



RRVV response to the Review of the Retirement Villages Act Options Paper

Introduction

RRVV drew on the accumulated knowledge and experience gained from responding to more than five hundred resident queries and grievances a year and on the wisdom of a small army of member contributors in preparing this submission. We also drew on the knowledge and experience gained from working with and challenging operators over our seventeen years of existence as an association.

In many respects, our experience mirrors that of operators. Nevertheless, we do bring a particular perspective to the challenges of this review, an unwavering resident focus.

Objective

Our goal in contributing to the review is to help make life better for third age people who live or want to live in a close community setting with like-minded people.

Guiding principles

The principles that have guided our responses to the Options Paper are:

1. People ahead of property.
2. Rights, freedoms and protections.
3. Opportunity for residents to control village lifestyle and finances.
4. Recognise the strengths and weaknesses of third age people.
5. Understandability (if residents cannot understand it, operators cannot offer it).
6. Simplicity.
7. Familiarity.
8. Pricing certainty.
9. Set standards and standardise.

Key Reform Points

We argue that the following will improve outcomes for all residents:

1. Recognise that third age living is a discrete category worthy of close study and formal recognition.
2. Increase the powers and resources of the regulator in line with the vulnerability of the market.
3. Implement a fit-for-purpose regulatory framework that clearly sets out owners, managers, and residents' rights and obligations, rather than relying on individual contracts.
4. Establish a licensing scheme (including prudential regulation), comprehensive public register and research database for retirement villages.
5. Ensure that, regardless of their form of tenure, residents have the same rights, freedoms and protections (import provisions from other Acts as necessary).

6. Reduce the complexity of business models and contracts rather than relying on disclosure to improve understanding.
7. Support prospective residents and their advisors through their journey with computer-assisted decision-support tools.
8. Recognise the current three buckets (bucket 1 - operations, bucket 2 - long term maintenance and bucket 3 – operator's company) village finances model.
9. Adopt the following legal and financing principles:
 - a. Prohibit operators from making offers residents can't understand.
 - b. Minimise or eliminate variations from residents' prior experience (e.g., make leases as close to residential leases as possible and use plain English).
 - c. Make residents financial commitments as predictable as possible.
 - d. Give residents as much control over raising village revenue (topping up buckets one and two) and spending of village funds (from buckets one and two) as they reasonably want.
 - e. Define who pays for what (residents from their pockets, bucket one and bucket two, and operators from bucket three).
10. Ensure residents have a right to receive consistently efficient and economical service consistent with the standard they require.
11. Ensure residents receive defined standard of complaint adjudication and mediation (including procedural fairness), including a free, independent and expert one-stop-shop retirement housing ombudsman service.
12. Introduce mandatory independent staff training, including individual accreditation.
13. Delineate the relationship between residential aged care, home-based aged care and the National Disability Insurance Scheme (NDIS).
14. Ensuring retirement villages stay a community for third age people by prohibiting operators from transitioning a village into other forms of accommodation, for example, rental units for people under 55 years old.
15. Reform exit provisions to end gouging, give residents greater control and ensure operators pay for the rectification of fair wear and tear, unit upgrades and village improvements and all their business expenses.
16. Support the easy addition of new business models.

1. What does the RV Act need to include to support well-functioning retirement villages?

RRVV suggests that it is first necessary to decide what a retirement village is.

RRVV suggests auditing of current villages to learn what they have become over the life of the Act. We sense from the options paper that the Government does not recognise the diversity and complexity of the sector. For example, RRVV collaborates with a village operator with 100% of the residents on periodic payment contracts. The operator believes the legal status of the village is uncertain. Did the departure of the last resident who paid an ingoing contribution suddenly change the retirement village into something else? We note the operator continued to hold section 33 annual meetings until the pandemic intervened. Equally, if an over 55's land lease community accepted a lump sum from an incoming resident, would it suddenly become a retirement village?

We also suggest it is necessary to develop a framework to guide defining a retirement village. Option 1 focuses on housing type. We believe this misses the point. Moreover, defining the future by reference to the regulatory structures of the past does not make sense to us. We believe the definition should focus on the third age cohort and their needs. Third age people moving into villages seek a life consistent with their capabilities and vulnerabilities and expected changes in those capabilities and vulnerabilities.

We question whether requiring entrants to be retired (the current understanding despite the Act's definition of retired person) continues to make sense. Lifestyle Communities Limited, a leading land lease community operator with villages competing directly with retirement villages, claims, "Since we're not a retirement village, you can still be working full-time or part-time while living in the community or fully retired" (see <https://www.lifestylecommunities.com.au/faq>). RRVV is aware of land lease operators who openly say they chose the land lease format to escape the burdens of the Retirement Villages Act.

Current trends suggest that Australians will retire later in life. Many will want to downsize before they retire and make that move their last move. There will need to be restrictions on entry but a requirement to be retired is not necessary. RRVV suggests that one restriction should be that all entrants except spouses or domestic partners be over fifty-five. The current definition of a retired person as one who has reached the age of fifty-five is out of date. Hardly anyone retires that early.

RRVV is aware of one strata-titled village where the operator exploits the section 3 definition of a retirement village that only a bare majority must be retired. So up to 50% of residents can be from young families with children. Currently, 44% are from families with children. The effect is that genuine third age residents are not experiencing the community and sense of safety they need. RRVV recommends a definition that prevents young families with children from living in retirement villages.

We also need a broad definition to prevent unscrupulous operators from escaping the obligations of the Act. We think the intention of the parties is the key to the definition.

It is also necessary to define what is a "well-functioning" retirement village.

To an operator, and at varying degrees, a well-functioning village is one posing low business risk, where residents accept what they are given, do as they are told, are undemanding, question nothing, do not complain, get on well with everyone else, keep out of the way and praise management generously.

Most current residents accept this operators' perspective, albeit grudgingly. They value harmony above all else.

The other residents, to varying degrees, have a different perspective. They seek formal recognition as village stakeholders. They want the right to a high degree of self-government, open access to village information, robust policy debate, coarse-grained control over fees and spending, and to live their lives as they wish subject only to by-laws determined by residents. They want their operator to be resident-centred, service-oriented, transparent, efficient and recognise that their village is their home. As the demographic shift rolls on, there will be more and more residents in this latter group, and there will be more and more prospective residents who will reject the operator centred perspective.

The current Act does not facilitate a resident centred perspective.

We support introducing a clear regulatory framework that sets out owners, managers, and residents' rights and obligations rather than individual contracts setting the parameters. We need residents' rights significantly strengthened to address the power imbalance between residents on the one hand and owners and operators on the other. This strengthening must include the recognition of residents as stakeholders in their villages. For more on residents as stakeholders, see Attachment 3.

The extensive research into discrimination and attitudes towards older people must inform the drafting of the Act. Understanding the context in which residents live is core to ensuring the appropriately strengthened residents' rights. For example, Commissioner Lynelle Briggs Commission into Aged Care Quality and Safety Final Report:

"I fear that society as a whole undervalues older people and their contribution. The acceptance of poorer service provision in aged care reflects an undervaluing of the worth of older people, assumptions and stereotypes about older people and their capabilities, and ageism towards them. This must change."

The public would be naïve to think these problems only occur in aged care. Indeed, we see these problems regularly in our work aiding residents in retirement villages.

RRVV is concerned that the full range of research findings on the nature of third age people and the environment they need to age well inform the drafting of the reformed Act.

Option 1 - Amend the RV Act to:

- explicitly clarify types of housing which fall outside its scope, and/or
- more clearly define particular types of tenure.

RRVV response

RRVV supports the option in principle, but with some concern.

If what is in and out of scope rests in part on housing type, be clear but be similarly clear in other relevant legislation that retirement villages are out of scope. Being clear about what is in and what is out is necessary but not sufficient. Currently, it is hard for prospective residents to distinguish between advertising for retirement villages, land lease communities and other like communities. All communication directed to prospective residents, including that for land lease communities, must be similarly clear about what is in and out of scope.

RRVV supports clarity but believes a more pressing aim is to craft an Act that eliminates or minimises the effects on residents lives of the types of tenure.



What matters most is that all residents have equal rights, freedoms and protections. Why treat leaseholders and freeholders differently, and why treat leaseholders and licensees differently? Why carry forward concepts that have not served us well?

Option 2 - Amend the Act to provide an expanded set of purposes or objectives.

RRVV response

Neither the NSW nor Queensland purposes or objectives are conceptionally an advance on the current Act's purpose. Instead, they anticipate some provisions to follow.

RRVV prefers the current purpose but with a requirement that any interpretation of the Act's provisions considers the age-related vulnerability of prospective residents and residents.

RRVV recommends that the Act require the parties to deal with each other with utmost good faith and that utmost good faith prevails when, circumstance, a contract or some provision of the Act conflicts.

2. What information should be provided to prospective and current residents and when? including: disclosure obligations, payment options, contracts, and maintenance charges?

Option 3 - Amend the RV Act to improve disclosure obligations to provide more support to residents by:

- **requiring all fees to be disclosed in advertising materials and/or**
- **introducing material fact provisions and/or**
- **requiring factsheets and disclosure statements to be available online**

RRVV response

We point out that much of the advertising of retirement villages is misleading in that it presents the offer as an ordinary real estate offer.

We also point out that requiring disclosure of all fees currently charged and costs incurred in operators advertising and marketing collateral materials is impractical. What prospective residents need is:

1. Much simpler fees and costs, and
2. A single figure summarising the total lifetime cost of living in selected units to help them compare their shortlisted villages offers.

We support introducing material fact provisions.

We support mandating the publication of all residence documents on the operator's website but again point out that the goal should be to reduce the need for explanatory documents through radical product and contract simplification.

The information used to decide to enter a retirement village will vary widely from person to person. Because the financial arrangements are unusual and complex, the most challenging aspects of the decision are:

1. Figuring out which of otherwise equivalent shortlisted villages is the cheapest overall and
2. Whether the person can afford to live in the village



Please note calculating the full cost of living in a village involves reducing all cash flows over the chosen period to a single figure using well understood mathematical techniques. Assessing affordability involves figuring out a resident's ability to meet their financial obligations when they fall due using an ordinary budgeting approach. Both calculations are programmable.

RRVV aids residents contemplating entering a retirement village.

Recently one prospective resident asked us to review an 18-page fact sheet which supplied data on six different contracts. Each of the contracts has a unique payment plan. Six payment plans (some quite complicated) would be enough to bamboozle most residents. The operator claims giving residents a choice allows the company to meet their needs better. Other operators offer multiple contracts. The research evidence strongly suggests that a prospective resident cannot make an informed decision when faced with choosing from even a brief list of villages.

Over recent years RRVV has suggested to many operators the Act should require them to provide all prospective residents with a single figure summarising all the costs of living in the unit offered over one or more tenure periods. We call this figure a comparison rental rate.

We receive two primary responses:

1. It is impossible to reduce all the costs of living in a unit to a single figure. Suppose it is impossible for the Macquarie University researchers who released a proof-of-concept comparison rental rate calculator to do the calculation. It follows that ordinary prospective residents certainly cannot make a valid cost comparison. Indeed, if the intended customers cannot understand the deal, the operator should not be offering it. The argument is self-defeating.
2. A comparison rental rate is an abstract concept that prospective residents will not understand. We disagree. It is the calculated monthly figure the prospective resident would have to pay to cover the operator's fees under a long-term rental contract. Nevertheless, the calculator could use a star system to compare the overall cost of living in a short list of villages.
3. Most prospective residents are not concerned with how much money they will have left at payout time, so focus more on nonfinancial considerations. This sweeping generalisation is dangerous. Prospective residents' decision criteria vary widely. An alternative version of this argument is RRVV focuses narrowly on the financial aspect of the decision. We do not. We see the comparison rate as just one of a variety of factors on which prospective residents might rely.

RRVV finds the objecting operators' criticisms illuminating. Why don't they want prospective residents to have access to simple information? Could it be that they might lose business if residents understand the total cost of living in a retirement village? Might informed residents lead to an efficient market, higher competitive intensity and lower costs to residents?

If we must have fact sheets and disclosure statements, RRVV supports requiring operators to make them available online. The disclosure statement is specific to a proposed transaction. Where an operator advertises a specific unit at a price, RRVV recommends requiring the operator to publish a disclosure statement.

Operators might not always want to offer an ingoing contribution deal. The beauty of the comparison rental rate is that it can deal effectively with all variations.

A partial alternative to the comparison rental rate would be for operators to offer a standardised base deal that prospective residents can readily compare with the base deal offers from competing operators. Prospective residents might want to utilise one of the available alternative payment plans to tailor the deal to their needs. The comparison rental rate deals effectively with alternative payment plans.

RRVV also recommends requiring operators to make the contract templates (i.e., the incomplete contracts often handed to prospective residents who ask) for each village available online.

Internet users who are both active and proficient remain a minority in retirement villages and amongst prospective residents. The primary methods of communication will remain face to face and on paper for many years. Nevertheless, professional advisers are internet proficient.

The research evidence suggests prospective residents who are computer savvy benefit enormously from decision support tools such as those available on comparison websites. Our experience suggests that even more computer-aided decision support would be of benefit. For example, as noted above, one specific addition we recommend is a financial capacity calculator to help prospective residents work out if they can afford to live in their preferred villages.

To the extent that prospective residents and their advisers need added information, RRVV recommends facilitating the introduction of computer-aided decision-making tools.

Option 4 - Improve understanding of retirement village payment models by:

- **defining 'deferred management fee' and/or**
- **expanding education materials on the deferred management fee to include alternative payment models and/or**
- **introducing yearly contract check-ups on request**

RRVV response

RRVV suggests that the key to improving understanding is improving the understandability of the product and payment plans. This requires recognising the ability to make decisions using complex information declines with age. It also requires recognition that third-age people respond better to concepts they are familiar with than new concepts.

RRVV supports standardising the deferred management fee's (DMF) (or whatever replaces it) definition and structure and the other costs of living in a retirement village. In RRVV's opinion, the challenge is to develop definitions understandable to 90% of residents. Please note that the DMF definition in the glossary has factual errors and is therefore highly misleading.

RRVV recommends expressing all deferred fees as a % of the outgoing resident's ingoing amount. The principle here is that incoming residents should have pricing certainty. Please see Attachment 1 for a more detailed review of retirement village payments, fees and payment plans and the bare bones of a definition for a DMF replacement.

RRVV submits that the Government should see education materials as a last resort rather than the primary tool for improving understanding.

RRVV supports providing residents with regular payout estimates with supporting contract references. Full contract check-ups would be overkill.



We see the goals of a payout estimate program as:

1. Boosting awareness of fees payable after leaving the village
2. Reaching out to family members, so they do not get fee shock when their loved one dies or moves into aged care.

So, we believe supplying an estimate only to those who request it (i.e., the already better-informed residents) misses the point. We recommend supplying the estimate every second year.

Option 5 - Reform the contract process by:

- **Requiring contracts to be in plain English and/or**
- **working with advocacy and legal assistance services to improve knowledge of contracts and/or**
- **introducing a requirement that residents must get legal advice before signing contracts.**

RRVV response

RRVV supports plain English for both contracts and the new Act. Nevertheless, we believe that simplification will have a more significant effect on improving widespread understanding.

RRVV does not see working with advocacy and legal assistance services as a cost-effective approach to improving understanding across the board. They reach only a small proportion of residents. Giving the money to CAV to spend on enforcement and requiring newly trained operator staff to deliver the message would do more for residents.

RRVV does not support introducing a requirement that residents must get legal advice before signing contracts. We believe poor legal advice creates at least as big a problem as not having legal advice. Our experience suggests suburban solicitors:

1. Do not understand the wide variety of contracts on offer.
2. Most do not offer much more than a summary of what they see as the contract's key features.
3. Those who take the trouble do their research and thoroughly review the contract end up charging more than their client is willing to pay. Even then, they are not supplying everything their client needs.

The rare solicitors who do an excellent job know the law and know the various contracts of many operators and show which contracts are the best for residents.

RRVV might take a different view on compulsory legal advice when:

1. We have an understandable Act, and all contracts are readily understandable, and
2. Specialist retirement living solicitors are available across the state.

RRVV only rerefers residents to solicitors with specialist retirement village ability, primarily lawyers who have had more than five years of experience working for operators. Please note that the major firms with specialist retirement village ability are unwilling to advise residents or unable because of conflicts of interest.

When there are specialist lawyers available to advise prospective, current and outgoing residents, RRVV recommends implementing a system that helps residents and prospective find them. We also recommend requiring operators to advise on how to access specialist lawyers, including in their advertising.



Option 6 - Amend the RV Act to clarify all maintenance and repair requirements

RRVV response

RRVV supports amending the Act to clarify and standardise all maintenance and repair requirements.

Almost all villages hold money contributed by residents to cover the provision of service, including maintenance, in two accounts:

1. a day-to-day village operations account (also known as bucket 1)
2. a sinking fund for long term maintenance (also known a bucket 2)

If these accounts run low, residents must top them up or suffer a loss of services. By implication, operators supply the services these accounts fund on a cost-recovery basis.

The Act does not recognise these arrangements and therefore does not protect residents against the misapplication of these funds, including using them to pay business expenses of operators. For example, RRVV contends that Property Council fees are a business expense, and operators should not charge them to villages.

The maintenance charge, maintenance (not always funded by the maintenance charge), budgeting, and related financial reporting sit at the core of most complaints referred to RRVV.

Many operators of non-strata-titled villages pay for village improvement works from funds collected for maintenance. RRVV believes this is a misappropriation of residents' funds.

The current Act, in many ways, does not capture the reality of retirement village financial arrangements or give residents adequate control over the spending of their money.

We believe the term 'maintenance charge' is misleading and that 'service fee' better captures what it buys.

We see no point in distinguishing between expenditure on major maintenance and the replacement of related items, as do some other States. Suppose the sinking fund (residents' money (bucket two)) pays for maintenance of plant and equipment, and the operator must pay to replace the item from the company bank account (also known as bucket three). In that case, the operator has an incentive to keep maintaining the item when it is beyond economical repair.

There is a legislative requirement for some villages to have a maintenance plan. The Owners Corporations Act requires large owners corporations to develop and report on a maintenance plan.

The Retirement Villages Act requires reporting on any provision for major works but does not specify the detail. It also requires reporting on the previous year's expenditure and on expected current or coming year expenditure on major works. Many operators do not follow these unclear requirements for major works. RRVV recommends that all villages have an adequately funded sinking fund and a ten-year maintenance plan and regularly report performance against the plan, including at the annual meeting. The purpose of the sinking fund and ten-year maintenance plan, amongst other things, is to protect residents trying to live on fixed incomes from financial shocks.

RRVV response to the nine points of the consultation question:

1. RRVV agrees with clarification of maintenance responsibility within units (also outside units) and in communal areas but believes standardisation is also necessary to allow prospective residents (with aid) to compare the overall cost of living in village A and village B. We also believe clarification of responsibility for the rectification of building defects is necessary.
2. RRVV agrees. The issue is broader than clarifying the boundary between a unit and common property or communal areas and related responsibilities. Why in disclosure statements? What about the Act? Contracts? Spatial definition does not always make sense. Sometimes it is necessary to define responsibilities, item by item or function by function.
3. RRVV agrees with requiring repairs and maintenance within a reasonable and mutually acceptable timeframe. We also recommend that the Act defines reasonable. For example, how long should a resident wait for an operator to fix a blocked sewer? A scratch in exterior paintwork? We recommend adding that an operator performs maintenance at a consistent standard agreed by residents and at a reasonable cost. RRVV would like residents to have a legislated right to efficient, competent and proactive management in all areas of village operations. Instead of proactively maintaining their villages, most operators take no action unless asked. These villages neglect the units and surrounds of the sick, the frail and the timid.
4. RRVV disagrees with distinguishing between maintenance and capital expenditure for the reasons given above in our response to this option.
5. RRVV agrees with operators *proposing* an asset management plan (i.e., a plan focussed on plant replacement) provided it is part of a democratically developed long term (e.g., ten years) maintenance plan.
6. RRVV agrees if the point is to remove the right of a residents' committee to approve an above CPI service fee increase without delegation from the resident body. The issue of resident control over money is much broader. For example, under certain circumstances, an operator can impose a special levy to avoid an above CPI service fee veto. RRVV recommends requiring resident approval for all special levies.
7. Maintenance fees are, in the main, differentiated at the level of the Retirement Villages and Owners Corporations Acts. Operators' contracts often cloud the picture. For example, one major operator's village management contract provides it will perform most of the duties of the owners corporation. RRVV recommends tightening the Acts to prevent this unless doing so is part of a suite of provisions designed to simplify living in strata-titled villages. RRVV also supports defining the roles of the owners corporation and village management more clearly.
8. RRVV supports requiring operators to report on compliance with maintenance plans, but the issue is broader than this. We believe residents should have the right to take part as fully as they want in developing the long-term maintenance plan, the right to veto the plan (with safeguards), and similar rights concerning the annual major maintenance program, budget and individual projects.
9. RRVV recommends requiring operators to report as often (e.g., as often as monthly) and in as much detail as residents reasonably require.



Option 7 – Amend the Act to:

- **extend the cooling-off period and/or**
- **introduce a settling-in period.**

RRVV response

RRVV does not support extending the cooling-off period but does support the operator repaying all funds if a prospective resident cancels the contract within the cooling-off period.

RRVV supports introducing a settling in period but believes anything less than six months works against the purpose of the provision. Many residents find the first few month's unsettling. Forcing these people to make a stay or go decision at, say, three months would be counterproductive.

- 3. How can protections for exiting retirement village residents be strengthened? including: ongoing charges, reinstatement and renovation costs, sale and re-leasing costs and mandatory repayment of exit entitlements?**

Option 8 - Amend the timeframe in which ongoing fees (personal services and maintenance charges) can be charged to residents leaving a retirement village.

RRVV response

1. Personal services charges. RRVV supports ceasing charging personal services provided on an ongoing basis from the date of handing up vacant possession. Residents leave their villages for one of three reasons:
 - a. Death. Rarely does an executor hand up vacant possession within 14 days.
 - b. Transition to an aged care facility. Rarely does an attorney under enduring powers hand up vacant possession within 14 days of the resident entering an aged care facility.
 - c. A planned move to alternative accommodation. Rarely does the resident hand up vacant possession within 14 days of asking the operator for a payout estimate.

In all three cases, the operator has adequate notice of the resident's intentions.

2. Maintenance charges. The village's running cost does not drop because a few residents leave, but revenue drops six months later. Nevertheless, the families of the ex-residents are prone to complain about paying fees for no service because their experience tells them that such an arrangement is unethical. Some bad mouth retirement villages in general, the operator and the village further depressing sales enquiries. The remaining residents are prone to complain they must pay a higher fee or suffer reduced services. Operators must wait longer to receive the DMF and capital gain share. It is a lose-lose-lose game.

It is in the best interests of operators and residents (ex and ongoing) for the operators to pay the service fees on vacant units from their company bank accounts. RRVV recommends requiring them to do so.

RRVV also recommends requiring operators to pay the service fees and contribution to the sinking fund on new, unsold units.

If these recommendations become law, operators will adjust their pricing, under the dominant village model, either by increasing the DMF or their capital gain share. Their profits are not at risk.

Option 9 - Clarify reinstatement and renovation requirements for RV residents and operators by:

- **defining fair wear and tear, reinstatement and renovation works and/or**
- **requiring a condition report to be completed on village entry and exit and/or**
- **allocating renovation costs in line with capital gains share**

RRVV response

RRVV submits that clarification is necessary but insufficient to deal with the reinstatement, renovation and unit upgrade issues that trouble residents. RRVV recommends restructuring the arrangements to make them understandable and easy to operationalise.

RRVV supports defining fair wear and tear in the Act. We point out that the Residential Tenancies Act repeatedly excludes fair wear and tear when naming rectification costs that are the responsibility of residents. We recommend making rectification of fair wear and tear the responsibility of the village owner or the villages long term maintenance fund. Our preference is to make the owner responsible for the rectification of fair wear and tear. Almost always, the village owner does the work after the exit of the resident. Currently, the resident pays for the work. One resident can pay for the fair wear and tear accumulated over the residency of several earlier residents. This approach is unfair.

RRVV supports defining various aspects of maintenance in the Act and aligning them with the funds allocated to cover expenditure on the goods and services required or the people/entities responsible for paying and the nature of the maintenance (routine, planned or unplanned, minor or major). Under most current contracts, operators undertake reinstatement and renovation work and charge the outgoing resident. Resident involvement in the process varies from operator to operator and contract to contract. Usually, the operator unilaterally defines the scope of work and chooses the contractor without competitive tendering or professional procurement.

The operator's stated renovation goal is usually to secure the best price for the unit, but the unstated goal is often to secure an easy sale. Both objectives tend to lead to overspending on renovations. The outgoing residents' dominant objective is sometimes to secure the best payout and sometimes to secure a quick sale. Under contracts with a DMF struck as a percentage of the resale amount or distributing a substantial proportion of the capital gain to the operator, the best sale price objective lowers the payout to the outgoing resident. RRVV has previously provided the review team with detailed calculations supporting this claim.

The best renovation practice under old-style contracts RRVV is aware of has the following features:

1. The operator offers the outgoing resident a side contract. If the resident does not accept the side contract, the residence contract's standard reinstatement terms apply.
2. The side contract provides that:
 - a. The operator will undertake defined renovations at a given cost and carry the costs until the sale of the unit.
 - b. The resident agrees to contribute the estimated cost of standard reinstatement to the project.

- c. If the renovations return a surplus on resale, the parties share the surplus equally, but the operator makes up the shortfall if it is a deficit.
- d. When the contract provides for the calculation of the DMF on the resale price or the operator shares in any capital gain, the operator calculates the DMF and capital gain share on the unit's estimated resale price for a merely reinstated unit.

This approach to renovation discourages excessive spending and is fair to both parties. Note that renovation includes rectifying accumulated fair wear and tear.

RRVV notes that some current contracts do not set new resident occupancy as a precondition for repayment of the ingoing contribution. One returns the ingoing contribution as early as 60 days after handing up vacant possession. RRVV believes that operators will soon offer contracts that return the ingoing contribution less deductions on the day of handing up vacant possession if the resident gives adequate notice. Some operators already do this on a case-to-case basis. Under these contracts, the operators take sole responsibility for renovation.

More generally, RRVV recommends basing the reinstatement and renovation provisions of the new Act on the following principles:

1. Best practice
2. The operator pays for the renovation and carries the commercial risk.
3. Adopting the approach taken by the Residential Tenancies Act as far as possible (e.g., the outgoing resident pays for reinstatement (i.e., the rectification of damage but not fair wear and tear) and the owner pays for renovation). Note, on resale the new resident pays the owner for the renovation through an increase in the realised price.

RRVV supports requiring the completion of a condition report at village entry and exit. RRVV recommends that the resident's and operator's representatives prepare the report jointly. Alternatively, the parties could engage an independent expert. RRVV also recommends the regulations prescribe the scope, depth and timing of the report.

RRVV does not support allocating renovation costs in line with capital gains share. In our view, renovation is 100% a village owner responsibility as identified above. In any event, we advocate preserving the right of residents to use the present value of the future right to capital gains to help meet the ingoing amount obligation. In other words, we see the right to receive a future sum is a tradeable right.

Option 10 - Clarify residents' rights in the sale or re-lease of retirement village units, including regulating costs incurred by residents and operators.

RRVV response

Clarifying residents' rights is necessary but not sufficient to protect the interests of residents. RRVV advocates restructuring the process and expanding residents' rights.

RRVV expects more operators will offer an early payout and therefore asserts the Act should recognise the trend. RRVV recommends setting a standard buy back interval and allowing the operator to offer a shorter period at a discrete price.

RRVV supports requiring operators to supply information to residents at the time needed by residents and in a resident-friendly format on all relevant occasions, not just at the time of exiting. Nevertheless, we assert this should not be an alternative to simplification.



RRVV advocates that all residents with new contracts have the right to appoint an external agent, set the sale price (whether using an internal or external agent) and require their operator to pay the aged care daily accommodation payment if relevant.

RRVV also recommends that the Act give the exiting resident a free choice of estate agent and require the operator to cooperate with an appointed agent, including allowing the erection of advertising boards.

RRVV does not support residents splitting the cost of releasing a unit in the same proportion as the split of capital gains for much the same reasons given in response to Option 9.

RRVV recommends requiring the owner or operator to bear the total cost of re-leasing a unit. Most residents believe re-leasing is an owner or operator responsibility because their experience of leasing a flat or house suggests that is the norm.

Option 11 - Regulate share of capital losses.

RRVV response

RRVV recommends splitting capital gains and losses on the same basis if the contract provides for sharing capital gains. For example, if the gains shares are equal, the losses shares must also be equal. Nevertheless, capital gains are an uncertain future benefit. RRVV recommends requiring operators to offer residents a payment plan that allows residents to trade their rights to capital gains for a lower DMF or no DMF or other benefits.

More generally, RRVV sees receiving capital gains as inconsistent with most residents understanding of a lease. Capital gains are more generally understood as accruing to property owners. Mixing leasing and ownership concepts creates confusion in the minds of many third age people. It might be that many prospective residents would prefer to forego capital gains for the benefits residential lessees enjoy, but retirement villages lessees currently do not.

Option 12 - Introduce a requirement to repay a resident's exit entitlement for RV units not re-sold within a specified timeframe.

RRVV response

The critical question in responding to this option is why it takes so long to sell a retirement village unit?

RRVV believes the increase in the time taken to complete a sale since June 2017 is the product of several factors:

1. The June 2017 Four Corners program *Bleed them dry until they die*.
2. A dip in house prices in late 2018 and early 2019 prompted prospective residents to take their family homes off the market and wait for a recovery.
3. Changes in prospective residents' preferences. Many older villages no longer meet the needs of many prospective residents, so it takes longer to find a buyer.

Nevertheless, the long run selling days average is higher than the broader housing market. RRVV again believes the long-time taken is the product of several factors, four of which are:

1. Prospective residents find the unfamiliar and complex purchase process daunting.
2. Prospective residents do not see village salespeople as exceptionally trustworthy (being able to trust is essential to prospective residents)
3. Operator inefficiency in preparing the unit for sale.

4. Lack of experience in selling units by operator staff. For example, few understand the needs and motivations of third age people. More worryingly, they do not seem to recognise a need to understand the people they serve.

Most of the reasons for the long sale time are under the control of owners and operators. Outgoing residents are victims of operators' decisions and practices.

A minority of residents leave for alternative accommodation other than aged care. For example, a resident may want to buy a small unit closer to a family member. Under the current arrangements, the resident might have to rent for some years before receiving a payout. Even when the resident moves from one village to another within the operator's portfolio, some contracts require them to rent until a new occupant moves into their old unit. The current arrangements do not support residents' welfare.

RRVV supports introducing a requirement to repay a resident's exit entitlements within a specified timeframe.

RRVV is conscious that village owners will argue that finding the capital to make the payment will be demanding. RRVV accepts that this will initially be the case for some village owners but points out that owners of mature villages have had a dream run because residents have supplied 100% of the capital. Having to stump up the capital for vacant units is no different to most businesses needing capital to fund unused capacity.

RRVV accepts that owners will recover the funding costs from their residents provided the market remain inefficient. RRVV contends the review must address this market inefficiency by ensuring prospective residents understand the commitment they are contemplating.

RRVV recommends requiring owners to buy back unsold units (from both owner and non-owner residents) within six months at an independently determined market price subject to the consent of the outgoing residents representative. Operators already buy most strata-titled units offered for sale but mostly when new residents commit.

To be clear, RRVV advocates that residents have the absolute right to demand a buyback. Nevertheless, we recognise that buying back a strata-titled unit will trigger a stamp duty payment by the operator and recommend the Government waive the requirement.

RRVV also recommends requiring operators, if they wish to offer a shorter buyback period, to quote a separate price for the more favourable buyback period. This will allow the buyer to assess if the shorter buyback is worth the price.

4. **Are the current internal and external dispute resolution processes adequate? (internal and external)**

Option 13 - Clarify and enhance internal dispute resolution procedures, including removing the role of residents' committees in resident disputes and/or mandating a code of conduct.

RRVV response

RRVV believes it is unsafe to apply an internal and external dispute resolution distinction rigidly. We estimate that at least a third of residents in the State do not have access to a competent and unbiased mediator or adjudicator internal to their operator.



RRVV believes there are four stages in the build-up to a contested management complaint:

1. A resident asks the operator to act (e.g., fix a roof leak).
2. The resident is dissatisfied with the operator's response and communicates that dissatisfaction (i.e., complains).
3. The operator decides against the complainant.
4. The resident communicates dissatisfaction (i.e., the complaint is now contested).

In a village where the owner deals with all complaints, there is no internal escalation pathway. The person you appeal to is the subject of your complaint.

RRVV recommends the reformed Act provide a mechanism for dealing with contested matters where there is no realistic opportunity for internal resolution. We are particularly concerned that residents have access to a dispute resolution system that does not require them to tell their story multiple times on the binding resolution journey. The right to go directly to a one-stop-shop external dispute resolution service once it is clear the complaint is contested would help.

RRVV observes that even larger operators have difficulty handling complaints. Few village managers clearly understand what evidence is and what it is not and a fair procedure. Even fewer have a workable understanding of how to mediate a dispute between residents. Sections 38E and 38F supply only meagre guidance, and operators rarely follow it.

Section 16 (2), (3) and (4) are particularly problematic because there is no requirement to afford the resident procedural fairness. Section 16(3)(c) does require that the breach be substantial but gives no guidance on what a substantial breach is.

A small number of residents have advised RRVV that they believe their operator has used section 16(2) to silence them. None had an opportunity to test the case against them and present a defence. One case relied on an anonymous accuser. None of the operators issued a Section 16(3) notice. One operator advised RRVV there was never an intention to evict the resident, and we have the impression the others also had no intention. RRVV believe issuing a section 16(2) notice in these circumstances is bullying.

RRVV recommends giving residents subject to a section 16(2) or (3) notice the right to have the matter decided externally.

Operators sometimes use section 16(2) and (3) to deal with a resident following a complaint by a staff member, amongst other things, because there is no other avenue for disciplining the resident.

RRVV recommends that the new Act include procedural fairness provisions and a less drastic mechanism than section 16(2) for resolving complaints by a staff member against a resident.

RRVV also recommends setting a minimum standard that residents can demand from internal adjudicators and mediators. We believe residents have a right to adjudication by an objective truth seeker following fair procedures and mediation by a skilled and unbiased facilitator.

RRVV:

1. Supports accredited mandatory training in adjudication and mediation (part of a broader management training program at Certificate IV level)
2. Supports the Act defining a management complaint, a resident about resident complaint and a three-way complaint (between residents and between those residents and the village manager or operator).
3. Supports removing the role of the residents' committee in residents' complaints against residents.

4. Does not support requiring consideration of the Good Practice Protocols in resolving disputes. First, many operators have not consistently followed the protocols because they are not binding. It is unlikely these operators will take the protocols seriously unless there are significant sanctions for non-compliance. Second, the protocols do not consistently set adequate standards. Third, residents have suffered under the light touch of the current Act and voluntary adjuncts such as the protocols and operators self-serving accreditation schemes. Fourth, the best way to reduce operators' compliance costs is to run efficient organisations, recognise a complaint early, act promptly, and act fairly. Fifth, the more documents that govern village operations, the less effectively residents assert their rights.
5. Does not support a separate mandatory code of conduct. We believe the matters the code might address would be better in the Act and regulations and addressed through a more effective dispute resolution system. In our experience, codes do not challenge the sector to reform; certainly not if voluntary and unlikely if mandatory.

Option 14 - Reform the external dispute resolution process by enhancing specialist services and introducing mandatory conciliation.

RRVV response

RRVV asserts that whatever the dispute resolution process is, its design must reflect the strengths and weakness of older people (the third age cohort) and the nature of their relationship with their operators.

1. Older people are not as good at thinking on their feet as they were in their prime. So, they experience disadvantage when dealing with an operator in the cut and thrust of an adversarial setting. Merely sitting across the table from an operator to deal with a complaint can be an adversarial setting for some older residents.
2. Older people are not good at investigating, gathering evidence or presenting their case. They are much better at articulating their problem. Similarly, older people tend to be conflict-averse. They will often pull out of the dispute resolution process rather than confront further conflict if they must take part in a layered approach. For these reasons, they need someone to listen to their problem, do any necessary investigation work, negotiate with the other party and recommend a resolution.
3. Many residents will not go ahead with external dispute resolution if there is a risk the operator will appeal or agitate in a court or tribunal and expose them to adversarial proceedings and costs. On the other hand, other residents might want to appeal or have the matter reheard in a court or tribunal. RRVV is aware of an earlier Commonwealth ombudsman service that prevented the more powerful party from appealing but allowed the less powerful party to do so. We recommend this approach.

By including mandatory conciliation, the proposed process does not respect most third age peoples' nature.

RRVV does not support restricting residents' access to VCAT. We see access to the court system as a fundamental right in a liberal democracy. In any event, what singles out residents from other citizens that would justify restriction? RRVV suggests that resident resort to VCAT will be in inverse proportion to the effectiveness of the reformed process.

Most residents handle mediation well when it focuses on repairing their relationship with other residents with whom they have conflicted. Third age people are naturally inclined to prefer harmony over winning



a contest. RRVV supports this form of mediation for resolving complaints by a resident about another resident.

RRVV routinely supports residents in conflict with their operators or other residents.

Whatever the dispute resolution system adopted, RRVV recommends it includes gathering state-wide statistics (both from internal and external processes) and publication of an annual report that allows prospective residents to find operators and villages with a high complaint rate. RRVV suggests that these statistics are also necessary for informing future regulation decisions.

5. What is the best governance framework to support well-functioning retirement villages? Including: rights and responsibilities, residents' committees, staff accreditation, village accreditation and an industry Ombudsman.

RRVV believes it is necessary first to clarify who should do what governing.

Many operators act as if their business and property interests entitle them to govern their villages as they see fit; the Act does next to nothing to curb their autocratic instincts. For example, section 36 gives a residents' committee no power to direct an operator.

Section 38 gives a residents' committee and residents the power to approve a maintenance charge above the adjusted maintenance charge subject to subsection 5. Section 34 gives residents the power to dispense with an audit by special resolution, and section 38 the power to approve a special levy by special resolution. All told, these are meagre powers.

Section 37 gives residents the power to make, alter or revoke specific by-laws by special resolution. On the surface, it looks as though this power could be helpful.

Residents find the by-laws definition hard to understand, and overcoming operator opposition to resident-initiated by-laws a challenge. The Act does not require an operator to enforce by-laws.

In short, residents are, for most practical purposes, powerless by design.

Residents age well when they have good social connections and feel they are in charge of their lives. Most villages supply many opportunities to develop social connections. Few create an environment where most residents feel in charge of their lives.

RRVV recommends reframing the provisions of the by-laws to give residents the power to shape the life of their community.

RRVV recommends the Act make clear that owner-operators do not administer the village primarily as owners. Instead, they manage the village's operations under contract according to coarse-grained directions by residents. We develop this idea further below.

Conceptually the operator's business administers the village under contract. In the case of leasehold villages, the owner's business is the one that owns the village, and it is helpful to define this distinction between owners and operators. Note that RRVV looks to limit some of the owner's property rights in favour of the resident body on the use of communal facilities on the ground a resident's village is her home. For example, we propose that residents have the power to set the opening and closing times of community centres, sporting facilities and the like. Similarly, we propose that residents have the power to shape communal garden design.

Option 15 - Amend the Act to prescribe rights and responsibilities for RV operators and residents, supported by a mandatory Code of Conduct.

RRVV response

RRVV supports amending the Act or subordinate legislation to prescribe rights and responsibilities for operators and residents. The reference to other Victorian housing-related legislation concerns us. The issues affecting retirement village residents are much broader than housing.

RRVV acknowledges the examples of prescribed rights are not exhaustive. RRVV believes the concept of rights adopted should be broad and:

1. Have an ethical foundation.
2. Include freedoms and protections.
3. Action-oriented (e.g., the right to collectively make decisions about certain aspects of the running of the village)

As noted in our response to Option 13, RRVV opposes expanding the number of documents to which a resident (or village manager) must refer to obtain information on rights, procedures and good practices. We, therefore, support including the proposed provisions in the Act or regulations.

Option 16 - Improve the operation of residents' committees by:

- **clarifying residents' committee powers and functions and/or**
- **providing additional guidance on village operators and managers attending residents' committee meetings**
- **clarifying arrangements for resident participation**

RRVV response

Not all villages have residents' committees. RRVV's rough estimate is that around 20% of residents in the State live in villages without a residents committee and a similar percentage live in villages that have what they call a residents' committee, but which is a social committee.

Some villages without a residents' committee hold general meetings to deal with matters with which a committee might otherwise deal. RRVV supports this approach.

RRVV recommends that the Act recognise that, at any time:

1. The residents of some villages will want formal participation in village decision making but will not want a residents' committee.
2. Some villages will want formal participation in village decision making but will want to delegate some functions to a residents' committee.
3. The residents of some villages will not be interested in formal participation in village decision making. They will, by resolution or default, delegate some of their powers to their operator. Whether they recognise it or not, these residents will need added mechanisms to protect them from an operator inclined to trample on their rights.

So, RRVV recommends the Act gives the participation and decision-making powers and functions to the resident body and allows their delegation to a residents' committee or their operator and withdrawal as seen fit. RRVV also recommends resident body have the power to enact, amend or rescind committee rules. If the resident body does not set committee rules, the committee must follow model rules.

RRVV recommends, subject to a provision like section 38(3), the resident body has the power to set, amend or approve village budgets (operations and sinking fund), set, amend or veto long term maintenance plans and select and brief the auditor. RRVV similarly recommends that the resident body have the power to set, amend or approve service fees and special levies.

RRVV supports the proposed provision in the Act specifying that the operator's staff may only attend residents committee meetings when invited.

RRVV supports only some of the proposals under "c. clarifying arrangements for resident participation".

All meetings

(RRVV presumes this refers to meetings held under the Retirement villages Act. There are some references to the Owners Corporations Act)

Voting arrangements

1. Voting arrangements. RRVV agrees with streamlining but recommends following the principle of sticking with concepts familiar to residents. Most residents have been voting one vote per person all their lives. Voting under the Owners Corporations Act will always be different, so there is no point in trying to align the two.
2. Ordinary resolution. Agree

Annual meetings.

1. RRVV recommends standardising on the ATO financial year, setting the service fee for the coming year late in the current year using the annual CPI increase at the end of the March quarter and holding the section 33 meeting within three months from the start of the new financial year. Ditch the term prescribed period in the interests of plain English.
2. Meeting deferral or delay. Agree.
3. Manager salary disclosures – RRVV assumes you mean the operator's staff. Agree. We also recommend ditching section 38(5)(b). For budgeting purposes, award salary increases are no different from other unavoidable increases such as insurance hikes after a disaster.
4. Surplus and deficit. RRVV recommends the Act recognise that residents contributed the money in village accounts for defined purposes and any not used for those purposes belongs to them. Therefore, what happens to the surplus is entirely a decision for residents to make. RRVV agrees that an operating deficit in a mature village is evidence of mismanagement, and therefore the operator should make good the loss. Applying such a provision to an immature village could force up service fees beyond what the market will bear. RRVV recommends requiring operators to support immature villages until they are capable of self-funding. Amongst other things, this would mean setting the service fee, in real terms, at the level reasonably expected for a fully occupied village.
5. There are clear economies in aligning the audit of the owners corporation and retirement village financial affairs. Section 36 (4) requires a standard corporate true and fair accounts audit. Retirement village residents need more.

They need their auditor to assess if the operator uses the money for the defined purpose, delivers value for the money spent and does not improperly transfer any residents' money to its company accounts.

6. Maintenance fee increases. Residents need the power to set service fee increases, whether above the CPI or not, and the power to set a special levy or veto operator proposed special levies. RRVV knows of operators who have increased the service fee despite the fact the village held large, accumulated surpluses and imposed special levies to get around the restrictions of section 38(4).

Option 17 - Improve staff qualifications by:

- **expanding disqualification criteria for RV staff and/or**
- **developing and mandating participation in a training and professional development regime**
- **developing and implementing a qualification for managers of retirement villages**

RRVV response

RRVV supports expanding the disqualification criteria and recommends applying the new criteria to all staff and regular contractors who might engage with residents and prospective residents.

RRVV supports developing and mandating participation in a training and professional development regime but believes covering all village staff would be overkill. We believe the primary focus should be on village managers and their immediate supervisors, assistant village managers, sales managers, and welfare coordinators. TAFE and like bodies cover training for cooks, grounds and maintenance staff and the like. Different villages need different skill sets, so RRVV recommends a modular approach. RRVV also recommends continuous professional development with a similar modular approach.

RRVV recommends independent training organisations develop and deliver the programs.

RRVV disagrees that the small number of candidates makes the development of a mandatory qualification inefficient. The DCM Institute has proved how much committed people can achieve with modest resources.

Option 18 - Improve industry practices and resident outcomes across retirement villages by:

- **strengthening existing voluntary accreditation or**
- **developing a mandatory accreditation scheme in consultation with stakeholders**

RRVV response

RRVV does not support a voluntary accreditation scheme. The accreditation schemes we have seen are expensive to implement and support but only marginally effective in improving the wellbeing of residents. They tend to focus on business compliance issues more than on residents. Moreover, they rarely have adequate enforcement mechanisms. We can see possible benefits in a mandatory scheme but would need to know much more about the proposal before commenting further than to say we do not see the current scheme (ARVAS) forming part of it. It is a scheme developed by operators mainly for the benefit of operators.

In the absence of more detail on a mandatory accreditation scheme, our preference for licensing stays.

The licensing scheme's focus would be on a bottom up raising of standards in areas of benefit to residents and weeding out underfunded, unsuitable, dangerous and incompetent operators.



Some years ago, RRVV representatives attending a roundtable meeting with CAV formed the impression CAV saw barring an operator not satisfying licence conditions as more damaging to residents than allowing an underfunded, unsuitable, incompetent or dangerous operator to continue managing villages. RRVV contends that this generalisation is unsound.

Barring an operator does not necessarily mean residents have to leave their village. During the Global Financial Crisis, insolvency practitioners successfully transitioned failing owners and operators' villages to new owners and operators.

Allowing an incompetent or unsuitable operator to continue can cause significant harm to residents. There may be situations where residents' welfare justifies an intervention that might close the village. The Berkley Living case supplies a clear example.

Liquidation should be a last resort. The ideal would be to identify a troubled owner, operator or village well before the point of failure. RRVV recommends implementing a system of prudential regulation and surveillance.

Option 19 - Reform the external dispute resolution process by the creation of an Industry Ombudsman.

RRVV response

RRVV has for years advocated for a one-stop, independent, expert and non-adversarial dispute resolution service with the power to investigate and make binding determinations on the full range of issues that arise in retirement villages. We also advocated for the service to investigate systemic issues. The specification came before the name.

Residents have a reasonable understanding of what an ombudsman does and trust the integrity of the service. When we attend general meetings in retirement villages, we explore how many people can name an ombudsman service. Almost half name one, and around 10 % have sought aid from one or more. It is hardly surprising that residents want an ombudsman.

RRVV does not support several aspects of the proposed process. We have already communicated some of our objections in our response to Option 13.

We see the need to publicise the availability of an ombudsman service, the criteria for accessing the service and how to get in touch during its early stages. Nevertheless, we expect comprehension will grow rapidly. Residents have been waiting for years for the announcement.

We see little need to use an expensive ombudsman service to coach residents through the internal dispute resolution service. Mandating that operators volunteer information about residents' dispute resolution rights at appropriate stages backed up by proportionate sanctions for failure to do so combined with training and accreditation should be adequate. Moreover, we see acceptance benefits in having operators responsible for spreading the word.

Operators prefer to keep disputes internal as long as possible. We believe this is an unsound practice. We believe getting a contested complaint before an ombudsman as soon as the case stalls is best practice. Moving the complaint along quickly leaves the relationship between the operator and resident in better shape.

As we have already noted, we believe mandatory conciliation is inappropriate. Residents need the ombudsman to listen to their problem and Act, including negotiating with the operator if necessary.



We expect an ombudsman to resolve an exceptionally high proportion of the complaints at this stage without resorting to its powers to make a binding determination.

In the rare cases where the ombudsman cannot resolve the problem amicably, the service can make a binding determination. RRVV understands the Energy and Water Ombudsman of Victoria can go years without making a binding determination.

Someone must pay to set up and run an ombudsman service. Not surprisingly, RRVV prefers the Government pays. If operators must pay, they will increase their prices (e.g., a higher DMF or an increased share of capital gains). Cost is only one of the variables in the equation. RRVV asserts that an ombudsman will:

1. Significantly increase resident wellbeing, particularly at the bottom end of the sector.
2. Improve the culture and service standards of the sector.
3. Reduce complaints steadily over time. The Energy and Water Ombudsman of Victoria's experience suggests cases will halve over five years.
4. Reduce operators dispute resolution costs by stopping cases from dragging on for months and reducing the number of cases.
5. Reduce CAV enforcement costs.

RRVV believes a rights-based Act with explicit provisions, licensed operators and a well-resourced ombudsman service will do more to raise service standards and performance consistency than any other approach and at a lower economic cost.

Minor and technical amendments

- a) If language used throughout the RV Act can be simplified, while ensuring the intent of the RV Act and provisions remain.

RRVV response

There are two related issues:

1. Inconsistencies and conceptual confusion in the current Act that suggest muddled thinking is behind much of the complexity. The first step in improving understandability is to correct the muddled thinking and clarify the intent of the new Act. Is it really about promoting resident wellbeing?
2. The language. Plain English is never a negative.

The nature and language of the current Act contribute to inconsistent interpretation and conflict between operators and residents. Moreover, it suffers from many of the issues raised by the Victorian Law Reform Commission report "Plain English and the law" concerning grammatical structure. Words that have a meaning in the general community have a different meaning in the Act or village contracts. For example, a loan is not money borrowed from the residents and paid back with interest as the general community might expect.

RRVV recommends adopting principles to remove uncertainty, avoid ambiguity and promote understanding, particularly by using words in their ordinary meaning. When, in rare cases, the Act or a contract uses a word other than in its ordinary sense, defining its meaning carefully and giving examples would aid understanding.

- b) Should the definition of 'by-laws' incorporate additional provisions that:
c) Distinguish by-laws that apply to the retirement village and the owners corporation rules.

RRVV response

RRVV supports distinguishing by-laws and owners corporation rules, but the problem is much larger than b) and c) recognise.

One of the reasons operators and residents do not understand how the Owners Corporations Act and the Retirement Villages Act work alongside each other is confused messages in the latter Act. Take the section 3(1) definition of an annual meeting. It tries to mix oil and water by combining the annual general meeting of the owners corporation and the section 33 annual meeting of the retirement village. An owners corporation annual meeting is a meeting of lot owners run by elected lot owners. Its democratic by design but not necessarily in practice as the developer may have rorted the lot entitlements. The section 33 meeting is a meeting of residents (not all of whom are lot holders) run by the operator. The Act gives only limited voting rights. Villages following section 3(1) make a mess of both meetings typically. The section 3(1) definition of the committee and section 36(8) are similarly unhelpful. They ask residents who are lease or licence holders to accept lot owners as their representatives.

d) Clarify that by-laws should not impinge on the operator's property rights and financial arrangements.

RRVV response

The problem is much more nuanced than d) above recognises.

First, section 3(1) definition of by-laws is a mess. Few operators and almost no residents understand it. Many operators' lawyers argue the weight of other by-law references in the Act that negates (a) of the by-law's definition "included in or applied by a contract," and villages must publish by-laws in a separate document. So, they argue, section 37 provisions on the making, revocation or alteration of by-laws do not apply to what would otherwise be by-laws an operator has included in its contract.

In the absence of anything contrary in the Act or contract, operators rely on their property rights to unilaterally make rules limiting residents' access to communal facilities and areas. Moreover, many contracts have clauses that allow the operator to unilaterally make rules limiting residents' access to communal facilities and areas. Residents set out to make their village their home, but unilateral operator rulemaking turns villages into institutions. Is this the intention of the Act?

Residents need an understandable by-laws definition and the right to make, alter and revoke by-laws even if the contract does not provide for the village to have by-laws.

The current definition focuses on regulating residents only (i.e., by-laws apply to a resident) rather than residents, operators and village owners.

The Consumer Affairs Victoria website notes that by-laws usually deal with:

- Visitors and guests
- Noise
- Security
- Pets
- Garbage disposal
- Car parking
- Restrictions on the use of services and facilities (make more general by dropping "restrictions on")
- The external appearance of residents' premises
- Gardening and landscaping.

RRVV recommends adding:

- Committees and the like not regulated by the Retirement Villages Act
- Speed limits
- Signage, notice boards and internal TV channels.
- Village bus usage and timetables
- Access to facilities by outside organisations
- Use of facilities for private functions.

RRVV recommends requiring operators to enforce by-laws and imposing a penalty for them not doing so.

RRVV contends that residents have a right to as much self-government as they choose. Nevertheless, RRVV does not advocate that the by-law's provisions should give the residents the right to block owners from changing units, building new units or redeveloping the village.

We advocate that other sections of the Act protect residents' interests when operators propose changing the village by giving them a veto by special resolution right.

RRVV does advocate giving operators emergency powers over village land and communal facilities. For example, during a future pandemic, it would be helpful if operators had clear powers to close certain village facilities to give effect to the chief health officer's orders. During the COVID pandemic, operators did close community facilities using their contractual or property rights and, in some cases, exceeded those rights.

e) Clarify that by-laws should not unfairly discriminate against individual residents.

RRVV response

Yes

f) Are current definitions of 'disclosure statement' and 'domestic partner' appropriate?

RRVV response

Disclosure statement. RRVV recommends updating the definition. Moreover, we contend that residents' rights should have priority over all other claims against the village's assets.

RRVV opposes the proliferation of documents. We prefer the contract to be the sole source of truth, even if operators reprint sections and make them available in specific circumstances. If we must have a fact sheet and a disclosure statement, RRVV recommends combining the two.

Domestic partner. RRVV recommends rationalising the definition of a domestic partner. The Act has two stabs at it and additionally refers to the Relationships Act 2008. Please keep it simple.

RRVV also recommends amending the Act to recognise residents may be:

- Friends but not in a relationship
- Family members such as siblings or parent and offspring.
- A resident and a live-in carer.

g) Can the definition of a 'manager' be expanded to include incorporated associations?

RRVV response

The Acts current use of the term manager confuses residents because they use the term to refer to their village manager. RRVV recommends defining three terms:

- Village manager
- Operator (including recognising the operator of a strata-titled village is [with some exceptions such strata villages where 100% of residents lease their units] is not the owner but might have been the initial owner)
- Owner (including recognising the owner may also be the operator)

RRVV is aware of:

- A handful of strata-titled villages, each with an incorporated association that supplies services (including management services) to the village and where the branding and DMF owner holds

30% of the association's voting rights. In RRVV's opinion, the branding and DMF owner has effective control of the association. The contractual relationship between residents, services association and the branding and DMF owner varies from one operator to another.

- Leasehold villages with an incorporated association that supplies services to the village and where the owner holds 30% of its voting rights. In RRVV's opinion, the village owner has effective control of the association. Leasehold association villages are more numerous than the strata-titled variant.

RRVV believes the services association model is not sustainable. From time to time, the village residents and the committee representing them may manage the village effectively, but most of the time, it is the owner or entity holding the DMF rights that pulls strings.

RRVV is not aware of any association villages that have a section 36 residents' committee. Most residents believe the association's committee of management represents them. RRVV believes the associations are too conflicted and too much under the control of a third party to represent residents.

RRVV believes residents, village managers and associations' committees of management struggle to understand their obligations and that compliance with the relevant Acts is poor.

RRVV recommends the new Act:

- Prevent the formation of other association villages.
- Have provisions that simplify the operations of existing association villages.
- Strengthen the role of residents in the running of all villages.

h) Should terms relating to a 'residence right' be consistently referenced to improve readability?

Yes

RRVV recommends setting out in the Act primary residents rights applying to all residents (i.e., irrespective of the form of tenure) rather than leaving rights to the operator's contract.

The section 3 definition starts by referring to residential hostel or hospital accommodation or other services (not being a service provided by a residential care facility). This definition is meaningless to a resident. Referring to accommodation that is irrelevant does not define what the relevant right or set of rights is.

Land and accommodation are only part of the package; they are necessary, but they do not define the whole.

i) Should the term 'retirement village land' be clarified to remove any potential inconsistencies in application?

To a resident, land and buildings are separate things, with the primary relationship being the latter depends on the former. The reference to land in the Act might well include everything permanent that sits on it, but it is the other way around to a resident. We sign up for unit x and get a tiny plot of land for it to sit on. Resident centred language would be an immense help.



- j) Can the definition of 'maintenance charge' be amended to:
- Include a requirement to differentiate between a maintenance charge or fee under the RV Act and the OC Act
 - Clarify any potential inconsistencies in relation to resident involvement with maintenance charge increases above CPI.

RRVV response

Residents better understand what they are paying when the term 'service charge' replaces 'maintenance charge'. RRVV recommends adopting 'service charge'.

RRVV has seen widespread residents' confusion and some operator confusion about periodic charges in strata-titled villages. Better definitions would help a little. Clearer articulation of how the two Acts work alongside each other would achieve much more. Please see RRVV's response to b) and c) above.

RRVV believes that best practice is for the operator, as owners corporation manager, to invoice lot owners for the fees levied by the owners corporation and separately, as the operator, invoice all residents for the village service fee (i.e., maintenance charge). In mixed tenure villages, the best practice is for the operator as the lot owner to invoice each leaseholder for the management and maintenance of the common property. Presenting all three separate invoices on one sheet of paper with the total due being the sum of all three is satisfactory. Presenting one invoice (either from the owners corporation or the village operator) perpetuates the confusion.

- k) Whether the definition of an 'owner' can be clarified between the RV Act and the RV regulations.

RRVV response

Yes, please see our response to g) above.

- l) Whether voting procedures across all meetings identified in the RV Act can be clarified, and if a definition of 'ordinary resolution' can be introduced.

RRVV response

Yes. Please see our response to Option 16.

- m) Whether provisions relating to annual meetings can be amended to:
- Clarify the definition of a 'prescribed period' for the timing of annual meetings in conjunction with references to 'in each year'.
 - Include provisions about circumstances and protocols to postpone meetings.
 - Include provisions to enable remote meetings and associated meeting and voting procedures.
 - Require disclosure of any manager salary increase if it directly relates to maintenance charge increases.
 - Require any surplus to be carried over and limit an operators' ability to pass on or accumulate deficits and make good any deficit from their own funds.
 - Clarify requirements for an audit and whether requirements should align with similar provisions in the OC Act.

RRVV response

- Prescribed period. Please see our response to Option16
- Postponing meetings - Yes
- Remote meetings - Yes
- Salary increases - Yes, all village staff.
- Surplus and deficit - Please see our response to Option 16.
- Audit - Please see our response to Option 16.

n) Should provisions relating to the cooling-off period be clarified to ensure it is clear which subsections are applicable.

RRVV response

No comment

o) Should a provision be introduced to enable the transfer of an in-going contribution held in trust from a legal practitioner to an estate agent acting for the owner?

RRVV response

No comment

p) Whether sections of the RV Act concerning the timing of refunds can be consolidated.

RRVV response

The only issue relating to refunds RRVV wants to comment on is the delay in remitting the net proceeds of the settlement to the outgoing resident of 14 days. RRVV recommends remitting the net proceeds on the day of settlement.

q) Whether the wording for an application for an extinguishment of charge can be clarified.

RRVV response

No comment

r) Consideration of the adequacy of investigative powers and penalties for offence under the RV Act.

RRVV recommends:

- i. Giving the Director powers to:
 - require suppliers to provide information and documents, and to give evidence relating to a suspected breach.
 - inspect, make copies of, take extracts of, or seize and retain any documents produced.
 - enter into information-sharing arrangements with other enforcement agencies.
 - issue corrective advertising orders, and
 - issue adverse publicity orders.
- ii. Empowering CAV to seek corrective advertising and adverse publicity orders.

- iii. Expanding CAV investigative powers under the Act to include the powers listed under sections 126, 126A, 127, 128, 129 and 133 of the ACLFTA, enter into information-sharing arrangements with other agencies (s133) and providing additional enforcement remedies in responding to breaches of the RV Act.
 - iv. Amending the Act to empower the Director of CAV to apply to a Court for either a corrective advertising order or an adverse publicity order under section 210 or section 2211 where an operator has breached certain sections of the ACLFTA.
 - v. Reviewing and updating penalties
- s) Consideration of the current what information is necessary on the public register, hosted by CAV.

RRVV response

RRVV sees two purposes:

1. A database to help the public find nearby retirement villages with specific characteristics.
2. A public database of further information for use by public policy researchers.

RRVV recommends the following details for the village finder service:

1. Name, physical address and electronic contact details.
2. The owner (or owners), including directors if a company, and registered office details (also supply information on joint ventures), physical address and electronic contact details.
3. Operator (including where the operator or joint is an incorporated association of residents plus any separate entity that holds rights to receive DMF income, physical address and electronic contact details).
4. Owners corporation manager (if strata-titled), physical address and electronic contact details.
5. Details of units (number broken down by size).
6. Communal facilities (list all significant facilities in useable condition)
7. The age profile of residents (% of the total number of residents by decade).
8. The availability of care (in-home care by the operator or on-site residential aged care)

RRVV recommends the following for the research part of the database:

1. Complaint statistics (anonymised) broken down by standard descriptors, including the village and operator names.
2. Length of stay statistics (anonymised) broken down by standard descriptors, including the village and operator names.
3. Vacancy and waiting list statistics broken down by standard descriptors.

Added items.

- t) Ensure residents rights are no less than those available under similar legislation.

In our option-by-option response, we have focused primarily on rights, freedoms and protections specific to retirement living, the needs of third-age people, and the deficiencies of the current Act. We are conscious that other Acts also deal with similar rights. The Residential Tenancies Act 1997 and the Owners Corporations Act 2006 are most directly relevant. Some aspects of the Retail Leases Act 2003 may also be relevant. RRVV suggest that the reformed Act picks up the best elements of these similar Acts, so village residents are no less empowered than other tenants or residents.

- u) Should operators hold residents' money on trust?

Operators hold residents' money in their villages' working accounts, sinking fund accounts and related term deposit accounts, or consolidating accounts.

Many operators act as if the money in these accounts is theirs. For example, many residence contracts have a clause that purports allow the operator to decide, at its absolute discretion, how to deploy an accumulated operating surplus. RRVV argues the surplus belongs to the residents who contributed it. Similarly, some operators act if the money in the long-term maintenance fund is theirs to spend as they see fit. Others have contracts that require them to consult village residents or their residents' committees before spending long term maintenance funds. Nevertheless, in practice, the consultation is more sham than real. RRVV contends that residents have the final say on all spending.

The Owners Corporations Act requires managers who hold owners corporation money to hold it on trust. RRVV argues that all village operators should hold all the funds they hold on behalf of residents on trust.

RRVV is aware of residents of operators who fell into financial difficulty because of the global financial crisis who had to fight to keep village funds. A straightforward trust arrangement would better protect residents' interests.

- v) Emergency management plans.

RRVV knows of a village that successfully evacuated its frailer residents following the rupture of a gas main. The evacuation was successful because the village had a sound, regularly tested evacuation plan, and all the staff were on-site at the time to aid residents. Nevertheless, if the gas main had ruptured after hours, there would have been only one person on hand to help those residents. Moreover, in the five years since the incident, the village has not had one practice evacuation.

The 2019-2020 summer bushfires exposed weaknesses in retirement village planning for bushfire emergency evacuation. The staff of one village at risk from a bushfire told residents that they had signed up for independent living, so it was up to them to make their own plans to evacuate. As the fire season wore on, the operator came to recognise the folly of the independent living argument as a sizeable proportion of residents were incapable of making their own arrangements. The operator hastily prepared an evacuation plan and organised transport to get the residents to a place where firefighters could protect them. Twice, the residents packed up as a fire threatened. Twice, the fire changed direction, and they were able to stand down. Nevertheless, the residents deserved better than a hastily devised and untested plan.



RRVV recommends, irrespective of any added emergency powers and obligations, requiring operators to develop, maintain and test an emergency management plan consistent with recognised standards for such plans.

w) Owner, operator and village failure protection

Even with the recent Berkley Living amendment, the Act does not deal well with owner, operator or village failure. RRVV contends that CAV or residents need a straightforward way of forcing the failing entity into administration and then reconstruction without significantly disturbing resident wellbeing.

During the Global Financial Crisis, insolvency practitioners successfully transitioned failing owners and operators' villages to new owners at investors' instigation. Unfortunately, not all investors are willing to intervene.

x) Eliminate or minimise inappropriate selling.

Operators' sales agents are inclined to sign up people with needs or expectations their villages cannot meet, particularly when vacancy rates are persistently high. When RRVV challenges them, they give one or more of the following responses:

- We cannot discriminate.
- It is up to the prospective residents to assess the village's services.
- We must reduce vacancies.
- How can we judge?

RRVV contends that operators and their sales agents have an ethical obligation to, at a minimum, advise prospective residents when they have doubts about the village's ability to meet their needs or expectations and to correct their misunderstandings. We also contend that operators and their sales agents should learn enough about prospective residents to form a view about the village's ability to meet their needs and expectations and about any misunderstandings (i.e., a know your customer obligation).

y) Clarifying included services and personal services.

As villages age and budgets tighten, operators become inclined to redefine some previously included but not contracted services as personal services. Residents object to the unilateral nature of the decision. RRVV recommends requiring operators to obtain approval from the resident body.

z) Who should pay the insurance excess?

Most villages pay the premiums for insurance that protects owners and operators' property with funds from the operations account. Take the case of a resident whose unit suffered flood damage. The contract was silent on who pays the excess. The village manager insisted the resident pay the excess. The idea that the village should pay for the insurance and the individual resident the excess is unfair and dangerous. Most operators arrange the insurance.

If residents pay the excess, the operator is like to select a policy with high excess so they can appear to be holding service fees down. RRVV argues that the owner or operator should pay the insurance premium and claim any excess from the company account.

More generally, RRVV argues that the Act should ensure cost allocations do not encourage manipulative behaviour.

aa) Are section 5 and 6 exemptions still necessary?

RRVV suggests that the exemptions are unnecessary because religious and charitable organisations owning or operating retirement villages owe no lesser standard to their residents than other owners and operators. In any event, sections 5 and 6 do not set out the grounds for exemptions. If we must have exemptions, the Act should set out why the residents should not enjoy its full benefits and owners and operators should escape some responsibilities.

bb) Requiring operators to enforce their contracts and village by-laws.

RRVV contends that residents have the right to expect owners and operators to enforce their contracts and village by-laws. For example, a resident might choose one village over another because it has a lower published speed limit and then finds that the operator does not enforce the limit. Many village managers claim they have discretion not to enforce contract terms and by-laws. A few contracts do have a clause committing the operator to enforce the contract.

RRVV recommends contracts have a contract and by-laws enforcement clause.

cc) Recognise in-home care.

RRVV has received complaints from several villages that their operator has unilaterally turned the village into an aged care home. More recently, the Royal Commission Into Aged Care Quality And Safety commissioners have made several recommendations with the potential to fundamentally change the nature of villages where the operator elects to offer in-home care. RRVV recommends reactivating consideration of the effects of changes in aged care on retirement villages.

Similarly, recognise in-home care supplied by the National Disability Insurance Scheme

dd) Support voting by ballot on significant issues.

In most villages, the proportion of residents attending annual and other general meetings is low. In significant part, this is because of illness, or mobility, hearing and other difficulties. There is also some reluctance to vote publicly. RRVV recommends supporting voting by secret ballot on significant issues. Nevertheless, many residents prefer to hear presentations and debate before deciding how to vote. So, RRVV recommends that villages hold general meetings before conducting a ballot except for voting in residents' committee elections.

ee) Clarify qualification for voting at an annual meeting.

Section 3(2)(a) implies that Part 6 shows who may vote at an annual meeting. Section 6 adds nothing.

The question of who may vote at village meetings is the cause of much pointless debate. RRVV recommends that all residents living in the village be eligible to vote even if in arrears on some payments.



ff) Section 26 refund of ingoing contribution

Section 26 (2) provides that outgoing residents have the right to receive the refund of their ingoing contribution 14 days after completion of the purchase or occupation by a new owner. RRVV sees no justification for the delay and recommends paying the refund at once.

gg) Section 33 annual meeting chair

Some residents' committees insist that the committee chair conducts the section 33 meeting. On the other hand, some operators insist the committee chair conduct the meeting. The operator must convene the meeting and at the meeting must fulfil its section 34 obligations to report on certain matters. RRVV recommends that a future Act have a similar provision, and that provision requires the operator to chair the meeting.

hh) Section 36A right of a resident to act through a representative.

RRVV recommends limiting the right of residents' committee members to appoint a proxy to represent them at a committee meeting to appointing another committee member. We acknowledge that such a provision would prevent family members from taking part and recommends alternative arrangements for family member representation.

RRVV also recommends giving residents an unrestricted right to appoint a proxy to participate in annual meetings, general meetings of residents, committee elections (if we must have voting at a meeting), and implementing provisions preventing proxy farming.

ii) Clarifying what a special levy is

The definition of a special levy is not clear. RRVV contends there are only two legitimate reasons for a special levy:

- An expected short-term increase in a recurrent expenditure that the operations budget cannot meet despite a revision. Residents may approve a short term (same duration as the expenditure) recurrent special levy by special resolution.
- An expected one-off near-term increase in capital expenditure that the sinking fund cannot absorb despite a budget revision. Residents may approve a one-off special levy or a short term recurrent special levy by special resolution to cover the expenditure.

Please note neither of the above would have any effect on the regular service fee. We recommend giving the operators the protection of provisions like section 38(3).

Note that RRVV objects to operators having any opportunity to impose a special levy unilaterally. Residents on fixed incomes must keep control over the spending of their money.

jj) Clarify the calculation of the adjusted maintenance charge.

Elsewhere in this response to the options paper, we have made recommendations on residents' approval of the charge (service fee) and the calculation timing. Here we comment on the section 38(5) calculations. Section 38(5) seeks to remove certain expenditures from residents' control. We believe this is unnecessary given the provisions of section 38(3).

RRVV has seen various interpretations of section 38(5). If we must have something like section 38(5), we recommend the one illustrated in the following table.



Table 1
Calculation of maintenance charge increase as per section 36(5) of the Retirement Villages Act.

Units	120	2019-2020	Adjusted maintenance charge Apply Increase	CPI	2020-2021	\$ increase over adjusted maintenance charge	Increase covered by 38(5) (a) and (b)	Increase NOT covered by 38(5) (a) and (b)
CPI increase for 2019-2020			1.93%					
Wages		100,000	101,930		106,000	4,070	2,000	2,070
Rates		10,000	10,193		11,000	807	800	7
All Other Expenses		333,200	339,631		339,800	169	169	-
Total Budgeted Expenditure		443,200	451,754		456,800	5,046	2,969	2,077
Service Fees Charge per month		443,200	451,754		456,800	5,046	2,969	2,077
Rounded to nearest 10 cents		307.78	313.72		317.22	3.50	2.06	1.44
Percentage increase			1.93%		3.05%			
Percentage of 2019-2020 fee						1.14%	0.62%	0.52%

A \$1.44 increase in the monthly fee above the adjusted maintenance fee plus Section 38(5) allowable increases requires resident approval.

kk) Misuse of village resources

Neither the Act nor residence contracts seen by RRVV protect residents from operators' misuse of village resources funded by resident contributions.

For example, one operator's staff mentoring program has experienced village managers supporting less experienced village managers. The experienced village manager's village pays his or her higher salary without compensation from the receiving village, which pays a lower salary to its village manager. They believe the operator is engaged in cross-subsidy.

Similarly, operators sometimes take staff away from a village on junkets. The operators usually pay for travel and accommodation from the company account, but the village continues to pay the salaries. Residents object to operators unilaterally assigning staff to non-village activities in this way. It is not necessarily an objection to the junket but certainly is to the attitude operators have to the use of resident funded resources.

More generally, the village managers of some operators do a lot of work for the head office. Residents have little visibility of this work. Many residents query whether the operator should charge some of the cost of this work to the head office. They want the Act to supply transparency, accountability and fairness to the murky areas of village finances.

RRVV recommends clarifying what the owner or operator and the village must pay.

ll) Enhancing section 38G

Section 38G(a) requires the operator to inform all residents of the matters contained in the documents required by sections 38E and 38F. Very few do, apart from some who meet the technical requirements of 38G(b) by pinning the relevant documents on a crowded notice board or burying them in a one-hundred-page document pack along with the contract and other boring documents. RRVV recommends requiring operators to tell residents of their rights at the first hint of a potential dispute or complaint.

mm) Enhancing Section 38 H recording and reporting requirements

Few if any operators systematically review village complaint statistics. There are no state-wide statistics. RRVV recommends designing and implementing a state-wide complaints database.

nn) Clarifying voting at meetings of residents, including meetings called by residents and residents committee meetings.

Currently, voting rules vary by meeting type, in large part the product of careless amending of the Act. We have already recommended standardising on one vote per person. We also recommend standardising the criteria for accepting a proposal. For example, 'a motion passes if a majority of residents living in the village and voting support it or, in the case of a special resolution, more than 75% of the residents living in the village and voting support it'. RRVV does not support the chair of the meeting having a casting vote. It is an anachronistic and anti-democratic idea.

oo) Dealing with vague contract provisions

Many residents are unclear about what they have leased or bought and for what they are responsible. For example:

- The boundaries of their land or the land they have leased and what their day-to-day maintenance responsibilities are. RRVV recommends mandating that each contract include a site plan that illustrates responsibilities.
- Contracts often express maintenance and like responsibilities of residents, the village and the operator) in generic terms that do not align well with the specific property. RRVV recommends

mandating an itemised list that sets out the responsibilities of the owner or operator, village operations account, the long-term maintenance fund and individual residents. RRVV also recommends standardising the principles.

- Contracts rarely deal with such matters as a water pipe leak in a wall or ceiling cavity, water hammer, damp that seeps through a party wall, old and unsafe electrical cables, obsolete smoke alarms. RRVV contends these are all owner-operator responsibilities.
- Operators and contracts often treat the rectification of building defects (usually arising during the first resident's tenure but sometimes showing up ten or 20 years later) as maintenance. RRVV recommends mandating that building defects are an operator responsibility irrespective of the form of tenure.

More generally, RRVV recommends legislating that the interpretation of vague contract terms or omitted responsibilities favours residents individually and collectively.

pp) Expand and standardise classifications of expenditure.

Different contracts have different expenditure classifications and responsibilities, so prospective residents cannot readily compare competing propositions. Moreover, contract responsibilities are unlike anything residents have experienced in their earlier lives. Even when contracts are clear, residents do not understand them fully and so cannot effectively challenge operators cost allocations. The risk of exploitation is significant. RRVV recommends expanding and standardising expenditure classifications and aligning them with those of residential leases.

qq) Inadequately equipped villages

Reports from residents suggest a high proportion of new villages are inadequately equipped. For example:

- Community centres too small to cater for the resident population on completion of all units.
- BBQ facilities with inadequate shade
- Inadequate storage space in community centres.
- Insufficiently durable carpets in community centres
- Ergonomically unsuitable seating in community centres
- Inferior quality air-conditioners in units requiring early replacement or excessive maintenance.
- Paths that crack within two or three years of laying creating a trip hazard.
- Sporting facilities poorly constructed, requiring early replacement or excessive maintenance.
- Ergonomically unsuitable appliances in units.
- Insufficient and unsuitable power points in units and community centres.
- Inadequate audio-visual systems in community centres given the hearing and vision difficulties of some residents.

Operators deal with resident complaints about these deficiencies in diverse ways, but almost all require residents to pay for at least part of the cost of rectification. For example, one operator provided storage for bar supplies some distance from the bar. Elderly residents complained they could not safely move the stores from the storeroom to the bar. The operator built added storage near the bar and charged the cost to the sinking fund; residents' money it holds to cover long term maintenance.

Another operator faced with a similar problem offered to pay half the cost of the work if the residents' committee would pay the rest. The operator charged its half of the cost to the long-term maintenance fund.

Prospective residents are unaware of the deficiencies at the time of signing their contracts.

RRVV recommends mandating operators pay for the rectification work from the company account.

rr) Inadequate provision for long term maintenance

Some operators of new villages under-provide for long term maintenance to keep the maintenance charge down and attract more residents. The medium-term result is that residents must increase their contribution to the long-term maintenance fund through a higher maintenance or some other charge. At the time of signing their contract, residents are unaware of the under-provision. RRVV recommends requiring the operator to engage independent experts to set the first long term maintenance fund contribution.

ss) Remove known gouging practices.

There are as many opportunities to gouge as there are discrete contracts, but only a minority of owners and operators take advantage of the opportunity.

- Example 1 – Excessive DMF charge
 - A resident paid a market-linked ingoing contribution.
 - The DMF reached its maximum of 35% of the ingoing amount at the end of year three.
 - The resident died at the beginning of year four.
 - The DMF cost to the resident (i.e., excluding the maintenance charge) taken over the three years is around 11.5% a year – much more than the cost of renting a fully maintained non-village property of similar value.

In summary, the resident paid a market-linked capital sum capital for the unit plus another amount comparable to an above-market rent and still had to pay to maintain appliances and items. Note RRVV has excluded retirement villages services funded by the maintenance charge from this analysis to improve the validity of the comparison.

- Example 2 – Excessive reinstatement charge
 - The contract purported to give the operator the right to undertake the reinstatement necessary to achieve the best resale price.
 - A 33% DMF struck as a % of the resale price was payable.
 - The operator spent \$15,000 of the resident's money on repairing damage (including new carpets and painting)
 - The operator spent \$10,000 of the resident's money on new appliances to bring the unit "up to contemporary standards". The operator estimated this would add \$10,000 to the resale price. It did.
 - The increase in the price increased the DMF the resident paid by \$3,300.

In summary, the operator spent \$10,000 of the resident's money, returned \$7,700 to the resident and pocketed the balance.

- Example 3 Sharing of capital gain but not the capital loss.
 - If resale crystallises a capital gain, the operator takes 50% of the gain.
 - If resale crystallises a capital loss, the resident must pay the operator the total amount of the loss.

RRVV recommends legislating to prevent gouging.

tt) Municipal rates

Retirement village residents pay twice for services supplied both by the councils and their villages. Councils have the power to set differential rates to give relief to retirement village residents, but most refuse to use their power. RRVV recommends the Government legislate to force municipal councils to discount rates on retirement village properties by 25%, the most realistic figure offered by the few councils that use their differential rate powers.

Retirement village payments, fees and payment plans

Village financial models

Under the current dominant model, most retirement villages residents:

1. Have made a refundable lump sum payment to the owner or operator to secure a residence right in the village.
2. Make periodic payments to the village that the operator holds and uses to cover the costs of contracted services supplied to residents. In most villages, the contract reserves part of the money for routine village operations and the rest for long term and major maintenance. If the money held by the operator runs low, residents must tip in more or suffer a reduction in services.
3. After exiting the village, will make a lump sum payment known as a deferred management fee (DMF) to the owner or operator.

These arrangements, amongst other things, set up a resident funded village using the three-bucket model where bucket one funds routine village operations, bucket two funds long term maintenance and bucket three funds the operator.

One rapidly growing operator uses a one bucket model (i.e., all the contributions go into one bucket). The operator uses the funds available to supply the contracted services and carries the risk of unexpected expenditure.

There are variations to the dominant model. Some residents make a further lump sum payment after exit to cover long term maintenance of the village communal spaces and external surfaces of residences. Other residents make only periodic payments. The periodic payments are significantly higher than the service fee to compensate for the loss of the lump sums. For example, one operator adds a periodic interest payment to compensate for the money it borrows to replace the refundable ingoing lump sum and another periodic payment to compensate for the loss of the DMF.

Deferred management fee

RRVV considers most of the operators' explanations for their DMF flawed.

Please consider the following hypothetical case, which RRVV believes better illustrates the purpose of the deferred management fee under the current dominant model.

Pleasant Dreams Village is:

1. The owners only village
2. Fully built and 100% leased.
3. The owners fully recovered the cost of developing the village from the first occupiers' ingoing contributions.
4. Occupied solely by the second or later generation occupants of their units.



5. Fully resident funded.
6. One where:
 - a. The operator applies 100% of the maintenance charge to running the village following its understanding of the Act.
 - b. 100 % of the capital gain flows to ex-residents.
 - c. Departing and incoming residents set the price for the unit transfer by negotiation.
 - d. Departing residents pay a DMF to the operator calculated using the ingoing contribution.

The most common justification for the DMF is that it is "part of the purchase price deferred until you leave" (extracted from the CAV website on 3 May 2021). The broad form of this justification is that price stays permanently below cost. Operators do not acknowledge persistent lower relative prices might show a customer appeal problem. The narrow form is that developers cannot recover the cost of developing villages from the first buyers of the units. This claim might be valid in some cases, but it is not the general case.

At Pleasant Dreams Village, the resale price is the price set by negotiation between the outgoing resident and prospective residents. It is, by definition, the market price.

A less common justification is that "the Deferred Management Fee helps pay for the public facilities in a village that everyone uses, bowling greens, swimming pools and the like" (extracted from the DCM website 3 May 2021). Typically, the DMF does not cover village operating costs, so RRVV believes this justification refers to the capital cost of the facilities. In that case, it again implies that the developer could not recover the total cost of developing the village from unit sales, which is not the general case.

RRVV knows of two strata-titled villages developed by a well-known operator to make a development profit and then exit. The residents pay owners corporation fees but no DMF. Similarly, RRVV knows of non-retirement village strata-titled gated communities that look like retirement villages, have similar facilities, and residents are mostly elderly. The residents pay owners corporation fees but no DMF.

There is no mechanism to compensate for a development loss in either case.

RRVV concludes that some village developers may not be able to make a development profit. Still, it is wrong to claim the DMF's purpose is to recover capital costs not recovered at the point of sale. What about covering business operating costs? What about profit? It is similarly wrong to claim that the operator has pledged funds that flow into the operator's accounts for a specific purpose, such as recovering the capital cost of supplying communal facilities. The operator offered a unit plus communal facilities package deal. Any inability to recover development costs is because buyers would not pay a break-even price for the package.

One industry observer with inside knowledge notes that "village operations generally work on a cost-recovery basis and so service/maintenance fees payable reflect the costs incurred" (extracted from Compare villages website 3 May 2021). Aveo notes that "The exit fee, which is one of Aveo's only forms of income, is used to keep our business strong and ensures we can continue to provide the lifestyle our residents enjoy now and into the future". RRVV believes these quotes reflect retirement village reality more accurately than CAV's articulation of the most common operator view or the DCM view.

The Pleasant Dreams Village situation is clear. The DMF is its operators only source of income, and without it, the company would not be able to cover its business expenses. Note that the operator's business expenses are separate from the village's expenses.



RRVV believes it helpful to speculate on the nature of the financial contract between Pleasant Dreams Village residents and the operator that governs village operations. Could it be a cost-plus contract with the monthly margin payment deferred until settlement? RRVV believes this is the most straightforward valid characterisation.

Alternative payment plans

It might be that sometime in the future, the operator of Pleasant Dreams Village will introduce a contract for new residents that reduces the DMF but returns only 50% of the capital gain to them at settlement. Would this change the nature of the DMF? RRVV says no as the DMF still contributes part of the margin earned for managing the village. The capital gains share adds the other part of the margin. The change benefits residents by lowering the range of uncertainty of their payout after leaving the village.

It might also be that sometime later, the operator of Pleasant Dreams Village introduces another new contract with the following features:

1. The operator pays for unit refurbishment on exit but not for damage rectification.
2. The sinking fund pays for the rectification of all fair wear and tear.
3. Residents pay a market-linked ingoing contribution and receive 100% of it back on exiting.
4. Residents pay a higher recurrent fee (split between day-to-day village operations and long-term maintenance and the operator).
5. The operator keeps 100% of the capital gain.
6. Residents do not pay a DMF.
7. Alternative payment plans. For example:
 - a. A lower recurrent fee plus a lump sum payment at the end (deducted from the return of the ingoing contribution).
 - b. A lower recurrent fee plus an added non-refundable lump sum upfront.
 - c. No ingoing contribution but a higher recurrent fee.
8. The operator might also allow the resident to buy an early buyback by making an added upfront payment or a recurrent payment.

Pleasant Dreams Village's newest contract presents a core product with three alternative payment plans. It keeps some of the features of the dominant model (e.g., the refundable upfront payment and cost recovery village operations). It also picks up some features from the Residential Tenancies Act (e.g., the operator pays for rectification of fair wear and tear and unit refurbishment).

The Pleasant Dreams Village example shows:

1. DMFs are not baked in.
2. Alternate payment plans can be simple.
3. If the DMF were not a deferred fee, it would be a series of recurrent payments.

There are over 30,000 current contracts that impose a DMF or exit fee, so DMFs will likely be with us for a long time.

RRVV supports defining the term or a replacement term. The essential elements are:

A lump sum payable by residents to the operator after exit, in place of a series of smaller payments throughout the occupancy that contributes to the gross profit earned for managing the village.



Recommendation

RRVV recommends:

1. Retaining and formalising the three-bucket model.
2. Recognising the DMF is the operator's monthly margin payment deferred until settlement.
3. Requiring the operators base offer to be like that of Pleasant Dreams Villages most recent offer (i.e., a 100% periodic payment offer).
4. Requiring operators to offer only limited alternative payment plans.
5. Requiring operators to price each variation from the base offer separately.

Villages with owners corporations

Overview of villages with owners corporations

RRVV receives a disproportionately high number of requests for assistance from residents living in strata-titled villages, and of those requests, a disproportionately high number become intractable disputes.

The main drivers of the requests for assistance are:

1. Residents do not understand the role of the owners corporation and the parallel role of village management.
2. Owners corporation committees do not understand their role and their relationship with their village management.
3. Owners corporations also have the powers of a residents committee and usually delegate them to the owners corporation committee. Very few owners corporation committees can handle the role-role distinction and routinely mix things up.
4. Village management does not understand their role and their relationship with the owners corporation committee.
5. Most village managers also serve as the local representative of the owners corporation manager (almost always the operator). Very few village managers can handle the role-role distinction and mix things up.
6. Residents do not understand the role of the owners corporation manager and their relationship with the manager.
7. Village operators head offices are similarly confused. For an example, please see the case study submitted to John Unkovitch of CAV on or about 24 January 2020 by John Borchers of Highvale Retirement village and Lawrie Robertson of RRVV.

RRVV believes this confusion arises because the Retirement Villages Act is not clear about what transforms an ordinary strata-titled development into a retirement village. From a resident's perspective, it is the services a retirement village offers that an ordinary strata-titled development does not. The savvier residents recognise that it's the Retirement Villages Act that regulates those distinguishing services.

Villages where all residents are lot owners

Fewer residents live in strata-titled villages where all residents are lot owners than in mixed tenure villages. This is the simplest of the various strata-titled village forms. Nevertheless, most residents and many operators find it confusing.

In RRVV's opinion, the confusion is the product of:

1. Regulation of one aspect of running a village by the Owners Corporations Act and the rest by the Retirement Villages Act with an unclear boundary between the two. Most residents think the owners corporation is the village management body. They also think the owners corporation manager manages the owners corporation rather than manages and maintains the common property for the owners corporation. Most village managers think their job is to manage the owners corporation.

2. Operators using management contracts that include supplying services that would usually be the province of the owners corporation (an outcome of an operator centric mindset and a desire to bypass the owners corporation's control of the common property).
3. Retirement Villages Act provisions that reinforce the confusion above. For example:
 - a. The section 3 definition of a retirement village annual meeting as the owners corporation annual meeting. The drafters of this section clearly did not understand the different meetings' purposes and who convenes them. Moreover, both operators and residents find it challenging to work out the voting rules for each agenda item at a combined annual meeting.
 - b. The erroneous section 38B distinction between owner and non-owner residents. The maintenance charge is a charge levied under the Retirement Villages Act to fund the provision of goods and services to residents irrespective of whether they are owners or non-owners.

Strata titled villages where not all residents are lot owners

Most strata-titled villages are mixed tenure villages. The presence of non-owner residents amplifies the confusion.

Section 36 provides that a strata-titled village may not have a residents' committee. This provision disadvantages non-owner residents because they must accept representation by a body they do not belong to and a committee they take no part in electing.

Owners corporation committees tend to read the section 3 definition of an annual meeting where there is an owners corporation as meaning the owners corporation voting rules apply. In some villages, they deny non-owner residents any voting rights. In others, they require non-owners to vote on matters they recognise as falling outside the province of the owners corporation using owners corporation voting rules.

Some of the operators of mixed tenure villages have contemplated giving their proxy to non-owner residents to enable more even resident representation. One operator trialled giving proxies to non-owner residents in a small number of villages over the recent annual meeting season. RRVV is not aware of the results. We support efforts to enable equal representation to non-owner residents. Nevertheless, we recommend radical simplification as the preferred solution.

Strata-titled villages with an incorporated association that supplies services, including management services.

RRVV is aware of a handful of strata-titled villages, each with an incorporated association that supplies services (including management services) to the village. The branding and DMF rights holder has 30% of the association's voting rights. In RRVV's opinion, the branding and DMF rights operator owner has effective control of the association. The contractual relationships between residents, the services association and the branding and DMF rights operator owner RRVV is aware of varies from village to village. In some cases, the service's association is also the owners corporations manager.

The services associations' committee of management is also the owners corporation's committee (i.e. the members are identical) in all cases of which RRVV is aware.



RRVV believes the services association model is not sustainable. From time to time, the village residents and the committee representing them may manage the village effectively, but most of the time, it is the owner or entity holding the DMF rights that pulls strings.

In RRVV's opinion, none of these villages comes close to complying with all the relevant Acts. RRVV recommends legislation to prevent forming of new strata-titled association villages.

RRVV is not aware of any association villages that have a section 36 residents' committee. Most residents believe the association's committee of management represents them. RRVV believes the associations are too conflicted and too much under the control of a third party to represent residents. Residents in a handful of association villages have tried to set up a section 36 committee. Residents became confused and upset by the added complication and hostility from the association's committee.

More generally, RRVV recommends the reformed Act:

1. Prevents the formation of other association villages.
2. Have provisions that simplify the operations of existing association villages.
3. Strengthen the role of residents in the running of all villages.

The solution to the problems of strata-titled villages

RRVV favours a solution that minimises or even eliminates differences between owner and non-owner residents irrespective of whether they live in strata-titled or other villages. In other words, we favour structuring the legislation around the needs and rights of residents rather than around the form of tenure.

Our preferred approach is to import as much of the Owners Corporations Act into the Retirement Villages Act as is necessary to align the interest of all residents, if not immediately, over time as residents enter with new contracts.

We are aware of one operator who is actively considering restructuring its strata-titled villages, all of which have some non-owner residents. The restructuring will minimise the owners corporation's responsibilities.

Minimising the role of the owners corporation reduces residents' control opportunities. We have proposed reforms to the Retirement Villages Act that increase residents control opportunities. RRVV contends that all residents should enjoy the best the Owners Corporations Act and the Retirement Villages Act (as reformed) offers in resident control, rights, protections and freedoms.

As a distinctly second-best alternative, we recommend disentangling the Owners Corporations Act and the Retirement Villages Act such that residents and operators may readily understand how each contributes to a well-functioning village.

Residents as stakeholders

Key Points

In this attachment, RRVV argues that:

1. Recognising residents as stakeholders is good for residents, operators and owners.
2. That the current Act reinforces a view of business that disadvantages residents, owners and operators.

Stakeholder theory

Stakeholder theory is a theory of organisational management and business ethics that addresses morals and values in managing an organisation. It presents a new idea about what a business is; a human institution embedded in society.

R Edward Freeman initially detailed stakeholder theory in his book *Strategic Management: A Stakeholder Approach*. He identifies the groups which are stakeholders of a company and recommends methods by which management can advance the interests of those groups. In short, it tries to address the "principle of who or what really counts".

In the traditional business view, the shareholder view, shareholders are the company owners, and the firm must put their needs first and increase value for them.

Stakeholder theory argues that other parties are involved, including customers, suppliers, employees, communities, and the people with the money (shareholders, lenders etc.). It also argues that business maximises its value creation by creating value for all *stakeholders*, not just shareholders. It does this by aligning stakeholders' interests with a business purpose (i.e., a desire to make a difference). One dimensional maximising (e.g., focusing solely on shareholder value) does not work.

What is a stakeholder?

Freeman suggests that a company's stakeholders are "those groups without whose support the organisation would cease to exist."

Residents see themselves as stakeholders because they see their villages as their homes. In Freeman's view, they are also stakeholders because they are:

1. Customers
2. The people with the money



At first sight, it might be challenging to accept residents as one of the groups with the money. In the vast majority of villages, they are because they contribute most, and in some cases, 100% of the capital employed.

RRVV committee members have attended numerous section 33 annual meetings. At not one meeting, did the operator supply information that would allow residents to make a general assessment of the security of their investment. Residents of a village RRVV attended recently have collectively invested around \$60 million. In the coarse world of commerce, a syndicate investing \$60 million would attract a measure of respect. Why not when the investors are retirement village residents?

Operators are reluctant to supply residents with financial information unless they must. Section 34(1) of the Act's failure to address the needs of investor residents does not help.

RRVV submits that residence contracts that require residents to carry some of the business risks strengthen residents' claim to be stakeholders. For example, most contracts require residents to directly fund some of their villages' more financially volatile aspects. These contracts lower the volatility of the owners' and operators' returns. Residents are deeply engaged in the business.

More generally, the current Act does not recognise residents as stakeholders of their villages and their village owners and operators.

Recognising residents as stakeholders

The hardnosed shareholder view of the firm is not ideal for organisations providing service to a consumer market segment with a higher-than-average proportion of vulnerable people. The current Act reflects the shareholder view.

Stakeholder theory sets out to make business fit for humans. Retirement village residents have more contact with their operator than most other consumer groups have with their suppliers, and that contact is more intrusive than in most consumer supplier relationships. Given the nature of the relationship, a disrespectful business is likely to damage residents' welfare, and a respectful business likely to enhance their welfare. The stakeholder view of the firm offers residents and other stakeholders a much more supportive and mutually rewarding relationship. So, it offers owners and operators growth opportunity.

Despite the business benefits, owners and operators are unlikely to change their ways unless pushed. They are stuck in a rut. RRVV recommends the reformed Act:

1. Reflects the stakeholder rather than shareholder view of the firm.
2. Puts values and ethics at the centre of owners' and operators' business relationship with residents.
3. Requires owners and operators to report to residents in some detail on the financial strength of their businesses relevant to the security of residents' investments.

For more information on stakeholder theory, see <https://www.youtube.com/watch?v=epxmG3YRgok>