

RETIREMENT VILLAGES ACT 1999 – REVIEW

SUBMISSIONS CLOSE

The Transport, Housing and Local Government Committee invites written submissions on the Inquiry by email to thlgc@parliament.qld.gov.au or by post to:

The Research Director
Transport, Housing and Local Government Committee
Parliament House
George Street
BRISBANE QLD 4000

Submissions closed **5:00pm, Friday, 21 September 2012.**

Guidelines on how to make a submission is available [here](#).

BACKGROUND

I write this submission on the basis of my experience. My mother entered an [REDACTED] retirement village six years ago and died in June this year. Mum was 74 when she entered the village. She had never attended high school and her highest educational qualification was Grade 6. When she entered the village, it was shortly after the death of her second husband whom she had nursed through dementia.

She could not and did not want to continue to live in the family home. She had some medical issues arising from being struck by a car on a pedestrian crossing some 5 years prior to entering the village. She was lonely, vulnerable and looking for a lifestyle change which involved maintaining a high level of independence. She believed that the village could provide what she was seeking.

My response to this submission is from firsthand experience, information provided by my mother over the years and from interactions with others who have experienced retirement village living.

Terms of Reference and response

1. Do you think the RVA promotes consumer protection and fair trading practices? If not, where do you believe improvement is required?

Whilst the Act needs to be amended in certain places to provide better protection for residents, overall there does not seem to be any significant deterrent for not adhering to the Act.

For example, in the Act, a village is required to provide to a former resident (or executors of their estate) an outline of work to be completed and quotes for that work once the unit has been vacated. This needs to be provided within 30 days of vacating. If villages are in breach of this requirement, what recourse does the consumer have?

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

My mother entered a village and was provided with an extensive contract and conditions of sale. It was an overwhelmingly large document that was not fully explained. My mother having limited educational knowledge did not understand it. Nor could she afford to hire a lawyer to explain the intricacies of the document. Being very independent at this stage, she would not take our advice nor listen to our cautions.

It would seem that as the entrance age into the retirement village market is increasing, people in this age group are less capable of making well informed decisions. They are vulnerable and easily persuaded and influenced by others. Reliance on the village management to provide accurate, up-to-date information is a cause of concern and in my opinion, not advisable. Also verbal advice is not verifiable and prone to misinterpretation.

Independent fact sheets would be a good step forward in this regard. But also someone qualified who could work through the contract with her step-by-step. This would preferably not be a lawyer as this was seemed to be intimidating. Nor should this be a person have any interest whatsoever in the village or its parent company.

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

I am not that familiar with the public information documents so cannot respond to this issue.

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

Whilst you might theoretically “own” the unit in a retirement village, in our experience, it is restricted what you can do with it. You cannot paint it a different colour or do major renovations. This is restrictive. So it seems that residents do not have the normal rights of a consumer that has owning their place of residence.

At my mother’s village, residents were requesting a number of services to be provided “centrally”. In the main, these were ignored by the village management. The residents are seen as a captive audience who do not have bargaining power.

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

I have insufficient knowledge of other Acts in order to comment upon this issue.

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

The exit fee is exorbitant and unreasonable in relation to the cost of the unit and the ongoing maintenance and capital charges a resident is required to pay. However, it acknowledged that some retirement villages are profit making enterprises and as such need to be financially viable.

It would be a particular burden on a resident who was moving villages. I suspect some do so to be closer to families or to have alternate care provided (which is not readily available at their current village). A person in this situation would be out-of-pocket a substantial amount of money and that could seriously influence their future options.

Other approaches could include an exit subsidy regularly paid like the monthly maintenance fees or regular capital improvement charges. A trust fund could be set up to accommodate and manage this fee or alternatively this could then be an income stream for the village operators. Another approach would be to provide residents with a few options that they can elect to use eg. entrance fee, exit fee, ongoing contribution to exit fee or a combination of these.

7. Do you believe that the current retirement village model ‘locks’ residents into a village, and that this may affect how responsive operators are to their requests?

Yes, the residents and resident's association of my mother's village was asking for centralised social activities. This was denied by the operators and management due to their strict adherence to the term "independent living". They did not believe that it was their responsibility and that residents could organise their own activities. Again, the residents had little to no bargaining power.

This also applies to issues such as when dinner is served (residents requested it be moved from 5pm to later in the evening), various maintenance requests and issues regarding bullying within the village. Village management use the issue that provision of such services costs and that cost would be transferred to residents. The costs are usually prohibitive and a deterrent to residents. The bullying and intimidation within the village was ignored by management.

8. Is there an appropriate balance of the burden of responsibility for vacated residences?

No. Once vacated, the village requests all keys to be returned. They then take control but the former owner (or their estate) is expected to pay for any restorative work and marketing.

The village management can take their time to obtain quotes on restorative work and take up to 90 days for that work to be completed. This process is undertaken before the unit can be placed onto the market. This really is unacceptable to former residents who are still expected to contribute to maintenance and rates during this time. Residents are not provided with the ability to undertake this work themselves so that the unit can be listed for sale at an earlier date. Even though the owner may be able to access qualified tradespeople at discounted prices (or for free), particularly by close relatives to undertake restorative work, this is not permitted. There is no room for negotiation in relation to vacated residences.

The village management do not take into account any capital investments made by residents. In my mother's case, she installed quality bathroom fixtures and ramps to both entrances to her unit.

Marketing of the unit is also in the sole control of the village who dictate when and where and how it will be marketed. However, the burden of payment of such marketing falls upon the former resident who is not permitted to have input.

The sole responsibility of vacated residences seems to rest with village management, although theoretically, the former resident still has ownership until the point of sale. This is applicable to my mother's unit which was a freehold title. I am unsure whether these practices are across the board in the industry.

9. What is your experience of the affordability of retirement village living, with specific regard to the provisions above (general services charges, maintenance of capital items)

My mother was more than financially capable of paying for the general services charges and the maintenance of capital items. However, she was in receipt of two partial pensions which equated to slightly above the "normal" pension. It seems that the villages are mostly affordable if you self cater and are independent living.

10. Are you aware of any unnecessary restrictions or provisions which affect the affordability of living in a retirement village?

No.

11. Is the governance of these funds appropriate?

From my experience, they seem to be.

12. Should residents have to state that they are considering leaving the village in order to receive an estimate of their exit fee? Is there another way that residents can receive this information?

No. This should be provided to residents both upon request and on an annual basis.

14. Best practice in obtaining financial information. Do you feel comfortable asking for financial information? Should it be a requirement of the RVA that operators proactively provide quarterly and annual financial information to residents (or publish it somewhere it can be readily accessed, rather than waiting to be asked to provide it?

My mother could not have understood financial statements even when they were provided by the village. She would not have been comfortable asking for these. So I would agree that they should be provided on a regular basis.

15. What is experience of the exit fees, is it variable within your village, or a fixed percentage or amount? Do you believe the system is fair and transparent?

It is a fixed amount that increases the longer the resident lives at the village. This equates roughly to one third of the sale price of the unit. I anticipate that in our case, this will be over \$100,000. Totally unfair and outrageous amount for 6 years of living in the village.

16. The RVA provides that a resident who dies is liable to pay personal services charges for up to 28 days after the termination of their contract. As a resident has to give one month notice to terminate their contract, they may mean then, or their estate, continue to pay personal services charges for up to two months after they die. Is this reasonable?

No – it is not reasonable to pay for 2 months of personal services charges if someone dies. They are not using the facilities nor consuming personal services so this charge is outrageous. The RVA should also be amended so that liability is a lesser time. Overall, I suggest 14 days is sufficient. In 14 days the retirement village would have time enough to cancel orders, amend shifts, etc.

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

I have no knowledge of this 2012 clarification and it has never been explained to us by village management.

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

We are in contact with a solicitor regarding exit fees and there is the potential that we will initiate legal action over [REDACTED].

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

I cannot comment on this aspect as I do not have sufficient knowledge. But I would state that the RVA should ensure that residents are not disadvantaged in any form when villages close. The village owner also has a duty of care to undertake to seek alternative living arrangements for those who cannot undertake this themselves. When a village closes I presume that the operators would be realising capital gains when they sell the facility.

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

Most definitely – in favour of the residents.

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

I suspect that residents are unaware how these funds will be managed upon village closures. Clarity would be welcomed.

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

No. It is too extensive which can be overwhelming, misunderstood and complicated.

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

As discussed previously, some clarity on punitive measures if rights and obligations are broken.

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

The rights and obligations of residents and operators may need to be further clarified.

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

This can be achieved through independent accreditation processes that follow best practice guidelines. These can be developed in consultation with all operators to ensure that they are current and affordable. Research into best practice and benchmarking with overseas markets would also ensure that the accreditation process is kept up to date.

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

Unfortunately self regulation is fraught with difficulties and is open to interpretation, and non-compliance. The only way to obtain best practice, regulation and accreditation is through an independent body.

27. Do you think that mandatory accreditation or standards that retirement villages – or providers of services within retirement villages have to follow would improve the standard of care provided across the sector?

Yes – it is needed in order to protect the vulnerable residents from exploitation.

28. What are the advantages and disadvantages of mandatory accreditation of the retirement villages industry?

Advantages – protection for residents, adhesion to standards, best practice models to be followed.

Disadvantages – requires more administration and documentation which could have a financial impact.

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

My mother's village had a resident's committee. From my knowledge it was solely focussed on the social aspects of village living which the operators of the village were not prepared to undertake or manage.

I am unaware if they were involved in village budgetary matters or decision making on other aspects of village life.

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

No – the residents (at mother's village) paid 100s of thousands of dollars to purchase their unit freehold. However, this investment is not commensurate with the level of power provided to residents. Power is solely invested in the operators and management of the facility.

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

Yes. The residents have a vested interest in their village and this could be an outlet for them to be involved in decision-making processes that directly affect them.

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

No – my mother did not receive any information on this matter when she entered the village nor had she received any information during the course of her living in the village.

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

From my mother's perspective – ineffective. There is a certain individual in the complex who has been intimidating and bullying residents. Unfortunately he was also my mother's neighbour. The manager of the complex chose to ignore his behaviour even though it had been brought to his attention on a number of occasions. He was never confronted and consequently still continues to reside at the complex and bully other individuals.

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

Yes.

43. Is the current dispute resolution process effective for the potentially vulnerable members of our community it is intended for, or are there more appropriate options that should be developed?

I do not believe that the current dispute resolution process is effective at all. A more appropriate option would be the appointment of external advocates for residents who were either unable or unwilling to advocate for themselves.

44. Are residents aware of their right to complain? Should this be included in the RVA?

Yes – the RVA is the most appropriate place in which to list rights and responsibilities of all parties. My mother was not the type of person to complain at all and even if she knew of her rights it would not have made a difference.

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

As far as I am aware there is no protection afforded to residents in this situation. Intimidation and victimisation can be subtle and prolonged and vulnerable residents need to be thoroughly protected from such behaviour.

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

I am unaware of how effective QCAT is but the cost of litigation in general is usually prohibitive to pensioners. Even if they were to access public legal aid, the chances of them actually doing so would be remote and intimidating to them.

In relation to other issues identified in the review – they have not been included as I have insufficient knowledge about them in order to provide an informed comment.

AUTHOR:

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