

## Retirement living code of conduct consultation draft

### Clause by clause review (as at 20 August 2018)

#	Clause	Comment	Recommendation
<b>Foreword</b>			
1	FWD	<p>Wordy - contains puffery and marketing spin</p> <p>Claims the peak bodies cover more than 50% of the retirement communities. RRVV questions the legitimacy of a code that doesn't cover at least 90% of the sector.</p> <p>Claims extensive consultation through ARVRA. At best, the consultation was perfunctory. The drafters asked for feedback late in the process. It was not a two-way engagement process. The State associations that responded did so directly.</p> <p>The inclusion of land lease communities seems premature</p>	<p>Rewrite to:</p> <ul style="list-style-type: none"> <li>• express support for legislation setting minimum standards for all retirement villages leaving the code for the good guys who are prepared to commit to standards higher than the minimum</li> <li>• commit to supporting RRVV's campaign for an ombudsman to provide <b>all</b> residents with the opportunity to obtain a binding resolution to a dispute</li> <li>• remove puffery and marketing spin</li> <li>• remove reference to extensive consultation and replace with an acknowledgement of the feedback provided by the retirement village residents associations</li> <li>• justify reference to landlease communities</li> </ul>
<b>Background</b>			
2		<p>Purpose – set and maintain commonly accepted standards regarding the marketing, selling and operation of Retirement Communities</p> <p>The first draft available to RRVV mentioned high standards. Commonly accepted standards are not good enough.</p>	<p>Replace “commonly accepted” with “high”</p> <p>Add “that are above and beyond statutory obligations” to statement of purpose</p>

3		<p>Objectives 2. – commonly accepted standards</p> <p>RRVVs objectives</p> <p>a. 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>b. 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 that oppress or cause detriment to residents</li> <li>• implementing 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>• a program of continuous conduct improvement</li> </ul>	<p>Delete</p> <p>The purposes and objectives identified by the parties are different, but compatible (amended as above) provided the peak bodies acknowledge that self-regulation is not an alternative to legislated minimum acceptable standards.</p> <p>Expand code objectives to include those proposed by RRVV.</p>
4		Architecture of Code Commitments	OK
5		About Retirement Communities	<p>Remove puffery</p> <p>The inclusion of land-lease communities is problematic</p>
6		Legislative Framework and Obligations	Add Owners Corporations Act 2006 under Victoria
7		<p>Definitions – RRVV objects to the deferred fee being characterised as the second amount paid for the home. It is a fee paid to the owner and operator to use as seen fit and</p>	<p>OK except for deferred payment</p> <p>Rewrite to provide</p>

		generally is used (along with any capital gain share and any development profit ) to cover head office expenses and deliver a profit.	<ul style="list-style-type: none"> <li>the code requires contracts to give a full explanation of each fee and how the recipient uses it.</li> <li>where the village is “resident funded”, the contract fully define this concept</li> </ul>
<b>Commitments</b>			
	<b>General Provisions</b>		
		<b>Overall</b>	
8	A1.1	Will comply	OK
9	A1.2	The manner of dealing with residents	OK
10	A1.3	Some tribunal determinations do not set precedents. The fact that some determinations do not to set a precedent is no reason for operators not a party to the actions to ignore them.	Remove ‘that set precedents’.
11	A1.4	Draw the attention of employees to code and train them	OK
		<b>Monitoring compliance with the code</b>	
12	A2.1	Woolly.  Needs a commitment to spot check regularly and follow through– at all levels of the business.	Rewrite to include mandatory spot checks.
13	A2.2	Woolly. RRVV supports internal audit but rejects any suggestion that a regular independent audit is not necessary.	Rewrite to include an independent audit on a schedule determined by code compliance history.
14	A2.3	OK	

15	A2.4	Woolly (acknowledge is not a useful commitment – replace with commit). In any event, this item is probably unnecessary.	Rewrite to include commit, or delete.
<b>Promoting the code of conduct</b>			
16	A3.1	Woolly. Subscribe not as strong as adhere.  The benefits of the code are in the eye of the holder. Residents will make up their own minds  Being a code signatory does not necessarily mean the operator is substantially compliant (this term needs a precise definition).	Rewrite: <ul style="list-style-type: none"> <li>• replace strong with adhere</li> <li>• remove reference to benefits of the code provide only factual information</li> <li>• require the operator to remove to remove all references to the code form its signage and documentation when not code compliant (including when committing a mortal code sin)</li> </ul>
<b>Handling and resolving complaints</b>			
17	A4.1	Under the Victorian Act, a resident has absolute discretion whether to participate in an internal dispute resolution process and where to go if dissatisfied with the first response under that process. In our view, by not making this clear the code puts a vital resident right at risk.	Rewrite to clearly articulate residents’ rights
18	A4.2	Weak. Minimum requirements for the system not specified	Rewrite to include minimum system requirements (see related references following).
19	A4.3	Encourage is a weak commitment	Strengthen commitment to ensure employees welcome all forms of feedback from residents
20	A4.4	Weak. Does not set minimum requirements for the required written policies.  “...aims to resolve issues without the need for external referral wherever possible” does not recognise complainants’ right to go to an external dispute resolution authority at any stage if dissatisfied with the operator’s response or handling of the	Rewrite to include minimum requirements for the written policies For example, include a list of all relevant residents’ rights provided under state law and expected by residents.  Communicate complainants’ rights to take the matter to an external authority or dispute settlement service.

		complaint.	
21	A4.5	<p>The code requires a written complaint. For a complaint to an operator, this requirement contravenes the Victorian Act. In any event, requiring a written complaint will deter some complainants. This requirement is inconsistent with the commitment to welcome feedback.</p> <p>The term confidentiality needs careful definition. RRVV advocates that confidentiality should be at the sole discretion of the resident(s) and prohibiting operators from requiring a complainant to sign a confidentiality deed as a condition of settlement.</p>	Rewrite to remove the requirement for a written complaint and to make clear that confidentiality is at the sole discretion of the complainant but is the default option if the complainant does not make a choice.
22	A4.6	Weak - Does not set minimum content and standards for training. In particular, it does not require that the training reflect the special needs of older residents.	Rewrite to include minimum content and standards.
23	A4.7	<p>“Where possible and reasonable we will endeavour” – weasel words.</p> <p>Fifteen days is too long without a response. The operator should get back every three days, with the determination communicated no later than 15 days and a commitment to an earlier determination whenever possible.</p>	Rewrite to strengthen the commitment to a prompt response and to provide feedback every three business days.
24	A4.8	Residents could reasonably take the escalation pathway as suggesting that approaching the relevant statutory authority is the last resort. This implication could lead to residents not exercising their rights (also see comment on 4.9 below).	Rewrite to articulate residents’ rights to go to an external dispute resolution authority at any stage if dissatisfied with the operator’s response or handling of the complaint.
25	A4.9	As written the commitment to advising complainants that they may refer the complaint to other avenues such as the CAC <i>if</i>	Rewrite to say “we will advise residents of their legal right to immediately refer their complaint to an external authority if they are

		<i>they remain dissatisfied</i> is inadequate because it does not make clear the residents' right to seek the assistance of an external authority if dissatisfied with the initial village response.	dissatisfied with the village managers (or operators) response."
26	A4.10	Double talk. Either an operator abides by an agreement it makes, or it doesn't.	Rewrite to make explicit an operator will abide by any agreement made under a complaint resolution.
27	A4.11	There is no commitment in the code to co-operate with residents who make a complaint.	Rewrite to: <ul style="list-style-type: none"> <li>• guarantee to cooperate with residents who make a complaint</li> <li>• guarantee the right of a resident to appoint a person to represent him or her in all or part of the dispute resolution process (as does the Victorian Act for complaints dealt with internally to the operator)</li> </ul>
<b>Moving into the community</b>			
<b>Marketing and selling the community</b>			
28	B1.1	An operator only has to commit once to obeying all the relevant laws and regulations. In any event, the code should require higher standards to reflect the age profile of the target market.	Remove?
29	B1.2	Does not commit to ensuring marketing material is ethical (a higher standard than legal) and is suitable for older prospective residents (e.g. free of industry terminology and contemporary terminology that prospective residents might not understand.	Rewrite to include that marketing material must be ethical and suitable for the target market.
30	B1.3	The reference to the intended nature of the community is problematic.	Rewrite to ensure forward-looking communications identify they are about the future and require the operator to disclose all relevant plans that might change the nature of the village.
31	B1.4	Why not also say comply?	Rewrite to say comply.
32	B1.5	Any pressure would be improper.	Delete the word improper.

33	B1.6	<p>Does not commit to explaining ‘resident funded village’ (where applicable) and to explaining the nature and extent of owner and operator financial support during the development stage (if applicable).</p> <p>Does not commit to providing a simple explanation of obligation to pay GST and to quote prices consistently (preferably always GST inclusive).</p> <p>Does not commit to defining what the operator means by independent living.</p> <p>Does not adequately specify the required detail on services offered, the limits of the services offered (a significant number of new residents report they receive less support than they expected) and the mechanism for revising the service offering.</p>	<p>Rewrite to include:</p> <ul style="list-style-type: none"> <li>• an explanation of ‘resident funded village’ (where applicable)</li> <li>• to clearly articulate the nature and extent of owner and operator financial report during the development stage (if applicable)</li> <li>• require a definition of independent living as applicable to each village</li> <li>• specify the detail required on the services offered and limits of the services offered</li> </ul> <p>Require an explanation of the mechanism for revising the services offered.</p>
34	B1.7	Commitment to clear information.	OK.
35	B1.8	Why not include in B1.6?	Move.
36	B1.9	Information on charges payable to third parties.	OK.
37	B1.10	<p>Why the ‘where possible’ qualifier? Surely the operator knows.</p> <p>Disclosure does not resolve a conflict of interest and is not an antidote to the poisonous effects of conflicted remuneration.</p>	Rewrite to prohibit conflicts of interest (e.g. the making of a profit through providing services to the village either directly or indirectly) and to prohibit receiving conflicted remuneration or to passing all commissions, volume or early payment rebates and the like to the village operations account.
<b>Contracts and terms and conditions</b>			
38	B2.1	An operator only has to agree to comply with relevant law and regulations once.	Rewrite to prevent operators, not in good standing and committing a code mortal sin, giving the code of conduct to prospective residents

		It should be an offence for operators to supply the code of conduct to a resident or prospective resident if not substantially compliant with the code or if committing a code mortal sin.	displaying it or referring to it in printed material.
39	B2.2	RRVV does not believe encouraging residents to obtain legal advice is necessarily in their best interests.	Remove until prospective residents have access to good legal advice at a reasonable price.
40	B2.3	Does not commit operators to cease issuing contracts with tricky fees, excessive fees and reinstatement rorts.	Rewrite to require: <ul style="list-style-type: none"> <li>• pricing certainty (amongst other things DMF expressed as a % of the ingoing amount and a \$ amount)</li> <li>• fees prorated to the day</li> <li>• the banning of 'open cheque' reinstatement clauses</li> <li>• banning excess reinstatement (i.e. more than necessary repair damage) and charging DMF or capital gains share on upgrade work.</li> </ul>
41	B2.4	Does not include owners building fault rectification and maintenance obligations, and does not make vagueness or ambiguity work to the disadvantage of owners and operators rather than residents (lack of clarity almost always works to the disadvantage of residents).	Rewrite to cover owners building fault rectification and maintenance obligations and make vagueness or ambiguity work to the disadvantage of owners and operators (i.e. require owners and operators to pick up the tab).
42	B2.5	The RLC Guide to Creating Simple and Effective Retirement Living Contracts does not adequately address the problems in current retirement living contracts.	Develop new guidelines, which amongst other things specify provisions that operators must exclude from contracts. The Victorian Retirement Villages (Contractual Arrangements) Regulations 2017, while inadequate, provides a starting point for a list of prohibited provisions.  RRVV has a project underway to create plain English versions of some commonly used contracts and is willing to share these when they are ready. Similarly, RRVV has a project underway to introduce ethics principles into contracts and is willing to share its early work.

43	B2.6	<p>Why include “where we are required”? Surely, operators should provide the information specified and much more to residents who request it even if not required to do so by law.</p> <p>The basic principle should be maximum transparency, and maximum resident participation (at residents discretion), particularly in resident funded villages</p>	<p>Requires a significant rewrite to include the participative preparation of annual budgets and ten-year maintenance plans, regular reporting of performance against budget and plan and the opportunity to review the detailed accounts (with very limited exceptions).</p>
44	B2.7	<p>The Victorian Act’s by-laws provisions gives residents considerable control over the matters listed and many more.</p>	<p>Rewrite adding a commitment to allow residents to enact, amend and rescind a wide range of village rules that are binding on both the operator and residents and which the operator must enforce.</p>
45	B2.8	<p>A weak provision in that it only requires the operator to communicate its policies but does not establish minimum resident rights and protections, and requires commitment only to a vague consultation obligation</p>	<p>Rewrite to guarantee a comprehensive list of residents’ rights based on a series of no disadvantage financial and amenity tests</p> <ul style="list-style-type: none"> <li>• For example, for permanent rehousing: <ul style="list-style-type: none"> <li>- the appointment of an independent advocate for affected residents from the earliest planning stages, at no cost to residents and with a realistic budget, a requirement for the owner and operator to engage in genuine consultation (defined) with residents at all stages of the planning process</li> <li>- current residents have a right to demand like rehousing within the village or rehousing in another village at no financial disadvantage (e.g. without triggering termination payments or increasing the final termination payments, and at the same maintenance fee and like service costs for the duration, with the owner or operator to pay all moving, reestablishment and out of pocket costs).</li> <li>- the right to occupy a new unit of similar size, standard and location convenience or better at no disadvantage to previous arrangements.</li> <li>- the maintenance of reasonable resident facilities and services during any redevelopment for all residents continuing to live</li> </ul> </li> </ul>

			<p>in the village</p> <ul style="list-style-type: none"> <li>- a redevelopment and construction plan that minimises disruption to the lives of continuing residents</li> <li>- a compensation scheme to provide redress for a failure to provide any of the above.</li> <li>- the right to take relevant legal action with all legal fees borne by the operator or developer</li> <li>• For temporary rehousing, the relevant elements of the list above</li> </ul>
46	B2.9	<p>Makes 'few restrictions' the objective. RRVV disagrees.</p> <p>To the extent that it is the operators prerogative to impose restrictions (rules?), these should be all the rules necessary to ensure the village operates harmoniously to the benefit of all residents, and no more (i.e. right restrictions rather than minimum restrictions).</p>	<p>Rewrite with the objectives of:</p> <ul style="list-style-type: none"> <li>• achieving the right rules</li> <li>• maximising resident control over enacting, amending and repealing village rules</li> <li>• requiring operators to comply with village rules</li> <li>• requiring operators to enforce village rules</li> </ul>
<b>Before moving and new resident arrivals</b>			
47	B3.1	Unconvincing.	Rewrite to include no-disadvantage test and compensation for losses incurred by residents.
48	B3.2	Does not include a joint inspection to confirm the unit is as promised	Rewrite to include a joint inspection to confirm the unit is as promised
<b>Living in the community</b>			
<b>Managing our relationship with residents and stakeholders</b>			
49	C1.1	Too general and vague to add any value to the code.	<p>Rewrite to</p> <ul style="list-style-type: none"> <li>• give a general commitment to provide the services residents want at the quality they want at the lowest realistic cost available</li> </ul>

			<ul style="list-style-type: none"> <li>• resident variation of service determined by special resolution</li> <li>• an obligation on operators to comply a special resolution on services only to the extent that residents have given reasonable notice of any required changes and approved the necessary funding</li> </ul>
50	C1.2	A bit too general. Too many residents feel their operator's survey is a joke (sidesteps the contentious issues, avoids known problems, asks biased questions, and management draws inferences not supported by the data, glosses over negative results and does not the take the indicated action).	Rewrite to require a professionally developed and administered, reasonably comprehensive survey paid for by the operator and to stipulate that follow up is a code compliance issue.
51	C1.3	Again, the operator only needs to agree to abide by the regulations once  Requires a comprehensive definition of personal services that distinguishes these from the various other services classifications	Rewrite to require a comprehensive definition of personal services that distinguishes these from the various other services including their funding
52	C1.4	"We will take steps to ensure there is..." = weasel words.  Needs a definition of genuine consultation. Rule out telling, consulting but routinely ignoring and other forms of sham consolation. Limit consultation with residents' committees on to matters delegated to that committee by the resident body otherwise consult with the resident body at a meeting. More often than not, the appropriate approach is engagement (a two-way process).	Rewrite to: <ul style="list-style-type: none"> <li>• remove weasel words</li> <li>• define genuine consultation/engagement</li> <li>• consult with a residents' committee only on matters delegated to that committee by the resident body otherwise consult with the resident body at a meeting</li> </ul>
53	C1.5	Some overlap with C1.4. Need a commitment to respond to residents requests for consultation/engagement.	Rewrite to align with rewritten C1 4.
54	C1.6	The code does not take a stand against bad practice, does not	Rewrite to take a take a stand against bad practice, limit days and

		limit days and hours of non-emergency access, and does not impose protocols on emergency access.	hours of non-emergency access (e.g. to business hours on business days, and impose protocols on emergency access (e.g. identification of emergency response person etc.).
55	C1.7	<p>The only requirement is to have privacy policy consistent with relevant legislation and to give each resident access to personal information held by the operator related to them</p> <p>There is no requirement to make the policy relevant to retirement village living (and therefore accessible to residents) and does not require provisions to allow residents to opt out of certain protections (e.g. you may tell my friends I am in x hospital).</p> <p>The code does not take a stand against misuse of privacy (e.g. operators hiding behind 'privacy').</p>	Rewrite to require the tailoring of policy to the needs of residents, prohibits misuse of privacy policy and includes an opt-out provision for residents who want their friends who enquire to know they are in a particular hospital and the like.
56	C1.8	<p>RRVV wants two-way engagement rather than one-way consultation.</p> <p>A commitment to engage with residents associations on how to engage with them (individually and collectively) would be a good start.</p>	Rewrite with a focus on two-way engagement with individual residents' associations as well as national engagement with all residents' associations (amend after engagement with all residents' associations on terms of engagement if then necessary).
		<b>Managing our staff</b>	
57	C2.1	<p>A promise to promise something.</p> <p>No commitment to engage with residents in the development of staff policies and procedures in which residents have a genuine interest (as distinct from matters which are internal to the operators business) would be helpful.</p>	Rewrite with a strong commitment to engaging with residents on staff policies and procedures where residents or their State associations so desire.

58	C2.2	Weak. Start by engaging with residents' associations on manager competencies, initial training and continuous professional development.	Rewrite with a strong commitment to engaging with residents on job requirements where residents or their State associations so desire
59	C2.3	Weak. Does not commit to training specifically designed to improve service to residents, and to the level and duration of training  Residents can assist in documenting required village manager competencies	Rewrite <ul style="list-style-type: none"> <li>• Committing to training specifically designed to improve service to residents</li> <li>• Committing to paying for training existing managers and prospective village managers at Certificate 4 level and equivalent duration</li> <li>• Committing to paying for the ongoing professional development of village managers and other staff</li> </ul>
<b>Managing property and safety</b>			
60	C3.1	Weak. Needs a commitment to engage with residents on their safety needs, tolerance of risk, and intolerance of safety measures that exceed Australian Standards.	Rewrite with a strong commitment to engaging with residents on their safety requirements where the residents or their State associations so desire
61	C3.2	Weak. Needs a commitment to engage with residents on routine, and emergency maintenance and on the development of a 10-year maintenance plan and to cost-effective maintenance	Rewrite <ul style="list-style-type: none"> <li>• with a strong commitment to engaging with residents on routine, emergency and long-term maintenance policies and procedures where the residents or their State associations so desire</li> <li>• commit to delivering maintenance services at defined standards and a competitive cost</li> </ul>
<b>Leaving the community</b>			
<b>Clarity of contracts</b>			
62	D1.1	Endeavour is a weak commitment. Also needs a commitment to eliminate reinstatement rorts	Rewrite with a strong commitment to be clear, and to eliminate reinstatement and resale malpractice
63	D1.2	Endeavour is a weak commitment. Need to document all the circumstances that might give rise to the termination of a	Rewrite with a commitment to documenting all the circumstances

		residents' contract.	
		<b>Communication</b>	
64	D2.1	The commitment is to communicate but not to improve residents rights and eliminate known poor practice (for example giving grieving families only 14 days to clear out their deceased relatives unit)	Rewrite with a commitment to documenting residents rights and eliminating poor practice
65	D2.2	Why only "should include"? Weasel words. If it's applicable, it operators must include it.  Does not require a commitment to adequately specifying the recommended reinstatement work (and not exaggerating the need for reinstatement work and not upgrading by stealth) spending residents money without approval, taking adequate care to have the work done promptly and at a competitive price.	Rewrite to: <ul style="list-style-type: none"> <li>• remove weasel words</li> <li>• require the operator to make commitments that protect the interests of residents</li> </ul>
66	D2.3	Weak. At the very least must include commitments to obtain resident approval on n price setting special conditions, buyer requested delays, offer acceptance and the like (i.e. the resident or representative has the final say).	Rewrite to require a commitment to obtaining resident approval on price setting, special conditions, buyer requested delays, offer acceptance and the like (i.e. the resident or representative has the final say).
<b>Administration</b>			
67		Code Administration Committee (CAC)  It does not have broad stakeholder representation, and it lacks independence (i.e. it's dominated by operator representatives).	Rewrite to provide for: <ul style="list-style-type: none"> <li>• A chair independent of both operators and residents</li> <li>• an equal number of operator and resident representatives</li> </ul>
68		Governance and Functioning of CAC	Noted.

69	Code Adoption and Code Register	<p>Noted that all operators are encouraged to subscribe to the code but there does not appear to be a requirement for members of the peak bodies to subscribe.</p> <p>The public issue is not signing up but being in good standing (i.e. maintaining substantial compliance and committing no mortal sins).</p>	<p>Rewrite:</p> <ul style="list-style-type: none"> <li>• make code compliance mandatory for all retirement village operator members of the peak bodies</li> <li>• to ensure the only time a signatory presents to the public through any medium as being a signatory is when they are compliant</li> </ul>
70	Code Review and Ongoing Consultation	<p>Does not commit to ongoing stakeholder (residents collectively are major village stakeholders) engagement – only consultation</p>	<p>Rewrite committing to ongoing stakeholder engagement.</p>
71	Self Assessment and Compliance	<p>Does not provide for an independent compliance audit.</p>	<p>Rewrite to include independent compliance audit – for initial certification and then annually with the option of extending the interval to 2 years for operators with an outstanding audit record over at least three audits.</p>
72	Complaint Management Framework	<p>Does not set minimum standards for complaint management system.</p> <p>Does not explicitly guarantee residents’ right to freely choose which pathway to follow if not satisfied with the village level response.</p>	<p>Rewrite setting minimum standards above minimum legal requirements in the State and guaranteeing residents’ right to choose a pathway</p>
73	Principles of the Framework and the handling of complaints		

		<p>The proper objective should be resident centred (e.g. to ensure residents' complaints are dealt with fairly, quickly, as far as possible without stress and delivering a binding resolution where required).</p> <p>The code should require the tracking of all complaints in a way that facilitates the publishing of aggregate statistics at village, operator, state and national levels.</p> <p>The escalation process should not seek to resolve complaints at the operator level – the resident decides the pathway.</p>	<p>Rewrite:</p> <ul style="list-style-type: none"> <li>• to ensure residents' complaints are dealt with fairly, quickly, as far as possible without stress and delivering a binding resolution where required by the complainant</li> <li>• require the tracking of all complaints in a way that facilitates the publishing of aggregate statistics at the village, operator, state and national levels</li> <li>• to remove any doubt that the resident decides the pathway</li> </ul>
74		<p>The CAC's Involvement in Complaints</p> <p>RRVV objects to the requirement to complain to the CAC in writing as this introduces a barrier to escalation. RRVV also objects to requiring a resident to escalate a code compliance complaint not resolved at the village level to the operator. Complaining to the village manager's boss should not be compulsory. Equally, the resident should have the option of complaining directly to the operator if the complaint is about the village manager.</p> <p>The Code should require the CAC to handle resident-resident-village manager (or operator) complaints.</p> <p>The code should make explicit that the CAC should facilitate reference to a relevant external authority if that is what the resident says or she desires and should advise the resident that the option exists before proceed to take any action on a dispute.</p>	<p>Rewrite:</p> <ul style="list-style-type: none"> <li>• to remove the requirement to complain in writing</li> <li>• to remove the requirement to escalate to the operator</li> <li>• provide an option to complain to the village managers manager if the complaint is about the village manager and an obligation to advise the residents of this option (if the village manage has no manager, an alternative person)</li> <li>• require that the CAC handle three-way disputes (resident-resident-village manager) if requested by the residents</li> <li>• require the CAC to facilitate reference to an external authority and to require the operator and the CAC to advise residents of their rights</li> <li>• limit residents' contribution to the mediator's fee to 50%</li> </ul>

		A resident should pay more than 50% of the cost of a mediator, and then only rarely.	
75		<p>Disciplinary Action for Non-Compliance</p> <p>“The CAC will also consider certain matters of ... non-compliance...” is a weak commitment.</p> <p>The Code does not make grounds for disciplinary action sufficiently clear to enable residents with the complaints repeatedly referred to RRVV to meet the “clear and objective code breaches” test.</p> <p>“The CAC will not take a view on questions of legal interpretation...”. This limitation severely limits its usefulness. Most of the complaints brought to RRVV’s attention include an allegation that the operator is not obeying the law and so require an interpretation of one of the two main acts governing retirement villages, Australian Consumer Law or the resident's contract with the operator. Moreover, if the CAC won’t take a view in legal interpretation, it then avoids taking disciplinary action against an operator that fails to comply with relevant law.</p> <p>Village managers do currently attempt to resolve basic questions of law albeit badly.</p> <p>Removing an operator from the register will not be adequate in some cases. A contractual penalty regime is required.</p> <p>There is no requirement for the CAC to refer a criminal or</p>	<p>Rewrite to include:</p> <ul style="list-style-type: none"> <li>• clear grounds for disciplinary action on matters of concern to residents (see the RRVV operator sins list)</li> <li>• contractual penalties</li> <li>• a commitment to refer criminal and other serious offences to the relevant authorities</li> </ul> <p>Commit to:</p> <ul style="list-style-type: none"> <li>• supporting RRVV’s campaign for an ombudsman</li> <li>• requiring the CAC to obtain legal advice necessary to carry out its duty to take disciplinary action</li> </ul> <p>Provide for a contractual penalty.</p> <p>Commit to referring criminal conduct to the relevant authorities.</p>

		serious offence to the relevant authorities.	
76		Cost to Code Signatories  At no stage should an operator attempt to recover Code costs (a cost of doing business) from residents.	Rewrite to provide that at no stage should an operator attempt to recover its code costs (a cost of doing business) from residents' funds.
<b>Appendix A Checklist for code self-assessment</b>			
77		Reflects many of the problems identified above.	Rewrite
<b>Appendix B Compliance statement</b>			
78		RRVV objects to self-assessment.	Require an independent compliance audit as in Item 71.
<b>Appendix C Schedule of independent dispute resolution services</b>			
79			OK
<b>Appendix D Guidelines for complaint management in the retirement community</b>			
	<b>Scope</b>		
80	1.1	Guidance	OK
81	1.2	Guidance scope	OK
82	1.3	Principles	OK
83	1.4	Read in conjunction with other appendices	OK
84	1.5	Residents' rights under legislation	OK

<b>Guiding principles and application</b>			
85	2.1	Guidelines not exhaustive	OK
86	2.2	Available to residents and promoted to all personnel.	OK
87	2.3	Training and ongoing training.	OK but see comments above at Item 58 on training.
<b>Scope of complaints</b>			
88	3.1	Procedure not to override contractual, statutory or regulatory requirements	OK but ensure that the code does not override contractual, statutory or regulatory requirements even by implication.
89	3.2	Will not address complaints between residents  Does not recognise three-way complaints where the village manager or operator is one of the parties.  Does not recognise that a resident's representative may be an individual (not just a residents' committee).	Rewrite to: <ul style="list-style-type: none"> <li>• recognise three-way complaints where the village manager or operator is one of the parties</li> <li>• recognise that a residents representative may be an individual (not just a residents' committee)</li> </ul>
90	3.3	Does not require a party to surrender any of their legal rights	OK but make sure code does not do this, even by implication
91	3.4	The Code does not require an operator who declines to consider a complaint to advise the resident of other available avenues of mediation or redress.	Rewrite to require an operator who declines to consider a complaint to advise the resident of other available avenues of mediation or redress.
<b>The right to complain without consequences</b>			
92	4.1	Complaints must be confidential at the request of one or more participating residents but otherwise not restricted by a confidentiality deed.	Rewrite to provide that complaints must be confidential at the request of one or more participating residents but otherwise not restricted by a confidentiality deed.
<b>Complaint handling and investigation framework</b>			
93	5.1	RRVV objects to any requirement to make a complaint in	Rewrite to make clear a resident may make an oral complaint.

		writing	
94	5.2	See 4.1 above on confidentiality.	Rewrite
95	5.3	Effect unclear.	Rewrite to clarify.
96	5.4	A resident should have the right at each stage to approve or reject any contemplated investigation.	Rewrite to make clear a resident has the right at each stage to approve or reject any contemplated investigation.
97	5.5	Written in the passive voice. Who is responsible for making the parties aware?	OK but rewrite to make clear who is responsible.
98	5.6	All lines of escalation and referral must be available, not just those set out in the code of conduct as currently drafted.	Rewrite to make clear that the resident chooses the escalation pathway.
99	5.7	Unclear.	Rewrite to clarify.
100	5.8	Outcomes recorded confirmed by the parties.	OK
101	5.9	Also checked by an independent auditor.	Rewrite to include an independent auditor and a detailed audit brief.
		<b>Management of the parties to a complaint</b>	
102	6.1	The operator does not have the last word on stopping a complaint and must not interfere with a residents right to proceed along another pathway.	Rewrite to make clear neither the operator nor the CAC will interfere with the residents' right to proceed via another pathway and will facilitate the resident's choice.
103	6.2	It is entirely up to the residents to decide if they want a single representative or point of contact and dangerous for the operator to request that they do.	Rewrite to make clear that the operator must accept such a request from the residents
		<b>Accountability, monitoring and improvement</b>	
104	7.1	Record keeping	OK but see comments throughout on a national statistical system,
105	7.2	Report to village annual meeting	

		Too vague to identify what the operator must not reveal (e.g. the names and other details that would identify resident complainants who have reserved their right to privacy)	Rewrite to make the resident's rights clear.
106	7.3	Annual review	Engage with residents, not just seek feedback from them.
<b>Appendix E Complaints form (internal to operator)</b>			
107		Must contain prominent advice that use of the form is not compulsory.	Amend
<b>Appendix F Complaints form (resident to code administration committee)</b>			
108		Must contain prominent advice that use of the form is not compulsory.	Amend
<b>Appendix G Complaints escalation flowchart</b>			
109		Does not identify alternative pathways.	Amend
<b>Appendix H Code administration committee charter</b>			
	<b>Committee governance</b>		
	<b>Committee Composition</b>		
110		See item 67 above for comment on committee composition  The one regulatory/consumer affairs representative is impractical.	Rewrite to provide for: <ul style="list-style-type: none"> <li>• a chair independent of both operators and residents</li> <li>• an equal number of operator and resident representatives</li> </ul>
111		Tenure of committee members	OK

112		Role of chair	Rewrite to cover the role of independent chair and expand
113		Role of secretary	Expand to include training of members and any other function
114		Role of committee members	Expand to include a responsibility to act independently of the organisations from which they originate and to withdraw for deliberations if they have a conflict of interest.
		<b>Key Committee functions</b>	
115		The disciplinary role is weak (i.e. <i>consider</i> is a soft commitment) and there is no process in the code for taking disciplinary action against a signatory.	Rewrite to strengthen the disciplinary role and provide a process for disciplinary action against a code signatory.
116		Monitoring – no mention of resident involvement and residents’ objectives.	Rewrite to include resident involvement and evaluation of performance against residents’ objectives.
117		<p>Complaints handling</p> <ul style="list-style-type: none"> <li>• no recognition of compatibility with a national complaints statistical system</li> <li>• does not recognise that single village operators have no internal escalation process, so residents need a right to go directly to an external service when the complaint is about the operator</li> <li>• Requiring complaints to be in writing is, for some residents, a barrier to complaining</li> <li>• The escalation dot point implies application to a statutory authority can only occur after trying the CAC process. This implication is wrong.</li> <li>• The resident must never pay more than half the mediators costs.</li> <li>• RRVV agrees with the last dot point but notes that not all references to complaint handling in the code are</li> </ul>	<p>Rewrite to include</p> <ul style="list-style-type: none"> <li>• national complaints statistics system</li> <li>• pathways for residents in villages where the operator has only one village</li> <li>• remove the requirement to complain in writing and clarify escalation pathway provisions (residents can go straight from the village process to a relevant outside complaints authority)</li> <li>• Limit the resident’s contribution to mediation costs to 50% maximum</li> <li>• Ensure all references to the complaint process are consistent with the last dot point</li> </ul>

		consistent with this point	
118		Code register	Rewrite, to require publishing details of all non-compliance
119		Complaints register Having an array of complaints registers is suboptimal	Rewrite to require the establishment of a national complaints statistical register of which the CAC register is a part
120		Compliance and self-assessment – as per Items 71 and 78	Rewrite to include independent compliance audit – for initial certification and then annually with the option of extending the interval to 2 years for operators with an outstanding audit record over at least two audits
121		Non-compliance Sole reliance on complaints is unsatisfactory. Requires a proactive approach	Rewrite committing to take a proactive approach to eliminate non-compliance (of which audit is one part)
122		Financial management	OK
123		Risk management	OK
124		Stakeholder communications. Why not commit to <i>engaging</i> with resident stakeholders as per Item 52?	Rewrite committing to <i>engage</i> with resident stakeholders as per Item 52
125		Decision making	OK
		<b>Improving committee processes</b>	
126		Committee meetings	OK but resident members will need assistance with travel and accommodation
127		Committee meeting agenda and minutes	OK provided the secretary negotiates the agenda with members

128		Committee papers	OK
129		Committee calendar	OK
		<b>Committee Effectiveness</b>	
130		Key aims	OK
131		Member protection – why only the peak body members?	Rewrite to include all committee members organisations
132		Ongoing member evaluation	OK
133		Member remuneration what about the independent chair (see Item 67	Rewrite to provide for the payment of an independent chair
134		New Member Nomination, Evaluation and Selection. What about resident members	Rewrite to include resident members (nominated and voted on by residents or their representative associations?)
135		Member development	OK
<b>Appendix I About the peak bodies</b>			
136		The RLC profile is too much like a commercial	Rewrite to eliminate self-promotion.
<b>Expression</b>			
137		Imprecise expression. Moreover, the authors have written 84 sentences written in the passive voice. This language does not promote confidence and trust.	Rewrite