



20 August 2018

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Mr Andrew Lowcock,
Property Council of Australia.
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Dear Andrew,

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

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

RRVV approach to evaluating the code

RRVV prepared to review the latest draft by:

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

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

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Code purpose and objectives

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

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

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

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

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

Checklist review

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

We have attached the checklists we employed.

Comparison of December 2017 and June 2018 codes

1. Amendments

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

2. Additions

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

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

Clause by clause review

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

Findings

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

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

Conclusions

RRVV has arrived at three conclusions:

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

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

Recommendations

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

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

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

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Yours faithfully,



Lawrie Robertson

President

Residents of Retirement Villages Victoria