



20 August 2018

By email:

[alowcock@propertycouncil.com.au](mailto:alowcock@propertycouncil.com.au)

Copy to:

[allison.quinn@retireaustralia.com.au](mailto:allison.quinn@retireaustralia.com.au)

[retirementliving@lasa.asn.au](mailto:retirementliving@lasa.asn.au)

[elizabeth.teece@acsa.asn.au](mailto:elizabeth.teece@acsa.asn.au)

Mr Andrew Lowcock,  
Property Council of Australia.  
Level 7,  
136 Exhibition Street,  
Melbourne  
VIC 3000

Dear Andrew,

## **Response to retirement living code of conduct- consultation draft 21 June 2018**

It is with some frustration that RRVV responds to the 21 June 2018 draft code of conduct. We are disappointed that the draft incorporates so little of our feedback on two earlier drafts.

### **RRVV approach to evaluating the code**

RRVV prepared to review the latest draft by:

1. Formulating a resident-focused set of objectives for the code
2. Developing a checklist to evaluate the code against best practice for codes of conduct (a technical review)
3. Developing a checklist to evaluate the code against good practice business ethics relevant to retirement living
4. Developing a checklist to evaluate the code against residents' views on their rights, freedoms and required protections
5. Developing a checklist to evaluate the peak bodies' commitment in the code to eliminating common problems experienced by residents

After reviewing the code using these instruments, RRVV did a clause by clause analysis of the code. RRVV also had the benefit of a comparison between the December 2017 and June 2018 codes prepared by the Consumer Action Law Centre.

### **Residents of Retirement Villages Victoria Inc.**

PO Box 2402

Caulfield Junction Vic 3161

Phone: (03) 9015 8402 Email: [rrvv.vic.admin@gmail.com](mailto:rrvv.vic.admin@gmail.com) Web: [www.rrvv.org.au](http://www.rrvv.org.au)

Registered No. A0048146R ABN 20 341 655 161

**Code purpose and objectives**

The table below compares the code purpose and objectives of RRVV with those of the peak bodies. The differences between the parties raise some crucial issues.

It is not surprising that a resident representative association should put the primary focus on improving the lot of residents. It is surprising the peak bodies do not put a stronger focus on improving the lot of their members’ customers and the providers of the capital employed in their villages.

<b>Code Purpose and Objectives</b>	
<b>According to RRVV</b>	<b>According to the peak bodies</b>
<p>Better define and promote the:</p> <ul style="list-style-type: none"> <li>• rights</li> <li>• freedoms</li> <li>• protections, and</li> <li>• interests</li> </ul> <p>of the residents of retirement villages.</p>	<p>The Purpose of the Code is to set and maintain commonly accepted standards regarding the marketing, sales and operation of Retirement Communities</p>
<p>Significantly improve the conduct of owners and operators by:</p> <ul style="list-style-type: none"> <li>• codifying required ethical standards</li> <li>• eliminating policies and practices residents find oppressive and detrimental (i.e. harm reduction)</li> <li>• promoting policies and practices that improve the lives of residents (i.e. life enhancement)</li> <li>• active monitoring and enforcement of performance against code provisions, and</li> <li>• requiring a program of continuous conduct improvement</li> </ul>	<p>Objectives of the Code:</p> <ol style="list-style-type: none"> <li>1. Promote and protect the interests of current and future residents;</li> <li>2. Set commonly accepted standards regarding the marketing, sales and operation of retirement communities that are above and beyond statutory obligations;</li> <li>3. Promote trust and confidence in the sector;</li> <li>4. Provide a framework to assist open, transparent and efficient resolution of complaints by residents against signatories to the code;</li> <li>5. Provide industry leadership to promote effective self-regulation.</li> </ol>

In the August 2017 draft of the code, the Retirement Living Council included a commitment to “Set and maintain high standards about the marketing, sales and operation of Communities.” In the draft now under review, the commitment is to “Set and maintain commonly accepted standards....”). RRVV believes a code that sets out to only maintain commonly accepted standards is setting the bar too low. In any event, if the code is a reflection of commonly accepted standards, the standards of the sector are unacceptable.

In RRVV’s opinion, the exercise was off the rails right from the start.

### **Checklist review**

The code does not meet best practice standards for developing industry codes and does not set adequate business ethics standards. Further, the code does not meet residents' requirements on rights, freedoms and protections and does very little to reduce common problems experienced by residents.

We have attached the checklists we employed.

### **Comparison of December 2017 and June 2018 codes**

#### **1. Amendments**

The fundamental amendments are few and do little to improve the lot of residents.

#### **2. Additions**

The bulk of the additions are resources for operators and again do little to improve a lot of residents.

The changes suggest the peak bodies did not take RRVV feedback on the August and December 2017 code drafts seriously.

### **Clause by clause review**

RRVVs clause-by-clause review was comprehensive and detailed. We have attached a copy.

### **Findings**

As the result of a systematic review of the 2018 code, RRVV finds that as it stands it:

1. Has self-serving statements of purpose and objectives that are more about benefiting owners and operators than residents;
2. Makes no clear ethical commitments;
3. Does little to strengthen residents freedoms, rights and protections;
4. Contravenes the Retirement Villages Act 1986 (Vic);
5. Does little to minimise the problems residents experience;
6. Does not acknowledge that there is dubious practice in the sector and does not commit to taking corrective action;
7. Proposes to set up an alternative dispute resolution system that is expensive and won't be able to make binding determinations, and offers no support for the ombudsman that RRVV advocates and which is supported by the Retirement Living Council's 8 Point Plan;
8. Proposes a supervisory committee dominated by owners and operators (this approach has parallels with the police investigating police malpractice);
9. Allows code signatories to certify their own compliance with the code and does not apply strong sanctions for code non-compliance.

### **Conclusions**

RRVV has arrived at three conclusions:

1. The code is inadequate as it stands, is not a sound foundation on which to progressively build a best practice code and is not an alternative to legislated minimum standards;

2. The retirement living peak bodies are not yet ready for self-regulation;
3. The retirement living peak bodies do not value resident engagement.

### **Recommendations**

RRVV recommends the Retirement Living Council, Leading Age Services Australia, and Aged and Community Services Australia):

1. Start again;
2. Work with retirement village residents associations to:
  - a. formulate a balanced statement of purpose and objectives
  - b. appoint an independent person to lead the drafting;
3. Work with the independent drafting team leader and with resident representatives as equal partners to draft a new code of conduct consistent with best practice in code development and business ethics, reflecting residents legitimate expectations on rights, freedoms and protections and systematically eliminating common operator conduct problems.

Our registered office is unstaffed for much of the week. I would prefer you to respond, if you wish, to my home address or by email.

Home: Unit 263, 57 Gloucester Avenue Berwick 3806

Phone: 03 9768 9330

Mobile: 041 146 2344

Email: [president@rrvv.org.au](mailto:president@rrvv.org.au)

Yours faithfully,



Lawrie Robertson

President

**Residents of Retirement Villages Victoria**

ATTACHMENT 1

Evaluating owner and operator programs

Business Ethics Checklist

Item #	Item	Compliance (full, partial or no)	Comment
	<b>A written code of ethics</b>		
1	Stand-alone document or included in the code of conduct	No	
2	Stakeholder-based <ul style="list-style-type: none"> <li>Recognises residents as: <ul style="list-style-type: none"> <li>customers</li> <li>contributors of capital</li> </ul> </li> <li>Recognises villages as residents' homes as distinct from a property</li> </ul>	No	
3	Ethical theory based <ul style="list-style-type: none"> <li>Utilitarian</li> <li>Duty</li> <li>Virtues and vices</li> <li>Reciprocity</li> </ul>	No	
4	Systems based <ul style="list-style-type: none"> <li>Deals with the underlying drivers of ethical and unethical behaviour</li> <li>Doesn't just deal with 'the rotten apples in the barrel' but with the whole barrel (i.e. organisation culture and systems)</li> </ul>	No	
5	Gives clear guidance and sets clear expectations on the ethical	No	The code refers to marketing materials

	<p>response to common business situations. Amongst other things:</p> <ul style="list-style-type: none"> <li>• Profit making (clearly distinguishes between honest and dishonest profit)</li> <li>• Prohibits exploitation of market inefficiency</li> <li>• Advertising (clearly distinguishes between what is deceptive and what is not and identifies obligations to the target audience)</li> <li>• Sales (clearly defines the obligations to the customer and what is appropriate and inappropriate behaviour)</li> <li>• Negotiation (clearly defines the obligations to the customer and what is appropriate and inappropriate behaviour)</li> <li>• Pricing (clearly defines clearly defines the obligations to the customer and what practices what are acceptable and what are not)</li> </ul>		
6	<p>Deals with specific retirement village issues:</p> <ul style="list-style-type: none"> <li>• Complexity that conceals the actual cost of living in a retirement village</li> <li>• Withholding information on the operations of the village that residents' need to evaluate the efficiency and effectiveness of management stewardship of their money</li> <li>• Not taking responsibility for the losses to residents funds arising from mismanagement</li> <li>• Diversion of resident funded village resources for operator purposes</li> <li>• Heads I win, tails you lose contract provisions</li> <li>• Gouging (charges way beyond any commercial reality inflicted on unsuspecting customers)</li> <li>• Inappropriate selling (failure to disclose concerns about appropriateness for particular resident)</li> <li>• Bloated reinstatement budgets</li> <li>• Manipulating lot entitlements in strata titled villages</li> </ul>	No	

	<ul style="list-style-type: none"> <li>Quoting fake law</li> </ul>		
	<b>Ethics training</b>		
7	Formal training in ethical decision making for executives, village managers and employees	No	
8	Readily available ethical advice <ul style="list-style-type: none"> <li>Mentors</li> <li>Advice lines</li> </ul>	No	
	<b>Compliance</b>		
12	Proactive monitoring	No	
13	Confidential reporting systems (whistleblowing)	No	
14	Clear procedures for dealing with ethical misconduct	No	



ATTACHMENT 2

Evaluation of June 2018 Code of Conduct

Best Practice for Codes of Conduct

Item #	Item	Comment	Code compliance Yes, Partial/No	Reason
1	Code developed by a genuinely independent body with input from residents, owners, operators and other stakeholders	<p>An external body that is a puppet of the industry does not qualify as independent. Nevertheless, the body must have the necessary industry expertise.</p> <p>It is good practice to involve customers in the selection of the body</p> <p>Stakeholder input from day one and continues throughout the process</p> <p>Resident involvement should not be taken as resident endorsement unless residents' representatives have explicitly given such endorsement</p>	No	<p>The drafting committee is a creature of the owners and operators of retirement villages</p> <p>Customers were not involved in the selection of the drafting committee</p> <p>Resident input not sought from day one as if genuine partners in the endeavour but limited to providing feedback on three of the drafts.</p> <p>The code appears to presume ARVRA endorsement. RRVV will not endorse the code until it is satisfied that it serves the best interests of residents and certainly not if RRVV has no part in the administration and enforcement of the code.</p>
2	Meaningful, genuine and efficient approach to resident engagement	<p>Amongst other things:</p> <ul style="list-style-type: none"> <li>• Appropriate resourcing for resident</li> </ul>	No	None of the requirements met fully

	throughout the code development process	<p>engagement required</p> <ul style="list-style-type: none"> <li>• A public, clear and realistic project timeframe</li> <li>• A public consultation plan</li> <li>• A broad call for submissions and an open forum (submissions made public unless the submitter objects)</li> <li>• Targeted consultation with resident groups that have specific experience or knowledge on particular topics (i.e. not just residents' associations)</li> <li>• A public interactive website containing not only submissions and commissioned reports but giving regular updates and inviting running comment</li> </ul>		
3	Complies with CFA ACCC and ASIC guidelines	Particularly having members that cover the majority of members of the sector, setting clear objectives, monitoring effectiveness and ensuring enforcement with mandatory reviews at least every three years	No	Does not comply with the CFA guidelines which are informed by the ACCC and ASIC guidelines
4	Built on more than just disclosure	Disclosure is not a valid consumer protection tool	No	See B1.10 - Disclosure rather than prohibiting conflicted remuneration
5	Exceeds minimum rights (residents) and obligations (owners and operators) required by law and fills related gaps in the law	ASIC RG183 says do more than simply restate the law		
6	Free of irrelevant material such as	It is improper to use a code as a lobbying	No	Puffery and industry promotion remains

	puffery and industry promotion	tool to defer or deter much-needed regulation		despite criticism of this material in earlier drafts and suggests industry promotion is higher up the purpose ladder than admitted.
7	Independent, proactive and comprehensive monitoring of code compliance and certification	Reliance on residents' complaints is insufficient	No	A2.2 allows the operator to self-certify; this is ludicrous
8	Public measurable standards	Real commitments needed (i.e. NOT 'we will take reasonable steps to think about doing x' or prepare a document that talks about y- rather 'we WILL <u>do</u> x and y')	No	
9	Independently supervised hard data collection on code compliance and effectiveness in improving outcomes for residents at the village, operator, state and national levels		No	
10	Public reporting of code compliance including naming and shaming		No	
11	A requirement to report breaches of law detected to the relevant authorities		No	
12	Sound, free and user-friendly process for residents to complain about code violations and obtain redress	Sound = an investigative rather than an adversarial process by an independent expert adjudicator with the power to make binding resolutions with only residents having appeal rights	No	Does not meet the requirements and mixes complaints about code violations with complaint processes established under State law. Residents must retain the right to choose the pathway they prefer

13	Protections for residents who complain about code violations		No	<p>The statement that a complainant is not to be discouraged penalised or negatively affected by raising a complaint (Appendix E 4.1(d) is inadequate. Express it positively in the active voice</p> <p>Residents need an independent process to handle complaints about retaliation</p>
14	Proactive and Independent enforcement of code compliance		No	
15	Contractual and enforceable penalties for code violation including fines and expulsion from RLC, LASA or ACSA with public notification		No	
16	Majority of Code Administration Committee independent of owners and operators	At least one third residents	No	