

Residents' consumer rights:

What do we want?

Google "human rights" or search the shelves of your local library, and you will find a wealth of material on the topic. Our State and Commonwealth Human Rights Commissions protect our human rights, and most of us would be happy with their focus.

But retirement villages are unique entities that throw up challenges to our wellbeing that conventional statements of human rights do not address. Consequently, the "rights" of residents are unclear and liable to misinterpretation and misunderstanding.

This article discusses the nature and reasons for the confusion and proposes consumer rights and protections specific to residents of retirement villages.

Before we start, a warning: while not every resident or every village will want to exercise the rights set out below, everyone should have the opportunity to do so.

Prospective residents' rights

The right to an understandable offer

The reformed Act should give prospective residents the right to an understandable offer.

The offers made to prospective residents have always been hard to understand, and they are becoming even more challenging as owners and operators introduce more contract options.

A typical contract asks a future resident to choose between two, three or more options. Each such option treats capital gains, deferred management fees, and how long residents must wait to get their money after leaving differently

However, recent research by Macquarie University on village fact sheets suggests that many residents

struggle to understand these more complicated offers. Very few can work out which is the best deal. The research concludes that paper-based disclosure alone is inadequate and recommends using a comparison website to improve understanding.

The right to pricing certainty

The reformed Act should give prospective residents the right to pricing certainty, i.e., the right to know all capital commitments before signing.

Some current contracts give the deferred management fee as a percentage of what the next resident will pay. So, prospective residents cannot know the capital cost of living in that village until they leave it.

Resident control of ongoing fees

The reformed Act should give prospective residents the right to collective control over service fees and special levies. Hence, the right to collective control over budgets.

Most village contracts have residents' service fees covering all ongoing village living costs. And since those costs will increase in line with the consumer price index (CPI), prospective residents can only estimate future service fees. Moreover, some provisions in the current Act allow an operator to increase service fees by more than the CPI or impose a special levy without the consent of residents. None of this is acceptable.

Disclosure of material facts

The reformed Act should give residents a broad material facts provision that goes beyond real estate.

There is a disconnect between the laws governing general real estate sales and those governing retirement village residence contracts.

Since 1 March 2020, it has been illegal for real estate vendors and their agents to knowingly conceal any material facts about a property from a prospective buyer. Vendors or agents must answer

all questions from prospective buyers about material facts as fully and frankly as possible. But future retirement village residents do not have this protection.

Some of us later discover facts about our units that the village owner knew but did not disclose. And most of us who do say that if we knew about these facts before signing, we would have made a different decision.

For example, one resident experienced a series of wall, floor and ceiling cracks after moving in and later learned that the operator knew the problem well before preparing the contract. She also learned that this was not the first time the operator did not disclose a material fact to a prospective resident.

And since prospective residents sign up for much more than a piece of real estate, they need to know more than just material facts about land and buildings. Take the case of a prospective resident couple who were seeking 24-hour nursing coverage. During one visit, the salesperson introduced the couple to the village head nurse and, on a later visit, to "one of our nurses". After moving in, however, the couple learned the village had only two nurses and planned not to replace them if they resigned.

Existing residents' rights

The formal status of residents

The reformed Act should recognise residents and their operators (i.e., landowners and business owners) as equal village stakeholders.

Although the current Act does not define residents' status, it is clear from many of its provisions that owners and operators mostly call the shots.

Although most residents' contracts make them, collectively, significant investors in their villages, we do not have investors' rights. Although our villages are our homes, most management contracts give the operator the right to make more

decisions about the village life than residents collectively.

The right to make, revoke and alter village rules

The reformed Act should clarify the by-laws definition and give the unfettered right to make, revoke and alter village by-laws or rules to residents and only residents.

The by-laws definition of the current Act is a confusing and hotly debated mess. For example, the section that covers making, revoking and altering by-laws puts residents collectively in charge. On the other hand, current contracts purport to take this right away by including matters that RRVV contends are by-laws. Operators argue that, because these matters are in their contracts, they are out of the reach of the section that requires resident approval and allows residents, alter and or revoke them.

Some contracts refer to village "rules". RRVV contends that if the by-law's definition applies to the subject of the rule, then simply calling it a village rule does not transform it into something else.

The right to access village financial information

The reformed Act should give residents the right to regular financial reporting throughout the financial year and reasonable access to detailed financial information.

Many of the challenges of village living owe something to the nature of village contracts and financial models. Most village management contracts are, in large part, cost-plus-profit contracts. Through the service fee, we give our operators money to cover the cost of running our villages. And after we leave our villages, we pay a deferred management fee to our operators to contribute to their profit. No honest operator would use service fees to boost profit.

People who enter cost-plus-profit contracts need detailed costs information to assess whether their supplier manages operations effectively and

follows the contract. But the Retirement Villages Act does not give residents the right to access necessary detailed financial information. It only requires operators to report to residents once a year.

Most operators argue that staff privacy prevents them from allowing residents to access financial information. RRVV disagrees. The solution is to spell out residents' rights in the reformed Act.

The right to access other village information

The reformed Act should give residents the right to access all village information (as distinct from the operator's business information) with only limited exceptions.

The Retirement Villages Act does not give residents the right to access any general village information. But financial information alone is not enough to assess whether operators manage villages in our best interests. Hence, we need access to other village information.

The right to procedural fairness in disputes

The reformed Act should give residents the right to:

- *complaint adjudication and dispute mediation without bias,*
- *know of a proposed decision on a complaint or dispute,*
- *learn the names of their accusers and witnesses, and*
- *a hearing.*

Disputes and complaints inevitably arise in retirement villages, but the current stipulates Act too few procedures.

Few village managers have training in handling complaints and disputes, and an unskilled approach can be unfair and damaging to the residents involved.

RRVV has supported residents in dispute with other residents and with complaints against operators who have suffered significant harm because they

do not have a legislated right to procedural fairness.

While some village managers can divorce themselves from the interests of their employer when dealing with complaints, those who cannot are dangerous. And few managers find it possible to remain free of bias when the complaint is about them.

Similarly, while some village managers can oversee a complaint between residents without taking sides, those who cannot are dangerous.

Village managers sometimes decide on a complaint or a dispute between residents without adequate time for consideration. RRVV believes this is unfair because it denies the parties the chance to have a say on the contemplated decision. It is also contrary to the relevant provisions in the current Retirement Villages Act because managers can go ahead only with the complainants or the parties to the disputes consent.

RRVV knows of operators who have decided against residents without informing them of the names of complainants and witnesses or details of the evidence considered. This presents two critical problems, in that it denies residents:

- the opportunity to mount a defence, and
- the information needed to mount a defence.

Village changes and residents' rights

The reformed Act should give residents specific and comprehensive rights and protections in the face of village rebuilding or repurposing.

Most of us see our villages and units as our homes for the rest of our lives. But many contracts have clauses that allow the owner to move residents to another unit if something destroys the current one. In some cases, an operator may cancel an existing contract if it considers rebuilding is impossible.

Prospective residents' preferences change from generation to generation, but the bricks and mortar of retirement villages stay much the same.

Increasingly, owners of old villages are embarking on village renewals.

Similarly, owners of villages look to renew their business models from time to time and change their service proposition. Suppose an operator plans to include in-home care in their service offerings. In that case, some existing residents might object to the prospect of their village becoming an aged care facility. Those residents have the right to have their perspectives considered.

When operators make mistakes

The reformed Act should require operators to be candid, apologise for their mistakes, and make good any losses or compensate residents for the harms they cause them.

Not all operators confess their mistakes, and those who do are not always candid. Very few give sincere apologies.

Take the case of a village manager who diverted village funds to his bank account. The operator eventually detected the fraud, made good the deficiency from the company account and fired the village manager. But at no stage did the operator advise the village's residents. This lack of candour was a patent failure of duty. But when the residents eventually found out and asked for an apology and a commitment to strengthen safeguards, the operator declined.

Through neglect or mistake, operators sometimes cause their villages monetary loss or cause residents' harm. Again, however, few willingly make good the loss or compensate for the injury. Even fewer apologise and openly take corrective action.

Departing residents' rights

RRVV considers the best unit upgrade practice is for the owner or operator to pay for the upgrade, cover any loss or share any profit equally with us. RRVV advocates that the reformed Act requires this approach.

Most current lease contracts claim to give owners and operators the right to upgrade our units when we leave to a vaguely defined standard and demand we pay. When the agreement requires calculating the deferred management fee as a percentage of the resale amount or sharing capital gain with the operator, upgrades usually lower our payout. RRVV considers this outrageous conduct.