keen to address current and pending seniors affordability issues but the current entrenched model and thinking restricts innovation in this area.

In Queensland, the current legislation is geared to providing a regulatory environment for one model of retirement village. It has been designed to entrench what is seen to be the 'standard' financial model for villages and by doing so it stifles flexibility and inhibits the industry's ability to respond to the changing needs of the market.

The basic model that is entrenched in the Act involves:

- An ingoing contribution (equivalent to the market value purchase price).
- The charging of recurrent charges for the provision of general services whilst the resident resides in the village on a cost-recovery basis, without a profit component to the village operator.
- The payment of an exit entitlement to the resident when they leave the village, comprising repayment of the ingoing contribution, from which is deducted an exist fee.

Under this model, the operator's source of revenue is the exit fee.

This model is entrenched in a broad combination of provisions in the Act. For example, the Act envisages that the resident will pay an ingoing contribution, receive an exit entitlement and pay an exit fee.

More particularly, it assumes that the operator must levy general services charges on a purely 'cost-recovery' basis by incorporating an extensive range of provisions that entrench a budgeting process that limits the amount an operator is able to recover for the provisions of services to the actual cost of providing them (presumably on the assumption that the source of profit is the exit fee).

The result is that the operator's ability to innovate by introducing alternative financial models is severely limited by this 'one size fits all' approach.

For example, the Act presents significant challenges and irregularities for an operator who seeks to implement a model under which any or all of the following applies:

- Residents not being required to pay an ingoing contribution to enter the village (in which case the village would potentially not even qualify as a 'retirement village' regulated under the Act).
- The inclusion of a 'profit' component in a rent or similar recurrent payment, increased in accordance with increases in an index other than CPI (for example, increases in the aged pension) or some other review mechanism agreed between the parties. For example, fixed percentage increases and/or market reviews. This rent might be in lieu of general services charges, which the Act restricts to being a cost-recovery charge and limits increases to CPI, unless the resident community otherwise consents.
- Residents do not receive an exit entitlement or pay an exit fee.

The types of innovative senior housing models that operators may, but for the Act, wish to implement range from pure rental models to different combinations of ingoing contribution, rent and exit fees.

In order to provide for this necessary innovation, the Act needs to incorporate flexibility for operators to derive profit from any source that is contractually agreed with residents – and suits the resident's circumstances.

There is no reason why this should not be able to be achieved, provided full and accurate disclosure is required to be provided to prospective residents before they make the decision to enter the village. A resident's rights can be protected regardless of the retirement living model they choose.

As the RV Act has become more prescriptive, the standard financial model described above has become more and more entrenched, and the ability of operators to cater for the changing requirements of the marketplace has further diminished. There is a need to review elements of the Act that entrench this model with a view to affording operators flexibility to adopt alternative models, whilst protecting consumers.

The current regulatory environment is hindering innovation and expansion of the retirement village industry in Queensland.

## Factors Hindering the Viability of Retirement Villages

An uncertain and changing regulatory environment hinders investment and expansion of the retirement village industry.

One of the biggest issues that effects industry investment is legislative amendments that strike at the heart of the bargains between operators and existing residents by having reforms operate retrospectively, to the financial disadvantage of operators.

Indeed, when the 1999 Act was formulated, the then Minister, the Hon. Judy Spence, acknowledged the imperative of not compromising the growth and viability of the industry by introducing legislation that operated retrospectively.

Accordingly, the Act was carefully drafted to ensure that those features of the Act that were capable of having a financial impact on operators only operated prospectively. It is for this reason that the Act states, in numerous places, that its provisions do not apply to 'existing' residence contracts.

The significant impact such legislation has on investment in the Queensland retirement village industry cannot be underestimated. There is no greater discouragement to investment in an industry than an uncertain and changing legislative environment. It diminishes the attractiveness of potential investors in the sectors, makes investments by financial institutions such as banks a riskier proposition, and for developers, increases the attractiveness of constructing standard residential stock whereby profit is realised immediately upon sale.

Whilst the RVA does not believe any significant reforms are necessary to the Act, it is recommended that should reforms be proposed, that these reforms are not retrospective. The latest reforms in Queensland, that saw retrospective changes to contracts, came with a significant cost to an industry already struggling. Any further changes will cost the industry, and will severely undermine future investments in Queensland.

## Differences in Viability

For-profit and not-for-profit retirement village operators all face similar challenges in meeting the needs of Queensland seniors. They cater for different markets and both have struggled in recent years to address affordability issues and to meet market demands.

Prior to 2002, church and charitable operators were exempt from many parts of the RV Act. These exemptions recognised the important role the church and charitable sector plays in the overall provision of age appropriate housing and care services. The flexibility this offered meant that many residents, regardless of their ability to pay an upfront ingoing contribution, could be catered for.

It is recommended the Committee consider proposing the removal of any unnecessary regulatory burdens placed on charitable operators because it is having a negative impact by minimising the affordable models and options that this sector could otherwise provide

Both for-profit and not-for-profit operators have an important place in the Retirement Village industry in Queensland.

## Recommendations

That the Committee:

1. Recommend the Government set in place a process for regular monitoring of the supply and demand for seniors housing – in particular retirement villages.
2. Recommends the Government work with the Federal Government to:
  - Ensure the Australian Housing and Urban Research Institute is resourced to measure the demand for, and supply of, aged friendly housing for seniors in NSW.
  - Enable the National Housing Supply Council to continue its annual 'State of Supply' report.

3. Recommend that the Government establish a regular forum between industry, residents and the Government to oversee the supply and demand work, and to discuss how all stakeholders can work together to meet looming seniors housing challenges.
4. Recommend that Government, industry and residents work together to determine new models of retirement village living and how the regulatory environment needs to be reformed in the future so they may be implemented to meet the needs of prospective residents.
5. Recommend to the Government that any amendments or reforms to the Act not be retrospective due to the impact this will have on industry investment in Queensland.
6. That the Committee analyse the regulatory burden placed on not-for-profit operators in light of their inclusion under the RV Act.

## **7. Affords residents all reasonable opportunities to be involved, should they wish to be, in budgetary and other decisions affecting their financial obligations.**

All residents in retirement villages can be involved in all aspects of village life should they so choose.

### **Extensive Resident Involvement Opportunities**

Residents are given an appropriate level of involvement in decisions that affect their financial obligations.

Village residents enjoy a range of rights to participate in decisions regarding the operation of their village:

- Via the residents committee, a right to be given a copy of the draft budgets for the financial year for the general services charges, maintenance reserve fund and capital replacement fund (sections 93 (3), 99(3) and 102 A (3) and to meet with the operator to discuss those draft budgets (section 129B).
- A right to vote on a special resolution about whether to approve increases in general services charges above the CPI percentage increase for the relevant financial year (after taking into account section 107 items (section 106).
- A right to vote on a special resolution about whether to introduce a new service for which a services charge is to be made or may be made (section 108).

- A right to vote on a special resolution about whether to approve a capital improvement, the cost of which all residents of the village will be jointly responsible (section 90B).
- A right to receive quarterly financial statements (section 112 (1)).
- Via the residents committee, a right to receive explanations about expenditure excesses over budget estimates (section 112 (4)).
- A right to receive audited annual financial statements about the income, expenditure, assets and liabilities of the village (section 113).
- A right to vote on a special resolution about whether to approve an insurance excess exceeding the prescribed maximum (section 110).

The above sections of the Act provide an appropriate level of control to residents about financial matters relating to the operation of their village and are consistent with the partnership model engendered in the retirement village industry.

As mentioned earlier, becoming a resident of a retirement village involves a decision to relinquish to the operator a range of decision-making responsibilities about the day-to-day management, administration and operation of the village. This is essential in order for the operator to provide the lifestyle represented to residents – and to comply with the contractual promises made by operators to residents when they entered the village.

The RVA believes the Act strikes an appropriate balance between the need to protect residents from excessive cost of living increases and the imperative for the operator to manage the village to the highest standard.

Affording individual residents direct control over decisions that affect their financial obligations and/or interest in their property, would risk operators being placed in a position where they are unable to fulfil their contractual obligations to other residents and would compromise the interests of the broader residents community at a village. This is not to say operators would not encourage dialogue and consultation with residents, however there are complex financial and capital decisions in a village that operators have great experience in that cannot be purely left to village residents. Moreover, for many people this is the exact reason they move into a village – to have this aspect managed for them. This is just the type of community that most residents seek when they elect to reside in a retirement village.

The very nature of the RV model affords residents with a significant level of power. In particular, where both operator and resident share the capital gain, both have an interest in the investment being maintained, and in the culture of the village being a happy one. It is a true partnership model.

## Resident Committees

Not all villages have resident committees. The vast majority of operators do, however, encourage their existence and support them in an advisory and financial capacity to assist communications and decision making in the village. These committees are voluntary and it depends on a particular village resident cohort as to whether they want and see a need for a committee.

Resident committees are generally very effective in dealing with retirement village operators and as a go between with residents.

The RVA believes the Act should not prescribe mandatory resident participation and/or the establishment of a resident committee.

As demonstrated above, there are significant opportunities for residents to engage in the business of their retirement village should they so choose. Some residents want to participate and others do not. Many choose the retirement village lifestyle, as they no longer want the burden of having to think about things like maintenance and services. This is why they moved out of the family home in the first place.

Resident contracts are the mechanism for ensuring the operator fulfils obligations and residents, in the main, are comfortable with this arrangement. They are afforded more opportunities to participate, have oversight and make decisions that in other forms of retirement accommodation such as apartment living.

## Recommendations

That the Committee:

1. Note the extensive existing provisions within the RV Act that afford residents with an appropriate level of information, oversight and involvement in protecting their financial interest.
2. Note that resident contracts are the appropriate mechanism to protect the interests of retirement village residents.
3. Does not seek to recommend mandatory resident committees as it is incumbent upon a village community to determine whether they are necessary and whether there is enough resident interest to make them viable.

## **8. Adequately provides a timely, informal and cost-effective process for resolving disputes between residents and scheme operators.**

The RVA believes the current dispute resolution process enshrined in the Act is comprehensive and working. The low level of disputation referred to earlier in this Submission is the most significant case in point.

Information is available to residents; they understand it and they use the process. Retire Smart, the Government's excellent publication provides information about the dispute resolution process.

A simplified PID that also includes information about dispute resolution would enhance the information to prospective residents.

Importantly, the industry Accreditation scheme (ARVA) requires villages to have internal dispute policies – another reason for governments, residents and industry to support this scheme.

### **Queensland's Comprehensive Dispute Resolution Process**

Importantly, Section 154 of the Act mandates preliminary negotiation of retirement village disputes at the village level before a dispute may proceed to mediation or the Tribunal.

The continuation of this compulsory preliminary negotiation is supported as experience indicates that many disputes are able to be resolved at this stage without proceeding into a formal process.

Accordingly, there is no need for villages to have an internal dispute resolution policy in addition to that provided for by the Act. Having said that, many villages have one as a matter of course or good practice.

Part 9 of the Act sets out a comprehensive dispute resolution process. This process includes:

- Mandatory preliminary negotiation at the village level (section 154). This enables an effective internal dispute resolution process and provides residents and operators with a signal and a way of dealing with disputes before they might escalate.
- The ability to apply for a mediation conference with the QCAT (sections 155-165). Again, this provides an avenue for both residents and operators to effectively deal with a dispute prior to possible escalation. Should this fail, an application may be made to the Tribunal for a hearing of the dispute.
- A hearing of the dispute by the tribunal and the making of appropriate orders (Part 10).

## Effective Resident Awareness and Engagement

The RVA contends that retirement village residents in Queensland are aware of their rights in terms of making a complaint to an operator or in terms of taking a complaint through a formal process.

Information advising of a resident's rights to make complaints and apply for resolution of disputes is set out in the PID given to each resident before entry into a village. It is also mandatory that a resident's dispute resolution rights be set out in the resident's contract.

Additionally, residents' rights to make complaints are highlighted in 'Retire Smart'.

There is a high level of awareness within retirement village communities about complaint rights, particularly in villages with active resident communities.

## Victimisation and Process for Resolution

Victimization and harassment has the potential to occur in any environment, particularly those involving community living with large numbers of people.

In the event that a resident believes they are being victimized or harassed by the operator, the resident has various options available to address the situation. These include: raising the issue with their resident committee; complaining to the Department administering the Act; and / or applying to the QCAT.

Residents also have the right to seek an urgent hearing at QCAT.

What is not covered by the Act, are incidences of victimization or harassment occurring between residents in village communities.

For the RVA, this is of greater concern, as there is no external process for resolving such issues when they do occur and in many cases they are the most difficult issue for an operator to resolve, as they require a level of thoughtful and experienced 'conciliation' between other warring parties. In some cases where resident-to-resident disputes arise, the harmonious environment in a village can be damaged, sometimes irreparably.

Resident-to-resident disputes do not currently constitute a 'retirement village dispute' within the meaning of the Act, and accordingly an aggrieved resident currently would not have available to him or her the Act's dispute resolution mechanisms in these circumstances.

A possible way this could be addressed would be to include in the Act an obligation on the residents of retirement villages not to behave in ways that unreasonably interfere with the peace, comfort and quiet enjoyment of their fellow residents, or that result in a resident being harassed or intimidated.

Accompanying this obligation could be a new right for an aggrieved resident to apply to the QCAT for relief. Also, a provision could be added to the Act making such repeated behaviour an additional ground for an operator to terminate the offending resident's right to reside in the village under section 53 of the Act.

## Effectiveness of QCAT

There is insufficient data available to industry or residents to properly assess the effectiveness of QCAT in resolving disputes. For example, there is no information available on how many retirement village dispute applications have been lodged, how many have proceeded to mediation, how many have been resolved through mediation, how many have proceeded to a hearing or how many have been settled prior to a hearing. The industry encourages the Government to make this data available.

Despite the lack of public data about QCAT's involvement in resolving disputes, the industry considers QCAT to be generally effective as a forum for resolving disputes. It plays an active role in the management of cases by making orders for the parties to comply, with a strict timetable for various steps to be taken by each party in the proceedings. Also, the strong emphasis QCAT places on alternative means of dispute resolution in its processes (such as compulsory mediation and compulsory conferences chaired by a member of QCAT) is endorsed by the RVA.

## QCAT: Potential Reforms

As stated above, the RVA does generally believe the QCAT to be effective. Members that hear matters are familiar with the retirement village business. There is, however, room for improvement and the following are some potential reforms the Committee might like to consider:

- QCAT affords residents with the ability to litigate claims at no cost and without the risk of costs awarded against them should their claim be unsuccessful. There is no deterrent within the current system to unmeritorious or frivolous claims being brought by residents. This can result in considerable cost and inconvenience to operators.

- QCAT attempts to ensure that proceedings are conducted in an informal manner and the RVA believes this to be a sound objective. It can mean, however, that residents are often permitted to change their claims throughout the course of a dispute without formally amending their claim. This is frustrating and unfair for operators – and would certainly not be permitted in a more formal court setting. An effective process for amendments to claims could be introduced without impacting on the desirable informal nature of proceedings.
- QCAT, unlike its predecessor the Commercial and Consumer Tribunal, has demonstrated a reluctance to grant leave for a party to a dispute to have legal representation. This reluctance has been witnessed at all stages of the process – mediation, directions hearings and the Tribunal hearing itself. This is resulting in the following:
  - Village managers taking a significantly increased role in representing operators at disputes. This takes them away from their management of a village.
  - The failure of appropriate legal arguments to be presented and of the real issues to be properly addressed by QCAT. It can also delay consideration of matters while parties and Tribunal members seek advice regarding the applicable law.
  - Tribunal matters taking longer, and increasing costs to operators and the Government, as parties clarify issues.

## Recommendations

That the Committee:

1. Note the low levels of disputation in Queensland and that the current dispute resolution system is working.
2. Note that the dispute resolution processes must continue to place significant emphasis on alternative means for resolution such as mediation.
3. Give consideration to a process for dealing with resident-to-resident disputes within a village being included in the Act and recommend to the Government that if it wishes to proceed with amendments on this matter to consult with the industry and residents about an appropriate response.
4. Recommend to the Government that QCAT report annually on its dispute handling procedures and outcomes including the following:
  - The number of dispute applications lodged.
  - The number of mediation cases and the number of cases resolved through mediation.
  - The number of disputes heard.
  - The number of disputes settled prior to a hearing.

5. Engage with QCAT about the effectiveness of the current dispute resolution system.
6. Give consideration to potential reforms to QCAT as outlined including ways to reduce frivolous claims, a process for claim amendment, and measures to ensure legal representatives and/or legal advice is readily available to QCAT and parties to disputes.

## List of Attachments

<b>Attachment A</b>	Information about the RVA, the retirement village industry in Australia and in Queensland, and the individual and community benefits of retirement villages.
<b>Attachment B</b>	Retirement Villages Amendment Act 2006 ('Amendment Act'): Drafting Issues
<b>Attachment C</b>	Draft Public Information Document (a separate document to this Submission).
<b>Attachment D</b>	Guidelines – Maintenance Reserve Fund and Capital Replacement Fund (a separate document to this Submission).
<b>Attachment E</b>	Response Submission to Discussion Paper: Closure of Retirement Villages, October 2011 (a separate document to this Submission).
<b>Attachment F</b>	Accreditation Handbook (a separate document to this Submission).

## **The Retirement Village Association: Key Facts**

The Retirement Village Association (RVA) is Australia's peak body for the retirement village industry.

The RVA represents over 800 villages and associate members nationally.

Membership consists of retirement village operators, managers, owners, developers, investors, and industry specialists across Australia.

Members include FKP Aveo, Lend Lease Primelife, Australian Unity, Southern Cross Care, Catholic Health, and Anglican Aged Care.

The RVA has regional offices located in Brisbane, Sydney, Canberra, Melbourne, Adelaide and Perth.

As the leading industry voice, the principle objectives of the RVA are to:

- Lead the building and growth of a sustainable and responsible industry.
- Advocate and strengthen our relationships with all governments to ensure the best outcomes for the retirement village industry.
- Encourage industry excellence and best practice through accreditation and facilitate quality improvement through an effective and relevant professional development program.
- Support and promote the benefits of retirement villages as 'the preferred choice of lifestyle for senior Australians'.

The Retirement Village industry is made up of around 60% of for profit operators and 40% not-for-profit operators.

## **Retirement Villages in Queensland: Key Facts**

Queensland retirement village operators, managers, owners, developers are represented by the RVA and we have an office in Brisbane. We are the peak body for QUEENSLAND retirement village industry.

Our members in Queensland include Aveo, Lend Lease, Churches of Christ Care.

There are more around 280 retirement villages in Queensland with over 37,000 units. There are over 40,000 people in Queensland living in retirement villages.

Around 100 construction projects are currently being undertaken at existing villages in the State although 25 of these are currently on hold.

Queensland retirement village construction activity has been disappointing in the last decade with only around 11% of existing villages being built in this time<sup>5</sup>. Retirement village construction in Queensland has now stalled.

The RVA is made up of around 60% for-profit operators and 40% not-for-profit operators.

As the leading industry voice, the objectives of the RVA are:

- Lead the building and growth of a sustainable and responsible industry.
- Advocate and strengthen relationships with governments to ensure the best outcomes for the retirement village industry.
- Encourage industry excellence and best practice through accreditation and professional development.
- Support and promote the benefits of retirement villages as 'the preferred choice of lifestyle for senior Australians'.

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<sup>5</sup> Ibid. (insert JJJ reference)

## The Retirement Village Industry in Australia

<b>Economic contribution</b>	<p>Economic modelling by KMPG-Econtech shows the retirement village sector contributes up to:</p> <ul style="list-style-type: none"> <li>• \$4.7 billion in turnover across the Australian economy, comprising the operations of retirement villages and in the broader economy.</li> <li>• \$2.8 billion to Australia's GDP.</li> <li>• 30,000 jobs across retirement villages, construction and other sectors supporting retirement villages.<sup>6</sup></li> </ul>
<b>Villages in Australia</b>	<p>There are 1,850 retirement villages in Australia with a construction value in excess of \$50 billion.</p>
<b>Australians in retirement villages</b>	<p>There are over 160,000 Australians living independently in a retirement village. Retirement villages now house more than 5% of people aged over 65. They house more than 20% of those over 75. There are similar numbers of Australians in retirement villages as in residential care.</p>
<b>Village construction has stalled</b>	<p>The estimated number of new villages under construction has declined from 109 in April 2008 to 46 in October 2010. The estimated number of units under construction in new villages declined from 10 655 in April 2008 to 4510 in October 2010.</p>
<b>Consequences of stalled construction</b>	<p>Should current construction trends continue, there will be a national shortfall of retirement village units within 10 years.</p>

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<sup>6</sup> KPMG., Retirement Village Association., 24 October 2011

## Individual and Community Benefits of Retirement Villages

<b>Ageing in place</b>	Villages support individuals to continue living independently for as long as possible, which is what seniors want. This also results in delayed entry to hospitals and residential care.
<b>Connection</b>	Villages enable access to social networks with significant health and wellbeing benefits.
<b>Support services and senior friendly facilities</b>	Villages offer services, site monitoring and other forms of care in purpose built facilities.
<b>Quality of life focus</b>	Villages focus on quality of life and encourage physical and mental activity.
<b>Active ageing</b>	Villages provide access to on-site facilities and programs that encourage activity, healthy lifestyles, and connectedness. These facilities relieve pressure on local community services.
<b>Community benefits</b>	Villages maintain and enhance the character of the local community by establishing multiple close networks e.g. health, exercise, volunteering.
<b>Safety</b>	Villages provide a safe and monitored environment e.g. call systems, 24 hour monitoring and first aid.
<b>Senior friendly infrastructure and design</b>	Villages provide senior friendly infrastructure that relieves pressure on families, carers and government resources.

Retirement Villages Amendment Act 2006 ('Amendment Act')

Drafting Issues

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
<b>Clauses 25, 26</b>	<b>Sections 61</b> (Who pays for work in freehold title scheme), <b>62</b> (Who pays for work in leasehold or licence scheme)	<b>Issue 1</b>	<p>In sections 61 and 62 the replacement of the words '<i>cost of reinstatement</i>' with the words '<i>cost of labour and materials for the reinstatement work</i>' is confusing.</p> <p>These words, being more restrictive than the words they have replaced, could be interpreted as suggesting that the cost of replacing items such as stove tops, hot water systems and similar goods, equipment and appliances are not able to be recovered from the former resident as part of a reinstatement on the basis that they are neither in the nature of 'labour' or 'materials'.</p> <p>The new definition of 'reinstatement work' in the Dictionary (refer clause 64 of the Amendment Act) refers to '<i>the <b>replacements</b> or repairs that are reasonably necessary to be done to reinstate the accommodation unit..</i>'. This definition clearly extends to the replacement of goods, equipment and appliances in the unit as reinstatement work.</p> <p>Furthermore, under the new clause 58 (refer clause 23 of the Amendment Act) the operator and former resident are to agree on the 'reinstatement work' (as defined) to be done to the unit. This is consistent with the intention that the costs to be borne by the former resident are not to be limited to simply the cost of labour and materials involved in the reinstatement but are to extend to the costs of replacing goods, equipment or appliances that are reasonably necessary to reinstate the unit.</p> <p>Accordingly, to suggest that the operation of sections 61 and 62 be limited solely to the recovery of the labour and materials involved with the reinstatement is inconsistent with both the definition of 'reinstatement work' and section 58.</p> <p>The Explanatory Notes to the Amendment Act do not indicate an intention to introduce such a limitation. They indicate that the amendment was meant to clarify</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
			<p>that reinstatement costs <i>'are for both labour and materials'</i>. These words do not suggest that the aim was to limit the types of costs to labour costs and material costs only.</p> <p>In any case this is no logical justification for such a limitation.</p> <p>Therefore, sections 61 and 62 should be amended to reinstate the expression <i>'cost of reinstatement'</i>.</p>
		<b>Issue 2</b>	<p>In the case of former residents who entered in a residence contract before the Amendment Act, under the previous section 62 the former resident and the operator were to share reinstatement costs in the same proportion as they shared the <i>'sale proceeds of the right to reside in the unit on its sale'</i>. Under the amended section 62(2)(c)(ii) this has been changed to the proportion in which they share the <i>'gross ingoing contribution on the sale of the right to reside, as provided for in the residence contract'</i> (with gross ingoing contribution being defined as the ingoing contribution before any deductions are made).</p> <p>The Explanatory Notes to the Amendment Act states that the intention of the charge was to <i>'more accurately describe the re-sale proceeds of the right to reside'</i>.</p> <p>The drafting did not achieve improved transparency and clarity for residents and industry and therefore it should be reviewed in consultation with all stakeholders.</p> <p>On a strict legal analysis, under most residence contracts in leasehold/ licence schemes the operator is legally entitled to the whole of the new ingoing contribution because it is the party granting the new residence right to the new resident. The operator then pays to the resident a separate amount which, whilst it might be calculated by reference to the amount of the new ingoing contribution, is not strictly at</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
			<p>law a share of that ingoing contribution. The reverse is the case in freehold schemes where the resident is legally entitled to the whole of the resale price and agrees to pay a separate amount to the operator in the form of the exit fee.</p> <p>The drafting needs to be amended to refer to the proportion which the amount the resident receives in accordance with their residence contract (on the one hand) bears to the amount of the ingoing contribution paid by the new resident (on the other hand).</p>
		<b>Issue 3</b>	<p>Section 62(4) provides that if the scheme operator must pay the cost of reinstatement work, it must be paid out of the scheme operator's capital replacement fund.</p> <p>A corresponding amendment to section 91(3) is required to allow the fund to be applied in paying for such reinstatement work. The ability in section 94(3)(a) to apply the fund for replacing the village's capital items is not sufficient because reinstatement work will include, but is not limited to expenditure to replace capital items (it also involves 'repairs').</p>
<b>Clause 29</b>	<b>Section 68</b> (Costs of selling)	<b>Issue 4</b>	<p>Previously the former resident and the operator were to share the costs of sale in the same proportion as they share the '<i>sale proceeds of the right to reside in the unit on its sale</i>'. In the amended section 68 this has been changed to the proportion in which they share the '<i>gross ingoing contribution on the sale of the right to reside, as provided for in the residence contract</i>' (with gross ingoing contribution being defined as the ingoing contribution before any deductions are made).</p> <p>For the same reasons set out in the comments on Issue 2 for section 62 above this amendment does not provide transparency and certainty for residents and industry. The industry will welcome consultation with all stakeholders about this issue. The drafting needs to be amended to refer to the proportion, which the amount the</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
			resident receives in accordance with their residence contract (on the one hand) bears to the amount of the ingoing contribution paid by the new resident (on the other hand).
<b>Clause 30</b>	<p><b>Section 70B</b> (Relative's right to reside after death or vacation) and related sections</p> <p>in conjunction with:</p> <p><b>Section 15</b> (What is an exit fee)</p> <p><b>Section 56</b> (Interpretation for div 5)</p>	<b>Issue 5</b>	<p>The drafting of the new section 70B and related sections has some major deficiencies in relation to the balancing of rights between the former resident, and the relative and the operator in the 3 month period during which the relative has the right to reside in the former resident's unit.</p> <p>Section 70B(4) states that '<i>During the 3 months, the relative has all the rights and liabilities of a resident under the Act</i>'. This means that the relative is given the rights and obligations under the Act in addition to the former resident, which is totally impractical in many instances. For example, the section is capable of being interpreted to remove the right of the former resident or their estate to be solely involved in voting on resolutions at residents' meetings. Do both the former resident and the relative have a right to vote? This is totally unworkable and could not have been intended. Either section 70B(4) needs to be qualified to preserve the rights of the former resident in respect of a number of rights under the Act or the section needs to be re-drafted to specify precisely which of the sections affording rights and liabilities to residents are to apply to the relative as well.</p>
	<b>Section 60</b> (Scheme operator and former resident to agree on resale value of accommodation unit)	<b>Issue 6</b>	<p>Under the new section 15(2)(b), if a relative resides in a unit under section 70B(2) the exit fee will calculated as at the <i>sooner</i> of:</p> <ul style="list-style-type: none"> <li>(a) the day the relative vacates the unit; and</li> <li>(b) the end of the 3 month period after the relative's right to reside terminates.</li> </ul> <p>This drafting does not to deal with the situation where the relative fails to deliver up vacant possession at the end of the 3 month period in circumstances where they do</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
	<p><b>Section 64</b> (Units not sold within 6 months)</p> <p><b>Section 66</b> (Updating agreed resale value)</p>		<p>not enter into a new residence contract. In this case it would be fair and reasonable for the exit fee to continue accruing until the relative actually gives up vacant possession given that they would be in occupation unlawfully. This is the relevant date that applies is the typical situation where there is no relative living in a unit (see section 15(2)(a)).</p> <p>To address this inequity, the section should provide that the exit fee continues to accrue until the last to occur of the events in paragraphs (b)(i) and (b)(ii) of section 15(2), unless the resident elects to enter into a residence contract on or before end of the 3 month period. In this case, the exit fee should be calculated up until the date the new residence contract commences (which could be prior to the end of this 3 month period).</p>
		<b>Issue 7</b>	<p>The way reinstatement of units has been dealt with in the circumstance where a relative resides in a unit under section 70B(2) is problematic. If a relative has a right to live in the unit for 3 months under section 70B(2) then under the amended section 56(1) the 'termination date' which triggers the reinstatement process is not the date the former resident's right to reside terminates (as would usually be the case) but the date the relative advises the scheme operator (under section 70B(5)) that they want to enter into a residence contract for the accommodation unit. From this date, the relative steps into the shoes of the former resident for the purposes of agreeing with the operator the extent and cost of the reinstatement work to be done to the unit (section 58(4)).</p> <p>Unfortunately the circumstances where the relative has a right to stay on for 3 months but either:</p> <p>(a) does not take up the right to reside for the 3 month period at all; or</p>

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			<p>(b) takes up the right to reside but does not have the right to enter into a residence contract under section 70B(5) because the unit is a freehold unit; or</p> <p>(c) takes up the right to reside (in a leasehold/licence scheme) but decides not to enter into a residence contract under section 70B(5),</p> <p>are simply not dealt with.</p> <p>This 'gap' is a clear oversight in the drafting. Unless this 'gap' is rectified significant confusion will result.</p>
		<b>Issue 8</b>	<p>Furthermore, whilst the relative who decides to enter into a new residence contract is given the right to agree with the operator on the extent of reinstatement, it is still the former resident or their estate who will be obliged to pay the relevant share of the costs of the work (under section 62). This is extremely unfair to the former resident (or the beneficiaries of the former resident's estate, if the former resident has died) and is likely to give rise to justifiable complaints by former residents or their beneficiaries, particularly when the relevant relative is not a beneficiary of the form resident's estate. For example, a relative may be motivated to encourage the operator to undertake a more extensive reinstatement than usual on the basis that the former resident or their estate will bear the cost.</p>
		<b>Issue 9</b>	<p>As with reinstatement, the trigger for the operator and former resident having to negotiate and agree on the resale value of the unit under section 60 will not be the date the former resident's right to reside terminates (as would usually be the case) but the date the relative advises the scheme operator (under section 70B(5)) that they want to enter into a residence contract for the accommodation unit (see section 56(1)). The same 'gap' identified in Issue 7 above exists in the application of section</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
			<p>56(1) to section 60.</p> <p>Even if the relative does take up the right to reside under section 70B(2) and decides to enter into a residence contract, there is a problem with the drafting. Under section 70B the relative must advise the operator at least 14 days before the end of the 3 month period that they want to enter into a residence contract. The 30 day period for reaching agreement before the operator must get a valuation will run from the date the resident advises the operator (section 60).</p> <p>However, under section 70B the operator must enter into the contract with the relative before the end of the 3 month period. Of course, it will not be possible for the operator to contract with the relative before the resale value is agreed with the former resident or their estate. Also, at this stage the reinstatement work will not have been agreed with the relative (let alone have been completed) which will make it difficult to include in the resale value and the settlement figures. The timing in these provisions is simply all wrong and must be rectified if section 70B is to be at all workable in practice.</p>
		<b>Issue 10</b>	<p>Sections 64 and 66 both operate by reference to a former resident's right to reside not being sold within 6 months after this 'termination date'. The same 'gap' identified in Issue 7 about exists in the application of section 56(1) to these sections.</p>
		<b>Issue 11</b>	<p>Under section 70B(6) the residence contract entered into by the relative who elects to stay after the initial 3 month period must be <i>'on the same terms as would be offered to any potential resident...., as adjusted to include any agreement between the relative and the scheme operator about reinstatement work for the accommodation unit'</i>. It is not clear what this 'adjustment' means, particularly in light of the fact that the former resident will be responsible for relevant reinstatement costs. Some guidance as to</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
			the intended nature of the adjustment is required.
		<b>Issue 12</b>	<p>A significant problem is presented by the fact that the operation of the cooling-off period will operate for the new contract the relative enters into under section 70B(5). It is sensible and justifiable that no cooling-off period apply.</p> <p>Whilst the cooling-off period operates a situation is likely where the relative enters into the a new residence contract on the last day of the 3 month period under section 70B(2), settles the contract and then has 14 days within which to rescind the contract and depart the unit. During this time the new ingoing contribution will need to be held in trust under section 46 until the cooling-off period expires.</p> <p>Under the amended section 63 the operator has to pay the former resident the exit entitlement within 14 days of the day the relative settled the new contract, which will be the same day as the cooling-off period expires. If the relative does not rescind, the proceeds will need to be withdrawn from trust and the exit entitlement paid to the former resident on the same day – a very difficult timeframe for operators to meet.</p> <p>Of more concern is the fact that if the relative does rescind, the operator will still have to pay the former resident's exit entitlement as the contract had settled before the cooling-off period expired, thereby triggering the obligation to pay the exit entitlement within 14 days under section 63.</p> <p>The obvious solution to these problems is for the cooling-off period not to operate in the case of a contract entered into under section 70B(5). Given that the relative will have been living in the unit for over 6 months already the removal of the cooling-off period is entirely reasonable.</p>

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<b>Clause 44</b>	<b>Section 104</b> (Working out and paying general services charges for former residents)	<b>Issue 13</b>	<p>Previously the former resident and the operator were to share general services charges after 90 days of the former resident vacating in the same proportion as they share the '<i>sale proceeds of the right to reside in the unit on its sale</i>' (section 104(2)). In the amended section 104(2)(b) this has been changed to the proportion in which they share the '<i>gross ingoing contribution on the sale of the right to reside, as provided for in the residence contract</i>' (with gross ingoing contribution being defined as the ingoing contribution before any deductions are made).</p> <p>The drafting did not achieve improved transparency and clarity for residents and industry and therefore it should be reviewed in consultation with all stakeholders.</p> <p>The drafting needs to be amended to refer to the proportion, which the amount the resident receives in accordance with their residence contract (on the one hand) bears to the amount of the ingoing contribution paid by the new resident (on the other hand).</p>
<b>Clause 45</b>	<b>Section 105</b> (General services charges for unsold right to reside in accommodation units)	<b>Issue 14</b>	<p>The new section 105(2) states that the scheme operator must pay any amount it pays on account of general services charges under section 105(1) into the maintenance reserve fund. This is incorrect. Only a small component of the general services charges is to be applied to the maintenance reserve fund. The majority of general services charges must be paid into the operating account to pay operating costs.</p>
<b>Clause 46</b>	<b>Section 106</b> (Increasing charges for general services)	<b>Issue 15</b>	<p>The new section 106 contains some significant drafting problems.</p> <p>The definition of '<i>CPI percentage increase</i>' for a financial year requires a comparison between the CPIs published for the quarters ending immediately before the start of the financial year and immediately before the end of the financial year. These</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
			<p>references should be to the <i>previous</i> financial year. Also, the CPI for the quarter ending immediately before the end of the previous year (ie for the previous March quarter) is not published until September, so it will not be available in June when it is needed. The definition should refer to the CPI last published at the time the June quarter commences.</p>
		<b>Issue 16</b>	<p>Paragraph (a) in the definition of '<i>total of general services charges</i>' implies that a charge for a general service may be increased by more than the CPI percentage increase for the financial year if the retirement village residents approve the increase by special resolution at a residents meeting. However, there is no provision in section 106 or elsewhere, which actually provides that a general service charge can be increased in this way. Paragraph (a) needs to have similar words added at the end as appear at the end of paragraph (b) ie '<i>...and that is allowed under section #.</i>' A new section then needs to be added that permits a charge for a general service to be increased in the way foreshadowed.</p>
<b>Clause 49</b>	<b>Section 108</b> (New services to be approved by majority of residents)	<b>Issue 17</b>	<p>Section 108 (as amended) provides that residents may be charged a services charge for a new service under certain circumstances. Where the public information document stated it was proposed to be supplied then the charge can be made without the need for a special resolution. However, no mention of the ability to make these additional services charges is mentioned in section 106. The definition of '<i>total of general services charges</i>' in section 106 needs to have an additional paragraph (c) added to the following effect:</p> <p><i>"(c) a charge for a general service allowed under section 108."</i></p>
<b>Clause 57</b>	<b>Section 132</b>	<b>Issue 18</b>	<p>In the new section 132(4) the words '<i>by the residents committee</i>' need to be inserted</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
	(Voting)		immediately after the words ' <i>meeting called</i> ' in the first line as it is clearly intended to refer to a meeting called under section 132(3)(b) only.
<b>Clause 64</b>	<b>Dictionary –</b> definition of 'cooling-off period'	<b>Issue 19</b>	<p>The changed definition of 'cooling-off period' seriously disadvantages both operators and residents.</p> <p>The new definition provides that if a residence contract is subject to a later event happening or another contract being entered into, the cooling-off period starts on the day the later event happens or the other contract is entered into.</p> <p>The result is that if a residence contract is subject to the prospective resident selling their existing home (an extremely common circumstance in the retirement villages industry) the cooling-off period will <i>not</i> commence when the contract is signed (as was the case previously) but when the resident's home is eventually sold.</p> <p>This puts operators in the position of not being able to secure a binding agreement from a prospective resident to take a unit for the weeks or months while the resident's home is being marketed. In effect, the prospective resident will get the benefit of a cost free 'option' to take up a right to reside in the relevant unit which they need only decide whether to exercise when their home is eventually sold.</p> <p>More importantly, operators will be disinclined to settle the sale of the right to reside with the new resident before the cooling-off period ends as that settlement will trigger the obligation to pay the departing resident their exit entitlement within a further 14 days (under section 63). Operators rely on the ingoing contribution received from the new resident to pay out the exit entitlement to the departing resident. Therefore, operators will want to be sure that the new resident will not be in a position to rescind (and require re-payment of the new ingoing contribution they have paid) before the</p>

Amendment Act clause	Retirement Villages Act section	Issue	Drafting Issues
			<p>obligation to pay out the departing resident is triggered.</p> <p>Ultimately, the resident will be disadvantaged. The day their home is sold is the very day the resident will want to settle the purchase or lease of their unit and enter into possession of the unit as they will no longer have a home in which to live. However, operators will sensibly want to wait 14 days for the cooling-off period to expire before allowing the resident to occupy, thereby avoiding a situation where the resident takes up occupation of the unit and then decides to rescind during the cooling off period.</p> <p>This will mean that residents will be put to the inconvenience and stress of having to find temporary accommodation after they settle the sale of their existing home pending expiry of the 14 day cooling off period.</p> <p>Significant concerns also arise in the case of agreements to lease/licence (for leasehold and licence units) and off-the-plan sale contracts (for freehold title units) used by operators for staged developments of units. Such agreements or contracts are widely used to obtain binding pre-commitments from prospective residents to lease or purchase units under construction in villages, often to satisfy the pre-conditions of financiers to draw downs of development funding. The agreement or contract binds a resident to enter into a lease of the selected unit or purchase the unit when construction is complete. They are often drafted as being subject to completion of construction of the unit within a agreed time frame and , in the case of freehold title, registration of the plan creating the unit as a separate title.</p> <p>Under the previous definition of 'cooling-off period' the 14 day cooling off period would have commenced when the agreement or contract was signed. After expiry of the cooling-off period, the operator would commence construction of the unit in the knowledge that the prospective resident was bound to settle the lease or purchase when construction was complete. In many cases, the operator would also draw down</p>

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			<p>on development funding that a financier was prepared to make available upon receiving evidence that the operator had secured a sufficient number of binding pre-commitments.</p> <p>However, under the new definition the cooling-off period will not commence until the unit is completed and/or the title is created. This renders it impossible for operators to obtain binding pre-commitments for units in future stages. It is grossly uncommercial to expect operators to commit funds to constructing further stages of villages in a situation where they are prevented from securing binding contracts from prospective residents. Even if operators were prepared to assume the commercial risks of doing so, in many cases they will be unable to secure development funding from financiers who will almost certainly require evidence of binding pre-commitments (that are unable to be rescinded by the prospective residents) as a condition of making the funds available for construction to commence.</p> <p>The changed definition of 'cooling-off' period needs to be urgently reviewed to address the above concerns.</p>

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