



Consumer Affairs Victoria Consumer Property Law Review

Options for reform of the Owners Corporations Act 2006

A submission by:
Residents of Retirement Villages Victoria Inc.
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1. Executive Summary

RRVV is pleased to have the opportunity to respond to your paper Options for reform of the Owners Corporations Act 2006.

Retirement villages are significantly different from other strata-titled developments. The differences are so many and fundamental that they deserve separate recognition.

The options paper does not adequately address these differences and so does not meet the needs of residents of strata-titled retirement villages. Moreover, this omission adds weight to the argument that the Owners Corporations Act will never adequately address the needs of retirement village residents. Given this, RRVV recommends simplifying resident stewardship of strata titled villages by in the first instance harmonising the Owners Corporations Act and the Retirement Villages Act (largely by giving precedence to an amended Retirement Villages Act), and in the longer term by replacing both Acts with one new Retirement Villages Act.

RRVV recommends revising policy settings governing retirement villages to provide prospective residents with a range of options, and that strata-titled retirement villages should be one of those options. Accordingly, RRVV recommends removing the disadvantages currently limiting the growth of strata titled retirement villages by implementing the following additional recommendations.

- a. Licensing owners corporation management companies and individuals representing the owners corporation manager at the village level, and implementing a program of initial training and continuous professional development
- b. Limiting the term of owners corporation management contracts including provisions preventing initial owners and operators from appointing themselves for terms that extend beyond the point where residents resolve to appoint a manager of their own choosing
- c. Removing unfair and misleading terms from owners corporation management contracts and subjecting them to independent expert pre-release vetting
- d. That only fairness principals should determine initial lot liability and entitlement for retirement villages. Similarly, ensuring each lot's liability as a proportion of the total and entitlement as a proportion of the total be the same except in the case where the particular use of a lot significantly increases the owners corporation's general repair and maintenance costs and except as in g. below.
- e. Adopting the dispute resolution process of the Retirement Villages Act, as amended from time to time, for strata-titled retirement villages ,
- f. Requiring all strata-titled retirement villages to adopt maintenance plans and fund them
- g. Prohibiting developers, operators and related parties of future strata-titled villages from owning 'common property' and extinguishing the voting rights of those that own such property in existing villages
- h. Legislating extensive resident safeguards and re-housing options when a strata-titled retirement village is subject to sale or redevelopment under legislation that does not require the agreement of all lot owners.



- i. Immediate legislation to ensure all residents in villages transitioning from strata titles to leases have equal and unified participation rights and opportunities. Similarly, RRVV seeks provisions that prevent an operator from gaining control of an owners corporation and therefore control of the common property before completing such a transition.
- j. Holding Retirement Village annual meetings and Owners Corporation annual meetings consecutively.
- k. Prohibiting village operators with majority lot entitlements from voting on owners corporation fee levies, and extending the prohibition to voting on any proposal affecting residents' control over their enjoyment of village life.
- l. Assigning residents in villages transitioning from strata titles to leases the voting and participation rights of owners to their lessees until the transition is complete

RRVV looks forward to a program of reform of all the major legislation directly affecting retirement villages.

2. About RRVV

Residents of Retirement Villages Victoria is a volunteer organisation serving and representing residents of retirement villages and like housing communities with around 7,700 paid up members. A committee of nine members supported by 110 resident liaison officers (village level coordinators) administers its affairs.

RRVV has four primary activity streams:

- Member support
- Research
- Government relations
- Industry relations

RRVV devotes the greater part of its resources to member support. This includes:

- Responding to telephone and e-mail queries and requests for help with problems (around 1,000 queries a year)
- Publishing four newsletters a year
- Holding two primary member events a year
- Visiting villages
- Advocating on behalf of residents making complaints
- Provision of the website www.rrvv.org.au as a service to members and a source of information for people interested in retirement villages.

RRVV research explores the retirement village satisfaction, interactions with management, problems encountered, disputes, access to information and residents participation in decision making.

During the last financial year, RRVV lodged formal submissions to:

- The Department of Justice on retirement village residents access to justice
- The Department of Consumer Affairs on Retirement Village Owners Corporations
- Local Government Victoria, Review of the Local Government Act 1989
- The Legal and Social Issues Committee of the Parliament of Victoria on retirement housing

RRVV meets regularly with retirement village operators to explore areas of mutual interest and resolve differences.

3. Scope of this submission

Chapter 8 is the only part of the options paper that recognises retirement villages are different from other strata-titled developments but even the two options canvassed in that chapter do not propose giving significant recognition to retirement villages in the relevant sections of the Owners Corporations Act.

RRVV submits that the options paper, therefore, does not provide retirement villages with the support they need.

Accordingly, RRVV prefers that as far as possible the Retirement Villages Act regulates strata-titled retirement villages, and that in the long term a new Retirement Villages Act fully covers strata-titled retirement villages.

This submission focuses solely on the implications for retirement villages of the many issues and solutions raised in the options paper.

4. Related RRVV submissions

Please see the RRVV submission to the Legislative Council Legal and Social Issues Committee at: <http://www.parliament.vic.gov.au/lsc/article/2970> (Select submission 687)

5. Background Notes

RRVV submits that if Victoria is to house its growing population of retirees adequately it will have to create a legal and economic environment that provides prospective residents with a choice of retirement housing types. Clearly, retirement villages will be a continuing part of the retirement housing mix.

Strata-titled retirement villages have advantages and disadvantages that define their place in the range of retirement housing options offered by developers and operators.

The overwhelming majority of people entering retirement villages have owned their own homes. Strata-titled villages thus provide residents with a form of tenure they understand. Many do not understand a long term lease.

Strata-titled villages provide residents with a sense of autonomy not replicated in leasehold villages. In RRVV's opinion, leasehold villages leave owners and their operator agents with ownership rights that exacerbate the power imbalance between manager and residents inherent in retirement villages.

Proposed amendments to Part 5 of the Subdivision Act and the banning of other practices that reduce or remove residents' control of the owners corporation would widen the availability of this sense of autonomy.

Strata-titled villages suffer some disadvantages compared to leasehold villages. For example, many purchasers of strata-titled retirement village units pay stamp duty whereas purchasers of a village leasehold occupancy right do not pay stamp duty.

RRVV acknowledges that not all strata-titled village disadvantages are the product of weakness in the Owners Corporations Act. Nevertheless they deserve recognition when reviewing that Act because they form part of a bundle of considerations shaping the decisions of prospective residents, potential developers, and operators of existing strata-titled villages considering transitioning to leasehold contracts.

6. Regulation of owners corporation managers (chapter 1)

Licensing versus registration of owners corporation managers (section 1.1)

The background notes on this issue fail to recognise several important facts about owners corporation managers serving retirement villages.

First, typically the owners corporation manager is a company that is also the village operator or a subsidiary of the village operator. Similarly, the village manager is usually the personal representative of the operator, and of the owners corporation management company if this is a separate entity. The village manager thus has two roles that are sometimes in conflict.

Second, in most cases, the village manager is a full-time manager of the village and has responsibilities for the welfare of residents. She has day-to-day contact with residents, some of whom are vulnerable people.

Third, the village operator employs a team of people to run the village. At a smaller village, the team might comprise only three full-time employees. At a larger village, the team could be 15 full-time employees or a greater number if the team includes part-time employees. Thus a village manager has important staff management responsibilities in addition to owners corporation duties.

Fourth, village staff members do not distinguish between owners corporation work and non-owners corporation work on a day-to-day basis, nor is it reasonable to expect them to do so. Similarly, village operations accounts generally do not adequately distinguish between owners corporation work and non-owners corporation work.

Fifth, the arrangements outlined above and other factors dealt with later in our submission give the operator powers and functions it can use to exert inappropriate control over the lives of village residents.

Sixth, a residence contract (sometimes called a service contract) governs much of the relationship between residents and the operator. This contract plays a significant part in the way the village manager manages the village. Typically, under this contract the operator runs the village as a not-for-profit entity and so it makes no extra profit from performing village management functions, including owners corporation management functions, effectively and efficiently.

The operator derives profit from a deferred fee and in many cases a share of any capital gain on unit resale. The absence of a day-to-day profit motive leads to management complacency.

RRVV submits that the failure to recognise these unique factors leaves the options proposed falling short of the needs of residents of strata-titled retirement villages. Moreover, this failure adds weight to the argument that the Owners Corporations Act will never adequately address the needs of retirement village residents.

Question 1 What option do you support, and what are the features of that option that make it the most practical and cost-effective way of improving the quality and conduct of owners corporation managers?

RRVV supports Option 1A for retirement villages, particularly the licensing of individuals representing the owners corporation manager at the village level. Owners corporation managers working in villages have daily face-to-face contact with residents of advanced years and are in a position of considerable power and influence over their lives. RRVV submits retirement village owners corporation management companies and their professional employees owe a higher duty of care to their residents than do other owners corporation managers and that only licensing and all that goes with it will ensure achievement of the highest standards.

Licensing will not create a significant barrier to entry to the job of retirement village owners corporation manager. Almost always the village owner or operator bears the cost of training individual managers. Note that RRVV also advocates similar licensing for village managers in loan-lease and other villages. If licensing were adopted for all retirement village managers the economies of scale would largely overcome any difficulties anticipated by the options paper. Sharing the work of administering retirement village owners corporation licensing and village manager licensing would cut unit costs. Moreover, the larger operators could carry some of the burdens of administering the licensing of their employees as is the case, for example, in the licensing of financial planners.

Question 2 What other eligibility criteria should be considered under Option 1A or Option 1B?

RRVV submits that individual managers working at village level must have no history of bullying or intimidation, nor of financial mismanagement. Merely excluding people who are insolvent or represented is not enough. Furthermore, the system of licensing administration should track all complaints made about individual managers including those dealt with internally by operators' and so provide additional information to consider when contemplating renewing or cancelling a licence.

Question 3 What other matters are important to consider for the transitional arrangements under Option 1A?

Clearly it is important to allow a sufficient transition time for existing managers. RRVV recommends a step-by-step regime rather than one that provides a fixed period to meet the new standards without any requirement to demonstrate satisfactory progress. Similarly, it is important to provide like transitional arrangements for bringing prospective managers up to speed.

[Maintaining the knowledge and skills of owners corporation managers \(section1.2\)](#)

Question 4 Which option, and why, would be more effective in ensuring the ongoing knowledge and skill of owners corporation managers?

RRVV recommends Option 2A for all retirement villages. RRVV also recommends integrating the training and continuous professional development program with a similar program for retirement village managers that we have advocated.

Question 5 What evidence is there of the benefits of continuing professional development for owners corporation managers, or for property occupations more generally, in Australia or overseas?

In RRVV's experience, well-trained village managers perform at a much higher level than untrained managers. Lack of effective initial and ongoing training significantly inhibits retirement village manager performance and so dampens the effectiveness and efficiency of the whole system and reduces fairness when dealing with residents.

Question 6 If continuing professional development is preferred, what steps could be taken to ensure the ongoing quality and appropriateness of the training, and to reduce the risk of exploitation by training organisations and participants?

RRVV recommends training designed and implemented by independent experts rather than by retirement village owners and operators or their industry associations. RRVV also recommends involving suitably qualified residents in the development and updating of the training programs.

RRVV acknowledges the potential for exploitation by training organisations, but expects that if the Government of Victoria solves the known problems, that solution will largely eliminate the problem for prospective owners corporation managers and village managers.

Question 7 What other options are there to support the ongoing maintenance of the knowledge and skills of owners corporation managers?

RRVV submits that owners corporations managers should be subject to professional standards audit in much the same way that lawyers, financial planners, and some other professionals are.

[Unfair terms and termination of management contracts \(section 1.3\)](#)

Question 8 Which option is fairer to both parties and why?

RRVV prefers option 3A to 3B on the grounds that termination without cause is unfair to owners corporations managers. Nevertheless, we see a need to enact clearer reasons and a process for removing a manager and a clear termination process. This would help overcome the chilling effect of the risk of an award of damages. In short, an owners corporation should only be at significant risk if it has failed to follow the process and the reasons it gave for the termination do not meet the specified criteria. The criteria should include minimum standards for performing the job, prohibited actions and failing to meet reasonable requirements adequately communicated by the owners corporation or its committee.

Question 9 Under option 3A, if certain terms are to be prohibited as unfair what types of terms should be prohibited and what types of terms should not be prohibited and why?

RRVV submits that legislation should prohibit any terms which conflict with the Retirement Villages Act, the Owners Corporations Act and Australian Consumer Law and terms likely to have the effect of misleading residents about their retirement villages owners corporations management contract rights.

Without limiting the generality of the previous paragraph, prohibit the following specific terms:

- long contract durations – the maximum length of a retirement owners corporation management contract should be set at five years.
- requiring the owners corporation to make the manager aware of defects in the common property; the manager should be required to inspect the property to identify any repairs and maintenance that may be needed and bring these to the attention of the owners corporation committee.
- requiring an owners corporation to obtain valuations of the cost of reinstating and replacing buildings (for insurance purposes) any less frequently than every four years' with desk reviews annually
- making it the role of the manager to advise an owners corporation on the Owners Corporation Act and its application (retirement village owners corporations need a free, independent advice service)
- permitting annual increases in management fees above CPI increases (i.e. enact provisions similar to those governing increases in maintenance fees under the Retirement Villages Act)
- permitting owners corporation managers demand that residents pay management fees annually in advance; monthly in advance is acceptable.

RRVV seeks independent expert pre-release vetting of retirement village owners corporation management contracts.

In addition, RRVV seeks a clearer definition of the meaning of delegation of powers and functions by an owners corporation to a manager, including more detail on what must not be delegated and the process of repealing a delegation. Even the term owners corporation manager is confusing to some retirement village residents who misunderstand it to mean that the manager has the right to direct the owners corporation rather than to manage the common property on its behalf as delegated. Why not 'common property manager'? RRVV recommends giving retirement village owners corporations the right to amend delegations to their manager as they see fit by giving a minimum of three month's notice.

Question 10 Should 'reasonable' notice be quantified under Option 3B and, if so, for how long?

Yes. Please see response to Question 11.

Question 11 What is the best and fairest way to exercise the termination right under Option 3B?

Option 3B should specify reasonable notice, and a process similar to that which employers undertake when terminating an employee. RRVV believes two weeks' notice is reasonable once completing such a process.

[Duties and obligations of owners corporation managers \(section 1.4\)](#)

Question 12 Are the disclosure requirements proposed under Option 4A sufficient to address potential conflicts of interest for managers and, if not, what other measures are required?

No. RRVV remains opposed to owners corporations managers retaining commissions because receiving commissions conflicts with their duty to act in the best interests of their residents. Disclosure is not best practice. We recommend banning owners corporations managers receiving a commission where commission-free commercial terms that do not disadvantage the owners corporation are available. Where suitable commission free commercial terms are not available, we recommend requiring the manager to rebate the commission in full to the owners corporation.

Similarly, disclosing beneficial relationships with suppliers is not best practice if such relationships benefit the owners corporations manager or associated entities ahead of residents. RRVV prefers arm's length relationships with suppliers as the default position with the onus on the owners corporation manager to prove to residents and the auditor a clear-cut resident benefit for any exceptions.

RRVV asks why, when ethical financial planners are choosing to deal with fund managers and insurance companies that rebate or don't pay commissions and don't enter into other conflict-laden relationships, CAV proposes condoning owners corporations managers receiving commissions and not rebating them or entering into other beneficial relationships affecting residents?

Given that an owners corporation manager is a servant of the owners corporation, information about the business of the owners corporation is the property of that owners corporation, not the manager. RRVV recommends that the Act contain no provisions that imply that a manager need only supply limited information about owners corporation business (as distinct from the business of the manager) to the owners corporation or individual residents. Rather, RRVV recommends making it an offence for a manager not to supply information reasonably requested or to impose unreasonable commercial terms on the supply of information. RRVV also recommends requiring owners corporations managers to maintain modern systems and records capable of economically meeting all reasonable requests for information.

Question 13 Is Option 4B sufficient to address the issues arising from the pooling of funds, or is the extra level of regulation under Option 4C required, and if so, why?

Neither Option 4B nor 4C fully meets the needs of retirement village residents.

RRVV sees no reason why retirement village owners corporations managers should pool funds. A significant number of retirement village long-term maintenance funds hold over \$1,000,000 even though the average is more like \$200,000. The balance in operations accounts is usually below \$100,000 but the number of transactions per month well above that of a typical owners corporation.

RRVV recommends legislation requiring all owners or their operator agents hold both operations and long-term maintenance funds in trust to guarantee better that residents will not suffer a loss when a village fails or changes hands. Nevertheless, we see no justification for the expense of separate trust account auditing.

Question 14 What are the risks, if any, of unintended consequences arising with the measures proposed in Option 4B or Option 4C?

NA

7. Responsibilities of developers, occupiers and committee members (chapter 2)

Developers obligations (section 2.1)

Question 15 Are the enhanced general obligations under Option 5A sufficient or are the additional obligations under options 5B, 5C and 5D needed, and if so, why?

RRVV believes additional obligations to Option 5A are required and prefers Option 5B to 5C, but only because 5C prevents developers appointing themselves or associates as owners corporations manager. Most retirement village developers do appoint themselves as an operator. There are pros and cons to this arrangement but, on balance, RRVV believes retaining the option to do so would better encourage the development of new strata-titled villages and hence continue to give retirees a choice of freehold or leased retirement village accommodation.

RRVV supports stand-alone Option 5D as an addition.

Question 16 Are the 'further expanded' obligations under options 5B or 5C necessary or should the Queensland or New South Wales approach, as applicable, be adopted without change?

RRVV would prefer Option C provided that it permitted retirement village developers initially to appoint themselves or their associates as owners corporations managers, and such initial contracts were for a limited term and free of unfair terms.

When the owners corporation in a new strata-titled retirement village is under resident control (assuming amendments to the Act have removed opportunities for developers and operators retain control by artificial means), it should be able to choose and appoint any licensed or registered manager as soon as possible. However in a new retirement village any lot owner with a commercial or other relationship with a candidate owners corporation manager should be excluded from voting.

RRVV supports stand-alone Option 5D as an addition.

Question 17 Why would the 'building defects' obligation be necessary?

RRVV members in strata titled retirement villages frequently complain about building defects and of the difficulties they have persuading owners and operators to deal effectively with builders or to take responsibility for defects. In some villages, disputes about building defects and related maintenance issues run for as long as six years.

RRVV submits that Option 5D should have an additional provision requiring retirement village owners or their operator agents to take all necessary legal steps to have building defects fixed promptly and at no cost to resident contributed funds.

Question 18 If it is desirable to expand the rule-making power to include rules on smoke drift, renovations and access to common property:

(a) should Model Rules also be made on those subjects, and if so

(b) are the proposed Model Rules based on reasonable presumptions about what most lot owners in owners corporation would regard as unobjectionable, and are they adequate?

RRVV supports Options 6A, 6B, 6C, 6D and 6E, and submits such rules should replace any like rules in a residence contract (i.e. replace the operator's rules) but not replace by-laws made under the Retirement Villages Act in a village transitioning from strata titles to leases. Accordingly, we recommend amending Section 37(1) of the Retirement Villages Act. More generally, RRVV prefers the rulemaking powers of an amended Retirement Villages Act for all retirement villages.

Question 19 Would a Model Rule on fire-safety advice to tenants, in principle, be unobjectionable, and if so, why?

RRVV supports Option 6F and submits such rules should replace any like rules in a residence contract (i.e. replace the operator's rules) but not replace by-laws made under the Retirement Villages Act.

Question 20 Do all or only some of the options improve the position of owners corporations and why?

Almost all retirement village residence contracts prevent the owner party letting the unit to a tenant, so provisions covering tenants are of little relevance.

RRVV does not support Option 6G in relation to invitees.

RRVV is concerned that many retirement village residents are so conflict-averse that they are incapable of controlling their visitors.

RRVV recommends making the communication of rules a responsibility of the manager as appropriate and as required (e.g. visitors may park here but not there) but leaving the ultimate

responsibility with the visitor. RRVV submits that compliance with visitor rules should be a condition of entry and published as such, with the exception that children not accompanied by their parents remain the responsibility of the invitee.

This is an example of strata titled retirement villages needing specific legislative provisions that are different from those enacted for strata titled development in general.

Question 21 What additional justification, if any, is needed for the proposal for the joint and several liability of lot owners for breaches of owners corporation rules by their tenants and invitees?

NA

Question 22 Is it sufficient simply to expand on the existing duties of committee members to address the issue raised, or is a complete reformulation of committee members' duties, along the line of the Associations Incorporation Reform Act, necessary, and if so, why?

RRVV supports Option 7A but not 7B.

RRVV does not agree that reformulating the existing duties of committee members is necessary for retirement villages. More generally, RRVV prefers the self-determination provisions of the Retirement Villages Act.

Question 23 What risks or unintended consequences might arise with options 8A, 8B, and 8C, which propose extending the powers of owners corporations to deal with community building, water rights and abandoned goods?

RRVV supports Options 8A, 8B, and 8C and sees no significant risks or likelihood of unintended consequences for residents of retirement villages.

Question 24 What is the best approach for dealing with abandoned goods on common property, and why?

NA

Question 25 What are the benefits and risks of the additional power proposed for goods that block access?

NA

8. Decision-making within owners corporations (chapter 3)

Voting thresholds and use of proxies (section 3.1)

Question 26 How might the limitations on proxy farming have negative consequences for the governance of inactive owners corporations?

RRVV supports the intent of Option 9A but recommends specific provision for retirement villages

RRVV submits that setting reasonable limits on the number of proxies a resident may hold would not materially affect the governance of inactive owners corporations. Nevertheless, some limits (existing and proposed) on who may hold a proxy could have negative consequences for retirement villages.

RRVV submits that one way of providing lessee residents of strata titled retirement villages with adequate representation and voting rights would be to require the unit owners to assign their entitlements to their lessee for the duration of the lessee's tenure or until the village is entirely leasehold, and to allow the lessees to stand for election for the committee during the transition period.

Members of retirement village owners corporation committees sometimes use their right to appoint proxies to arrange for their adult offspring to participate in committee meetings in their place. RRVV supports this practice because it covers absences due to ill health and brings new views and expertise to the committee.

RRVV recommends enabling a retirement village owners corporation to elect not more than two independent outsiders (i.e. independent of the operator) to the committee, provided the committee first meets the requirements of Section 103 (1) of the Owners Corporations Act.

Question 27 Which approach to giving owners corporation managers decision-making powers in Option 9B is the more effective and why?

RRVV supports Option 9B-1 with Model Rules.

Question 28 What are the risks of giving owners corporation managers decision-making powers in the absence of a licensing or enhanced registration scheme for managers?

RRVV members report many examples of retirement village owners corporations managers engaging in dubious practices, of exceeding their authority and of maneuvering to gain total control of the owners corporation even without the proposed greater authority to make decisions.

RRVV nevertheless acknowledges that there are inactive owners corporations in retirement villages from time to time and such villages do need managers with authority to make certain decisions

RRVV, therefore, submits that retirement villages need the enhanced protections of licensing for managers.

Question 29 Is further relaxation of the special resolution process required for inactive owners corporations and, if so which alternative under Option C is preferable and why

RRVV recommends the special resolution provisions of the retirement Villages Act for strata titled retirement villages except in the case of approving a proposal for sale and redevelopment of a building complex or the whole village.

Failing such a change applying the retirement Villages Act special resolution provisions, RRVV prefers the first form of Option 9C (i.e. unopposed special resolutions by a quorum) but otherwise leaving the current provisions in place.

Question 30 How might reducing the size of an owners corporation committee and providing for who can arrange a ballot improve its functioning?

RRVV recommends the provisions of the Retirement Villages Act apply. Failing this, RRVV supports both options 10A and 10B. Our experience suggests a committee of 12 members is too large for some villages because not enough residents are committed to the cause. A smaller group of committee members is more effective than a larger group containing passengers.

There are dangers in mandating a smaller committee. Residents of retirement villages suffer more illness than the population at large. Absences from meetings are frequent, leaving decision-making in the hands of a very small group or stalled for lack of a quorum.

RRVV knows of owners corporations that have reduced their committee size on their own initiative. RRVV supports this form of self-determination

RRVV supports Option 10B.

9. Dispute resolution and legal proceedings (chapter 4)

Internal dispute resolution process (section 4.1)

Question 31 How well do options 11A and 11B address the issues raised about the role of owners corporations in dispute resolution and the procedures under Model Rule 6?

RRVV prefers the dispute resolution process provided by the Retirement Villages Act for retirement villages to Model Rule 6.

Question 32 What are the benefits and risks of increasing the amount of the civil penalties for breaches of the rules?

RRVV supports Option 12 A and sees no significant risks when combined with Option 12C.

Question 33 Which option for reforming the imposition and payment of civil penalties achieves the best balance between fairness and effectiveness, and why?

RRVV supports Option 12C. Nevertheless, RRVV prefers like provisions inserted in the Retirement Villages Act

Question 34 Which option, and why, best balances the need for owners corporations to be able to commence legal actions with protection for those lot owners opposed to an action?

RRVV supports Option 13A but prefers like provisions to be in the Retirement Villages Act and does not support allowing operators to insert similar provisions in residence or service contracts.

Question 35 If Option 13A was adopted, would the current provision of the Owners Corporations Act that empowers VCAT to authorise a lot owner to commence proceedings on behalf of an owners corporation still be necessary?

RRVV supports Option 13A but prefers the special resolution provisions of the Retirement Villages Act to authorise commencement of proceedings.

Question 36 If Option 13B was considered appropriate, but the 66 percent threshold was considered insufficient to overcome the problems identified, would a further reduction to 60 per cent be appropriate?

NA

10. Differential regulation of different sized owners corporations (chapter 5)

Question 37 Which option, and why, represents the most appropriate way to differentiate the level of regulation of owners corporations according to their size?

Most strata-titled retirement villages have more than 50 lots and are prescribed owners corporations. Regardless of size, however, the management needs of the common properties in retirement villages do not vary to the extent that they do in non-retirement residential developments. Accordingly, the RRVV does not consider that introducing tiers for retirement villages is necessary or desirable.

All the mandatory requirements listed for Tier 1 developments should apply to retirement villages regardless of size.

Question 38 Is the size of owners corporations in each tier appropriate for the requirements imposed on them and, if not, what should be the size requirement for each tier?

NA

11. Finances, insurance and maintenance (chapter 6)

Defaulting lot owners (section 6.1)

Question 39 What other options could be considered to enable owners corporations to recover debts?

RRVV does not support Option 15A for retirement villages but does support Options 15B, 15C, and 15D.

RRVV recommends retirement villages have a legislated range of options to collect fees from defaulting lot owners to be used before applying to either VCAT or a Magistrates Court in preference to provisions in a service or residence contract.

Moreover, RRVV recommends the Retirement Villages Act to provide for collecting unpaid fees rather than the Owners Corporations Act and supports continuation of the current owners corporation right to collect unpaid fees from the proceeds of the eventual sale of the property under conditions of genuine hardship.

RRVV supports Option 15F.

Question 40 Should the amount of any fee bond be left to owners corporations to set and, if so why?

NA

Question 41 Should a maximum amount be set out in the Act and, if so, what should that amount be?

NA

Question 42 Would it be more efficient if fee bonds were held by the owners corporation itself, the owners corporation manager or the RTBA?

NA

Question 43 Should owners corporations be able to recover costs that exceed the debt or should they be capped at level of the debt?

Capped.

Question 44 Which of the 'litigation costs' options better achieves a balance between financial equity for lot owners, encouraging alternative dispute resolution and discouraging unnecessary use of lawyers?

RRVV supports Option 15 F.

Question 45 What would be the cost of increasing the minimum public liability insurance amount to \$20, \$30 and \$50 million?

RRVV does not have access to reliable data

Question 46 How might the equity achieved by the powers proposed under Option 16B outweigh the potential problems?

NA

Question 47 In relation to the proposal under Option 16B for differential levies for insurance policy premiums (where a particular use of a lot increases the risk) should owners corporations be:

(a) required to apply to VCAT for the appropriate order, or

(b) permitted under the Act to apply the appropriate levy as of right, leaving it to an aggrieved lot owner to apply to VCAT for any remedial order?

NA

[Maintenance plans and maintenance funds \(section 6.3\)](#)

Question 48 Which option or options do you prefer for maintenance plans and funds, and how does the option or options address the issue?

The RRVV supports Options 17A, 17B and 17C (with 17C subject to obtaining a professional risk assessment) for all retirement villages regardless of their size on the basis that all strata titled retirement villages, being prescribed owners corporations, should have fully funded maintenance plans in recognition that fixed income residents do not have the financial capacity to absorb maintenance shocks. These funds should also cater for future liabilities and financial risks, taking into account relevant insurances.

Question 49 Should a general obligation be imposed to deposit in a fund the amount necessary to implement the relevant plan, leaving it to individual owners corporations to resolve on the appropriate part of annual fees or should some fixed proportion of fees be set in the Owners Corporations Act?

RRVV does not support setting a fixed proportion of fees in the Owners Corporations Act. Owners corporations in retirement villages should be allowed flexibility in the methods used to raise funds for their maintenance plans.

Maintenance funding differs from one retirement village to another, largely because the arrangements are established by service or residence contracts. For example, some villages fund

long-term maintenance from monthly maintenance fees whereas some others derive funding from deferred fees which are paid when residents leave the village.

Question 50 If a general obligation, should the resolution as to the amount to be set aside be an ordinary or special resolution and should it also be stipulated in the Act that the designated part of the fees must be adequate to fund the plan?

RRVV supports the proposal for a general resolution as provided for by the Retirement Villages Act and a legislated obligation to fund the plan. The legislation should also provide for an annual review by an auditor or quantity surveyor.

Question 51 If a fixed proportion of fees, what should that be for both types of fund?

NA

Legislating for Maintenance Plans and Funds

The RRVV recommends an enlarged Retirement Villages Act incorporate the matters raised above in Questions 48 to 51.

Increased expenditure arising from lot use (section 6.4)

Question 52 Where an owners corporation needs to make an assessment of how much of its general repair and maintenance costs arise from a particular use of a lot, what criteria or principles should it apply in making the assessment?

RRVV supports Option 18 but believes it impractical for an owners corporation to specify criteria or principles for the day one assessment. We recommend the owners corporation seek independent advice. We also recommend a legislated requirement for detailed justification. Note, in the case of retirement villages the question only arises for non-residential lots owned by the operator or residential lots owned by the operators and used for business purposes (e.g. as a sales office or demonstration unit). We submit that these cases warrant specific legislative attention.

We recommend a legislated requirement to maintain adequate records to support ongoing assessments.

12. Part 5 of the Subdivision Act (chapter 7)

Common seals (section 7.1)

Question 53 What, if any, risks arise from removing the requirement for owners corporations to have and use a common seal?

None

Procedures for initial setting of and changes to lot liability and lot entitlement (section 7.2)

Question 54 How much should developers' property rights regarding initial settings of lot liability and entitlement give way to considerations of fairness?

RRVV submits that lot liability and entitlement for retirement villages should rest entirely on fairness principles.

Question 55 If developers' rights should give way to fairness, which of options 20C to 20E for the initial setting of lot liability and entitlement best ensures fairness, and why?

RRVV supports Options 20D and 20E.

RRVV recommends that each lot's liability as a proportion of the total and entitlement as a proportion of the total should be the same except in the case where the particular use of a lot significantly increases the owners corporation's general repair and maintenance costs.

RRVV seeks prohibition of developers, operators or other related parties retaining ownership of land, buildings, and facilities that serve as common property or reserved for future common property. RRVV does not object to developers, operators or related parties owning land set aside for future construction of accommodation at a village provided that such land does not confer lot entitlements on the owners or expense on the owners corporation.

In villages where, for example, an operator or related party owns the community centre and associated lot entitlements (fairly allocated or not), the operator has a block vote which often gives it control of the owners corporation. RRVV submits this situation is inconsistent with the resident owner self-determination intention of the Owners Corporations Act.

Some operators recognise the existence of such a voting block as contrary to the best interests of residents and so decline to vote their entitlements, or alternatively to give their proxy to the chair of the owners corporation committee. RRVV believes such a practice is better than nothing, but less than ideal.

RRVV also seeks the extinguishment of the voting rights of developers, operators and related parties owning land, buildings and facilities that serve as common property in existing villages.

Question 56 Under what circumstances could options 20B to 20D be implemented by the developer rather than a licensed surveyor (which would be cheaper and quicker)?

Never. RRVV members' experiences suggest developers' conflicts of interest bias their decision making.

Question 57 To what extent should the surveyor (or developer) be required to set out how the criteria were applied in achieving the settings?

Fully, lot by lot. In the case where the surveyor judges multiple lots to have the same entitlement (and liabilities), justify this judgment.

Question 58 Under Option 20E, is 30 days a reasonable time for an owners corporation to notify Land Victoria of changes to lot liability and entitlement?

Yes

Question 59 How might the proposal to reform the process for VCAT applications be sufficient to balance the rights of the majority of lot owners against those of a holder of the majority lot entitlement?

RRVV believes a vote by the majority of lot owners should be sufficient to take a matter to VCAT where the majority lot entitlement holder can argue its case. Allowing the majority lot entitlement holder to block the will of residents, whether owners or lessees, is fundamentally unfair.

RRVV is concerned about the rights of a single unit holder with a lot entitlement or lot liability grievance. Such a unitholder should have the right to seek leave to mount a VCAT case.

[Sale and redevelopment of apartment buildings \(section 7.3\)](#)

Question 60 Which option, and why, is the best and fairest way to provide for a more flexible process to sell buildings governed by owners corporations?

Option 21A but with safeguards for existing residents. For example:

- the appointment of a resident advocate 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
- current residents have a right to demand like re-housing within the village or re-housing in another village at no financial disadvantage (e.g. without triggering termination payments, and at the same maintenance fee and like service costs for the duration, with the owner or operator to pay all moving and re-establishment costs). The right to occupy a new unit of similar size, standard and location convenience or better at no disadvantage to previous arrangements.
- the maintenance of reasonable resident facilities and services during the redevelopment for all residents continuing to live in the village
- a redevelopment and construction plan that minimises disruption to the lives of continuing residents
- a compensation scheme to provide redress for a failure to provide any of the above
- the right to take relevant legal action with all legal fees borne by the operator or developer.

RRVV recommends development of a detailed 'no disadvantage' test.

Question 61 Under Option 21D, which voting thresholds and VCAT processes are preferable, and why?

NA

Question 62 Under Option 21E, which sub-alternative is preferable, and why?

RRVV supports the NSW model

Question 63 If the 'less restrictive' sub-alternative, should the special resolution be 75 per cent of lot entitlement only and should the burden of proof be on the applicant rather than the respondents?

RRVV supports 75% of both lot entitlement and lot liability with the burden of proof on the applicant.

Question 64 To what extent do the options to reform the Subdivision Act in improve decision-making processes within owners corporations?

Significantly. By removing the opportunity for developers to gain permanent control of the owners corporation by manipulating lot entitlements, residents will have greater opportunity to participate in village decision making.

13. Retirement villages with owners corporations (chapter 8)

RRVV supports simplifying resident stewardship of strata-titled villages by, in the first instance, harmonising the Owners Corporations Act and the Retirement Villages Act (largely by giving precedence to an amended Retirement Villages Act) and in the longer term by replacing both Acts with one new Retirement Villages Act.

In the short term, RRVV seeks provisions that ensure all residents in villages transitioning from strata titles to leases have equal and unified participation rights and opportunities. Neither of the options presented provides such provisions.

RRVV also seeks provisions that prevent an operator from gaining control of an owners corporation and therefore control of the common property before completing the transition. Neither option provides such provisions. Gaining control occurs earlier if the owner or operators have retained ownership of 'common property'.

In short, neither option corrects the major disadvantages suffered by leasehold residents in transitioning villages. Similarly, neither option adequately maintains the rights of strata titled residents as their numbers decline and the operator's voting rights increase.

Both options largely put the owner of the lessee units property rights ahead of residents' participation rights, and so further tip the power balance in favour of owners and operators. RRVV vigorously opposes further increasing the power imbalance.

Both options attempt to address concerns about the conduct of annual meetings.

An annual meeting held under Section 33 of the Retirement Villages Act is convened by and typically chaired by the manager whereas typically residents' representatives convene the owners corporation annual meeting and an elected resident chairs it. RRVV asserts that it is easy to distinguish the purpose of a Section 33 meeting from the purpose of an Owners Corporation annual general meeting. A Section 33 meeting deals with matters that are largely specific to retirement villages and not covered by the Owners Corporations Act. Why include them in a meeting governed by the Owners Corporations Act? RRVV submits that the confusion lies within the annual meeting definition of Section 3(1) (b) of the Retirement Villages Act because it stipulates that where a village has an owners corporation the annual meeting is the annual meeting of the owners corporation (presumably the "annual general meeting"), without altering the convening provision of Section 33 (including the penalty on the manager for not convening the meeting). Clearly, the drafters and legislators of Section 3(1) (b) and other sections that use this definition did not think through the issues clearly.

In RRVV's experience, combining the meetings would serve no constructive purpose. Rather it would introduce unnecessary complexity and risk increasing misunderstanding of the purpose and scope of both meetings.

RRVV recommends holding the two meetings consecutively, as any inconvenience of consecutively holding two meetings is trivial and far outweighed by the greater clarity of keeping the meetings separate.

Question 65 Which option, and why, better achieves the aim of ensuring that the operation of owners corporations in retirement villages conforms with both the Owners Corporations Act and the Retirement Villages Act?

Option 22B, but it offers an inadequate solution and RRVV objects strongly to certain details.

RRVV members in villages transitioning from strata titles to leases are adamant that they don't want a 'them and us' division. They want all residents to have equal and unified protections and participation rights.

RRVV supports prohibiting village operators with majority lot entitlements from voting on owners corporation fee levies and recommends extending the prohibition to voting on any proposal that limits resident control over their enjoyment of village life. For example, RRVV seeks to prohibit an operator or related owners voting on a proposal to increase the number of car parks outside the community centre reserved for people with disabilities.

Question 66 If Option 22A, which sub-alternative, and why, better resolves the problems involved in the combining of annual meetings for owners corporations and retirement villages?

RRVV finds some of the explanations and implications of this option objectionable. First, the idea of giving an operator a further right to interfere in the conduct of an owners corporation meeting is unacceptable. Second, the idea that leasehold residents' individual rights do not matter because their numbers are small is offensive. Every resident's rights matter.

RRVV proposes a new option to deal with voting and participation rights - Option 22C: Assign the voting and participation rights of owners to their lessees until the transition is complete.

RRVV submits this option is superior to either 22A or 22B. Specifically it:

- gives all residents equal and unified rights
- retains the power balance as it was before the transition commences (though note RRVV has elsewhere proposed measures to correct the historical power imbalance)
- is easy to understand.

RRVV recognises that the owners of leased strata-titled units will probably argue that this proposal diminishes their ownership rights but asserts that, even with these provisions the power balance will still favour owners and operators.

14. Conclusion

RRVV submits that retirement villages need wider law reform than that canvassed on the options paper.