

Evaluating owner and operator programs in resident funded villages

Rights, freedoms, protections and responsibilities

(as at 20 August 2018)

| Item# | Item | Comment | Code Compliance (Yes, Partial, No) |
|-------|--|---|------------------------------------|
| | Basic Rights | | |
| 1 | To full and effective use of his or her personal, civil, legal and consumer rights. | | Partial |
| 2 | To quality accommodation appropriate to his or her needs and financial resources. | <p>In the case of new units:</p> <ul style="list-style-type: none"> • designed for ageing in place • delivered on time • complete and free of building defects • reported problems rectified completely and promptly <p>In other cases:</p> <ul style="list-style-type: none"> • handed over in the condition promised and on time • properly (time and quality and cost-effective) maintained in accordance with a fit-for-purpose contract, provided the resident body authorises the necessary funds | No |
| 3 | To quality services appropriate to his or her needs. | <p>Service offering as determined by special resolution of the resident body.</p> <p>Implemented in full subject only to the provision of adequate funding</p> | No |
| 4 | To service by village staff and contractors who recognise the village as the home of its residents and behave as guests. | | No |
| 5 | To be treated with dignity and respect, and to live without exploitation, abuse or neglect. | | No |
| 6 | To live without discrimination or | Equal access requires a proactive | No |

| | | | |
|----|--|---|---------|
| | victimisation including equal access to services and activities generally available to residents in the village. | approach to service provision rather than responding to 'squeaky wheels' and ignoring the timid. | |
| 7 | To personal privacy. | | Partial |
| 8 | To live in a safe, secure and homelike environment, and without being obliged to feel grateful to owners and operators.. | | Partial |
| 9 | To be treated and accepted as an individual, and to have his or her individual preferences met as far as possible. | | No |
| 10 | To have free access to information about his or her rights, village operations (including financial information) and any other information that relates to the resident personally. | | Partial |
| 11 | To exercise free choice in the acceptance and utilisation of personal services free from pressure from the operator. | | No |
| 12 | To participate both individually, as part of the resident body and through a residents committee in the making of decisions about the running of the retirement village (as distinct from the business of the operator). | Includes the right to resident-initiated and approved village rules, binding on and enforced by the operator, necessary for the orderly functioning of a retirement village community. | No |
| 13 | To take action to assert his or her rights without reprisal or a well-founded fear of reprisal. | | Partial |
| 14 | To have unrestricted access to advocates and other assistance in enforcing rights and seeking redress. | | Yes |
| 17 | To clear communication from management. | Amongst other things, this requires: <ul style="list-style-type: none"> • recognition of the special needs of the elderly • elimination of industry jargon and flavour of the month expressions | Partial |
| | Basic Freedoms | | |
| 17 | To conduct his or her cultural and religious practices, and to keep the language of his or her choice, without discrimination. | | No |

| | | | |
|----|---|--|----|
| | | | |
| 18 | To select and maintain social and personal relationships with anyone else without fear, criticism or restriction. | | No |
| 19 | To freedom of speech. | | No |
| 20 | To maintain his or her independence consistent with capacity. | | No |
| 21 | To accept personal responsibility for his or her actions and choices, even though these may involve an element of risk because the resident has the right to accept the risk and not to have the risk used as a ground for preventing or restricting his or her actions and choices | | No |
| 22 | To maintain control over, and to continue making decisions about, the personal aspects of his or her daily life, financial affairs and possessions to the limit of his or her capacity. | | No |
| 23 | To be involved in the activities, committees, associations and friendships of his or her choice, both within and outside the retirement village subject to resident approved village rules. | | No |
| 24 | To free access to information in as much detail as requested about the village, village operations and its finances, subject only to a very few exceptions. | This access does not include information about the operator's and owner's businesses unless necessary to justify head office charges for services rendered | No |
| | Basic protections and preventions (stronger than current law and proactive) | | |
| 25 | To protections against fraud and financial irregularity through effective independent financial audit (resident approved), proactive internal audit and unimpeded resident investigation. | | No |
| 26 | To protection against owner and operator failure. | Amongst other things, hold all resident contributed village funds in bank accounts with 'for the benefit of the residents of xxx village' in the name | No |

| | | | |
|----|--|--|----------------------------|
| | Protection against overly complex, misleading, intimidating extortionate and inadequate contracts) | | |
| 27 | To pricing certainty. | | No |
| 28 | To deferred fees expressed as a % of the ingoing amount. | | No |
| 29 | To have all fees calculated to the day (not a week, month or year). | For example, part-year and part month fees prorated to the day | No |
| 30 | To fees proportionate to the commercial reality of the accommodation or service (a 35% DMF at three years is not). | | No |
| 31 | Simple, clearly expressed, plain English consumer contracts. | | Partial |
| 32 | To contracts without provisions in conflict with Australian Consumer Law, the Retirement Villages Act or the Owners Corporations Act and other relevant laws and without provisions that are ineffective or unenforceable. | Residents perceive such provisions (when they discover their true nature) as an attempt by the operator to intimidate them | Partial (comply with laws) |
| 33 | Contracts that enable a resident to require the operator to enforce the contract against another resident. | | No |
| | Dispute resolution | | |
| 34 | To a clear, simple definition of a complaint or dispute trigger, and of dispute resolution (e.g. a matter is only resolved when the resident parties say it is or is resolved by law). | | No |
| 35 | To the right to make a verbal complaint. | | No |
| 36 | To the right to reject dispute resolution actions proposed by the operator, | | No |
| 37 | To procedural fairness. | Includes the right to village managers proficient in procedural fairness | Partial |
| 38 | To a prohibition on conflicted adjudicators and mediators. | This right does not rule out an operator employee adjudicating on or mediating a management complaint but does require a guarantee that a conflicted | No |

| | | | |
|----|--|---|----|
| | | employee will stand aside and that there is an obligation on the employee dealing with the matter to act impartially | |
| 39 | To impartial information from operators on their rights at each stage of the dispute resolution process. | Amongst other things this right requires operators to advise complainants impartially of their external dispute resolution options (i.e. no tilting the process towards operator or industry operated options) | No |
| 40 | To a guarantee of fair compensation for any resident or resident body loss caused by an owner or operator failure. (the owner or operator provides the compensation, not the village). | Resident funding of villages not a reason to deny compensation | No |
| 41 | To a free, independent appeal process that has the power to make binding determinations. | | No |
| | Resident participation in decision making | | |
| 42 | The right to contractual recognition of the primacy of the resident body's will over the will of the residents' committee. | This right includes the right of the resident body to delegate some matters to the residents' committee and withdraw that delegation without notice plus, in very limited circumstances, the right to delegate some resident powers to the village manager and withdraw that delegation without notice. | No |
| 43 | To genuine consultation (as distinct from telling, sham consulting or appearing to consult but routinely ignoring resident will) | Requires the presentation of well-developed proposals giving clear objectives, realistic alternatives, pros and cons of and complete financial projections for each | No |
| 44 | To participate in the development of budgets and long-term maintenance plans and right not to approve such budgets and plans and the right not to approve expenditure on long-term maintenance | Protection for the operator against breach of contract limited to the extent of the resident bodies failure to provide adequate funds Protection for the owner against residents' refusal to authorise expenditure on long-term maintenance (appeal to a regulator or independent supervisor) | No |

| | | | |
|----|---|---|---------|
| | | | |
| 45 | The right to the benefit of professional management relevant to the villages needs subject to the resident body authorising adequate funds. | | Partial |
| | Village redevelopment and repurposing | | |
| 46 | To genuine consultation from day 1 and at all significant stages. | Consultation to start before the owner or operator has invested in developing plans | No |
| 47 | To a rigorous no disadvantage step by step and end- result test for each resident. | No financial disadvantage No accommodation disadvantage No net amenity disadvantage | No |
| 48 | To a rigorous minimum disruption test for each resident whether directly or indirectly affected | | No |
| 49 | To the right to reject the proposal by special resolution. | | No |