Review of the Retirement Villages Act 1999

Report No. 13
Transport, Housing and Local Government Committee
November 2012
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Acknowledgements
The Committee thanks those who briefed the Committee, and participated in the inquiry process. In particular, the Committee acknowledges the assistance provided by the Department of Housing and Public Works.
# Contents

**Abbreviations**

iii

**Chair’s foreword**

iv

**Recommendations**

v

## 1 Introduction

1.1 Role of the Committee  
1.2 Inquiry process  
   1.2.2 Reporting deadline  
   1.2.3 Public submissions  
   1.2.4 Public briefing  
   1.2.5 Public hearing

1

## 2 Background

2.1 Objects of the Act  
2.1.1 What is a retirement village?  
2.1.2 Types of retirement villages  
3

## 3 Best practice

3.1 Mandatory standards and accreditation  
3.1.1 Other states and territories  
3.1.2 Alternative options  
3.1.3 Planning system  
5

## 4 Principle of fairness

4.1 Basic rights and obligations  
   4.1.1 Operators’ response to correspondence from residents  
4.2 Fair trading practice protections  
4.3 Is a resident an owner or a renter  
4.4 Non-retirement village accommodation  
4.5 Legal advice for potential residents  
4.6 Opportunities for residents to be involved in decision-making  
4.7 Dispute resolution  
   4.7.1 Resident satisfaction  
   4.7.2 Who and what does the dispute resolution process apply to?  
   4.7.3 Fear of intimidation and repercussion  
   4.7.4 Legal representation  
   4.7.5 Cost of dispute resolution  
   4.7.6 Effectiveness of QCAT  
10

## 5 Financial matters

5.1 Budget development  
27
5.2 Charges
   5.2.1 Increased charges
   5.2.2 Incomplete retirement village
   5.2.3 Sales commission
5.3 Capital gains
5.4 Capital replacement
5.5 Reinstatement works
5.6 Resale value of accommodation
5.7 Financial responsibilities when leaving a retirement village
   5.7.1 Closure of retirement villages

6 Public Information Document (PID)
6.1 Current PID
6.2 How to improve the PID
6.3 Alternative PID options

7 Exit fees
7.1 Background on model
   7.1.1 Rationale for regulating in Queensland
7.2 Resident satisfaction with exit fee model
7.3 Calculation of exit fee
7.4 Estimation of exit fee
7.5 Daily rate for calculation of exit fees
7.6 Nursing home bond
7.7 Alternative models

Appendices
Appendix A – List of submissions
Appendix B – Witnesses at Public Briefing
Appendix C – Witnesses at Public Hearing
## Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>Australian Capital Territory</td>
</tr>
<tr>
<td>ARQRV</td>
<td>Association of Residents of Queensland Retirement Villages</td>
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<td>CPI</td>
<td>Consumer Price Index</td>
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<td>COTA</td>
<td>Council on the Ageing Queensland</td>
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<tr>
<td>ERRRC</td>
<td>Eaglemount Retirement Resort Residents’ Committee</td>
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<td>DHPW</td>
<td>Department of Housing and Public Works</td>
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<tr>
<td>LAPCSESC</td>
<td>Legal Affairs, Police, Corrective Services and Emergency Services Committee</td>
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<td>LASAQ</td>
<td>Leading Age Services Australia Queensland</td>
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<tr>
<td>PID</td>
<td>Public Information Document</td>
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<td>QCAT</td>
<td>Queensland Civil and Administrative Tribunal</td>
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<td>QLS</td>
<td>Queensland Law Society</td>
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<td>RSL</td>
<td>Returned and Services League of Australia</td>
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<td>Retirement Villages Association</td>
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<td>SPA</td>
<td>Sustainable Planning Act</td>
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<tr>
<td>The Act</td>
<td><em>Retirement Villages Act 1999</em></td>
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Chair’s foreword

On behalf of the Transport, Housing and Local Government Committee (the Committee) of the 54th Parliament of Queensland, I am pleased to present the Committee’s report number 13 – Review of the Retirement Villages Act 1999.

On 2 August 2012, the Legislative Assembly agreed to a motion that the Committee undertake a review of the Retirement Villages Act 1999 (the Act) and set a reporting date of 30 November 2012.

The Committee has consulted widely and gathered evidence from key industry groups, including retirement village scheme operators, residents, industry participants and relevant experts. I would like to acknowledge those who have briefed the Committee, provided written submissions, and others who have informed the Committee’s deliberations through their participation in the inquiry process.

Many issues were identified during the inquiry, including those relating to the exit fee model provided by the Act, the quality of the current Public Information Document and the need for some fundamental principles to guide retirement village decision making and relationships within villages.

A number of inquiry participants noted the complexity associated with navigating the Act and in understanding what it means for them, so the Committee has recommended the development of a series of fact sheets, to be written in plain English to assist prospective, current and former residents; their families and operators at key times where access to clear information could prove invaluable.

I thank the Committee’s secretariat and the Education and Innovation Committee’s Secretariat for their support and assistance throughout the inquiry process.

I commend the report to the House.

Howard Hobbs MP
Chair

November 2012
Recommendations

Recommendation 1

The Committee recommends that with a view to embedding best practice standards in the operation of all retirement villages, the Minister for Housing and Public Works:

a) examine the benefits of a voluntary code of conduct for retirement village scheme operators
b) consider the role of the chief executive officer in administering such a code, and
c) seek amendment to legislation, if required.

Recommendation 2

The Committee recommends that the Minister for Housing and Public Works include principles in the Act for:

a) scheme operators in their management of villages and interaction with residents and their families, and
b) residents in their interaction with operators, staff and other residents.

Recommendation 3

The Committee recommends that the principles referred to in recommendation 2 should cover the following matters:

a) residents’ right to peace, comfort and quiet enjoyment of their unit and communal facilities
b) residents’ right to privacy and freedom from unplanned attendance at their unit by operators
c) residents’ right to express their views about issues affecting the village without fear of public or private recrimination from the operator or other residents
d) residents’ and operators’ right to freedom from harassment and intimidation by other residents and operator staff
e) a requirement for residents to respect the rights of other residents and the operator of the village, and
f) a requirement for operators to respect the rights of residents and persons working in the retirement village.

Recommendation 4

The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to:

a) include definitions of the terms ‘right to reside’ and ‘residence contract’, and
b) ensure that the terms ‘right to reside’ and ‘residence contract’ are used appropriately in the Act, removing any assumptions that these terms are synonymous.

Recommendation 5

The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to require that new residence contracts include an obligation on operators to respond to written correspondence from residents within six weeks, and that this requirement is also noted in Public Information Documents.

Recommendation 6

The Committee recommends that the Minister for Housing and Public Works ensure that fair trading practice protections, including those provided by other relevant legislation such as the Fair Trading Act 1989, are available to all prospective and current residents of retirement villages through:

a) drafting fact sheets in plain English and relevant community languages and
b) placing the fact sheets on the Department of Housing and Public Works website.
Recommendation 7

The Committee recommends that the Minister for Housing and Public Works notify relevant local and federal government authorities of the Committee’s concern that the pensioner water subsidy, pensioner rates subsidy rebate and rent assistance are not available to residents of retirement villages and ask the relevant authorities to investigate whether the subsidies can be extended to include residents of retirement villages.

Recommendation 8

The Committee recommends that the Minister for Housing and Public Works seek amendment to the *Retirement Villages Act 1999* to prevent persons who manage or control residential premises from representing that complex as a retirement village, unless the complex is a retirement village within the meaning of the *Retirement Villages Act 1999*.

Recommendation 9

The Committee recommends that the Minister for Housing and Public Works seek amendment to the *Retirement Villages Act 1999* to ensure that prospective residents of retirement villages who choose not to obtain legal and financial advice be required to advise that they are aware of their right to obtain this advice and to sign a provision to this effect in their residence contract.

Recommendation 10

The Committee recommends that the Minister for Housing and Public Works include a provision in the Public Information Document that highlights the importance of obtaining independent financial and legal advice before residents sign residence contracts.

Recommendation 11

The Committee recommends that the Minister for Housing and Public Works seek amendment to the *Retirement Villages Act 1999* to clarify who, and what, the dispute resolution process applies to, specifically confirming whether the process applies to disputes between residents.

Recommendation 12

The Committee recommends that the Department of Housing and Public Works develop a fact sheet on the dispute resolution process and options available for disputes between residents, between residents and operators and those that involve non-resident owners, and that this fact sheet is published on the Departmental website.

Recommendation 13

The Committee recommends that the Minister for Housing and Public Works examine the dispute resolution options available to non-resident owners and seek amendment to the *Retirement Villages Act 1999* if required.

Recommendation 14

The Committee recommends that the Minister for Housing and Public Works seek amendment to the *Retirement Villages Act 1999* to insert provisions that will deter operators and residents from engaging in harassment and intimidatory behaviour towards one another, other residents and staff of retirement villages.
Recommendation 15

The Committee recommends that the Minister for Housing and Public Works explore options to ensure that operators do not pass on their costs associated with the dispute resolution process, including legal fees, to residents of retirement villages, so that the process fairly and adequately protects the interests of both parties.

Recommendation 16

The Committee recommends that the Department of Housing and Public Works examine issues associated with section 106 and 107 of the *Retirement Villages Act 1999* with regard to:

a) the potential for operators to move costs between these sections to the detriment of residents

b) whether operators are disadvantaged through limitations imposed by the specific charges in these sections, and

c) including this information in the Public Information Document so that there is clarity for prospective residents regarding what charges can be increased within and beyond CPI, when this can occur and how operators can increase these charges.

Recommendation 17

The Committee recommends that the Department of Housing and Public Works consider issues regarding fee increases and review whether the *Retirement Villages Act 1999* provides adequate certainty and clarity for residents regarding when charges can increase, how they can be increased and residents’ rights to object to any increase and that the Minister for Housing and Public Works seek amendments to the Act if required.

Recommendation 18

The Committee recommends that the Department of Housing and Public Works develop a fact sheet on retirement village fee increases which translates relevant provisions of the Act into plain English and clearly identifies the rights and options available to both operators and residents.

Recommendation 19

The Committee recommends that the Minister for Housing and Public Works seek amendment to the *Retirement Villages Act 1999* to clarify that residents are only required to pay a pro-rata amount of general services charge when there are incomplete or vacant units in retirement villages, and that this information is also included in the Public Information Document.

Recommendation 20

The Committee recommends that the Minister for Housing and Public Works consider whether residents and operators should be required to pay pro-rata maintenance reserve fund contributions when there are incomplete or vacant units in a retirement village, and that this requirement be included in the *Retirement Villages Act 1999* and in the Public Information Document.

Recommendation 21

The Committee recommends that the Minister for Housing and Public Works seek amendment to the *Retirement Villages Act 1999* to prohibit operators and their related entities from charging former residents:

a) fee, charge or commission for selling a resident’s right to reside in a retirement village

b) lump sum to former residents as part of the cost of sale of a right to reside, and

c) termination fee when residents leave a village.
**Recommendation 22**

The Committee recommends that the Minister for Housing and Public Works clarify operators’ obligations regarding charging fees to prospective, current and former residents for selling rights to reside in a retirement village through developing and publishing on the Department’s website a fact sheet, and including these obligations in plain English in the Public Information Document.

**Recommendation 23**

The Committee recommends that the Minister for Housing and Public Works seek amendment to the *Retirement Villages Act 1999* to ensure that capital gains are provided fairly to residents and operators according to the residence contract and that there is no option for operators to artificially reduce the amount of capital gain provided to residents through reducing the new ingoing contribution or selling the right to reside under a less favourable contract.

**Recommendation 24**

The Committee recommends that the Minister for Housing and Public Works seek amendment to the *Retirement Villages Act 1999* to ensure that residents and operators share the same percentage of any capital loss as they share any capital gain.

**Recommendation 25**

The Committee recommends that the Minister for Housing and Public Works seek amendment to the *Retirement Villages Act 1999* to provide that outgoing residents are not required to remove improvements made to a unit before an incoming resident has been consulted regarding whether they would like to keep the improvements; and that if an incoming resident decides to keep the improvement, that the Act provides it does not have to be removed.

**Recommendation 26**

The Committee recommends that the Minister for Housing and Public Works seek amendment to the *Retirement Villages Act 1999* to:

a) provide a definition of ‘marketable condition’ as currently used in the definition of ‘reinstatement work’
b) provide a definition of ‘vacate’
c) clarify the extent of reinstatement work that is required to be undertaken, including an example of appropriate reinstatement work, and
d) provide for what happens in the event that reinstatement work cannot be agreed by the former resident and operator within the current time limit provided by the Act.

**Recommendation 27**

The Committee recommends that the Department of Housing and Public Works develop a fact sheet on ‘reinstatement of retirement village units’ that clearly outlines the financial responsibilities of residents and operators as provided in the Act; timeframes for key decisions; is written in plain English, in a number of relevant community languages and is published on the Department’s website.

**Recommendation 28**

The Committee recommends that the Minister for Housing and Public Works seek amendment to the *Retirement Villages Act 1999* to provide for the protection of residents in the event that a retirement village closes down, or is in the process of closing down.
Recommendation 29
The Committee recommends that the Department of Housing and Public Works develop a new Public Information Document to improve the layout of information, reduce the length and complexity, simplify, remove unnecessary repetition, ensure information is provided in plain English and that key terms and considerations are included.

Recommendation 30
The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to require:
   a) operators to place the Public Information Document on their retirement village websites
   b) the Public Information Document be made available to prospective residents online or in hard copy without their personal information first being sought
   c) any amendments to a Public Information Document be made available on the website within three business days of the amendments being approved and
   d) the Public Information Document be provided to prospective residents when they are provided with the general prospectus.

Recommendation 31
The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to require the Public Information Document be provided to prospective residents by operators at least 10 business days before an application for a right to reside is completed, before any contract is signed and before any funds are paid to an operator by a prospective resident.

Recommendation 32
The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to require that residence contracts include the detailed formulas that will be used to calculate exit fees.

Recommendation 33
The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to remove the requirement under section 54 that require residents to give written notice stating they are considering terminating their right to reside in the village, in order to obtain an estimate of their exit entitlement; and operators be required to give an estimate of a resident’s exit entitlement if requested once every twelve months and when the resident is leaving the village.

Recommendation 34
The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to ensure that residents receive their exit entitlement from an operator within six months of terminating their right to reside in exceptional circumstances, such as if they would experience severe hardship if they did not receive this money or if the village has closed or is closing down.
Recommendation 35

The Committee recommends that the Minister for Housing and Public Works consider seeking amendment to the Retirement Villages Act 1999 to provide that a vacating resident’s exit entitlement is calculated independently of an incoming resident’s ingoing contribution and that this is clearly provided in the contract and Public Information Document, with consideration given to potential tax implications.

Recommendation 36

The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to provide for the prescription of standard form contracts for retirement villages to facilitate the comparison of retirement villages and provide increased clarity of provisions such as those relating to exit fees, and in doing so considers the draft New South Wales standard form village contract as an example.

Recommendation 37

The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to provide alternative financial models for retirement village living, for example periodic payments, that provide improved choice and flexibility for residents and operators, do not include an exit fee (deferred management fee) and are available to prospective residents from lower socio economic positions.
1 Introduction

1.1 Role of the Committee

The Transport, Housing and Local Government Committee (the Committee) is a statutory committee that was established on 18 May 2012 by the Parliament of Queensland Act 2001 and the Standing Rules and Orders of the Legislative Assembly (the Standing Orders). The Committee consists of both government and non-government members and its primary areas of responsibility include transport, main roads, housing, public works and local government.

In relation to its areas of responsibility, the Committee:

- examines legislation, including subordinate legislation, to consider the policy to be enacted and the application of the fundamental legislative principles set out in part 4, section 24 of the Legislative Standards Act 1992;
- considers the Appropriation Bills;
- assesses the public accounts and public works of each Department in regard to the integrity, economy, efficiency and effectiveness of financial management; and
- has a responsibility to consider any other issue referred to it by the Assembly, whether or not the issue is within a portfolio area.

The Committee may deal with these matters by considering them and reporting and making recommendations about them to the Legislative Assembly.

1.2 Inquiry process

1.2.1 The referral

On 2 August 2012 the Legislative Assembly agreed to a motion that the Transport, Housing and Local Government Committee undertake a review of the Retirement Villages Act 1999 and in undertaking this review, the Committee should consider whether the Act:

- provides adequate fair trading practice protections for residents; including providing appropriate material to enable informed decisions to be made
- does not include unnecessary restrictions and provisions which increase the affordability of living in a Retirement Village
- provides adequate certainty, accountability and transparency for residents in relation to their financial obligations, including the interests of residents in the event of a village closing down
- provides sufficient clarity and certainty in relation to the rights and obligations of residents and scheme operators
- should make provision for scheme operators to develop and adopt best practice standards in operating villages, or require operators to comply with mandatory standards or accreditation
- adequately promotes innovation and expansion in the retirement village industry, avoids purely ‘red tape’ requirements, and facilitates the ongoing viability of villages
- affords residents all reasonable opportunities to be involved, should they wish to be, in budgetary and other decisions affecting their financial obligations and
- adequately provides a timely, informal and cost-effective process for resolving disputes between residents and scheme operators.

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2 Standing Rules and Orders of the Legislative Assembly, Schedule 6.
3 Parliament of Queensland Act 2001 section 92(2).
4 Parliament of Queensland Act 2001 section 92(3).
Further, the Committee should take public submissions and consult with key industry groups, including retirement village scheme operators, residents and potential residents, industry participants and relevant experts.

1.2.2 Reporting deadline

The Committee is required to report to the Parliament by Friday 30 November 2012.

1.2.3 Public submissions

The committee advertised its inquiry in August 2012 by seeking submissions through:
- a media release to 364 media outlets
- letters to 18 stakeholders
- emailing 351 subscribers registered to receive information from the committee and

The Committee received and considered 23 submissions. A list of submissions is included at Appendix A. Submissions have been made public (other than those which submitters requested remain private) and are available at:


1.2.4 Public briefing

On 28 August 2012, the Committee received a public briefing from the Retirement Villages Association, AVEO Retirement Villages, Churches of Christ Care, the Association of Residents of Queensland Retirement Villages and the Department of Housing and Public Works. A list of witnesses who attended is included at Appendix B.

1.2.5 Public hearing

On 26 October 2012, the Committee held a public hearing. A list of witnesses who gave evidence at the hearing is included at Appendix C.

Transcripts from the public briefings and the public hearing have been made public and are available at www.parliament.qld.gov.au/work-of-committees/committees/THLGC.
2 Background

The Retirement Villages Act 1999 (the Act) regulates Queensland’s retirement village industry. The number of retirement villages in Australia continues to grow, and it is estimated the number could double over the next 17 years. 

Retirement villages allow a group of people to share amenities and services that individually might not be affordable or desirable. Villages provide services at different levels, ranging from low care to higher care, sometimes within the same village. It is important to note they are not nursing homes, and do not provide the level and type of care available in nursing homes.

At June 2011, 311 schemes were registered in Queensland, housing 28,000 residents and employing 8,000 people. Mr Andrew Giles, Chief Executive Office of the Retirement Village Association (RVA) informed the Committee that “… the number of people over the age of 65 will almost double” over the next 20 years.

2.1 Objects of the Act

The protection of consumers is a primary objective of the Act. The Act intends to promote fair trading practices and consumer protection in the operation of retirement villages and supply of services through declaring particular rights and obligations of both residents and scheme operators. It facilitates the disclosure of information to prospective residents of retirement villages to ensure that these rights are easily understood. An assessment of how well the Act does this is to be considered under the first of this inquiry’s terms of reference.

The second key objective of the Act is to encourage the continued growth and viability of the retirement village industry in Queensland. Other objectives of the Act are to encourage adoption of best practice standards by the industry, provide a clear regulatory framework for industry expansion, facilitate resident participation in retirement village affairs and to provide a process for resolving disputes between residents and scheme operators. The terms of reference of the inquiry address all of the objectives of the Act, and are examined in more detail in the following chapters.

2.1.1 What is a retirement village?

In Queensland, the Act defines a retirement village as premises where older members of the community or retired persons reside, or are to reside, in independent living units or serviced units, under a retirement village scheme. Many retirement villages are integrated with aged care support. Options with a mix of self-care, low care and high care are also becoming popular.

A retirement village scheme is defined in the Act as a scheme under which a person:

- enters into a residence contract

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7 Mr Andrew Giles, CEO of the Retirement Village Association, public briefing 28 August 2012, Transcript, p1.
8 Queensland, Parliamentary Debates, Legislative Assembly, 14 February 2006, 44 (Hon Margaret Keech, Minister for Tourism, Fair Trading and Wine Industry Development).
9 Retirement Villages Act 1999 section 3(1).
11 Unless otherwise referenced, section 2.2 and 2.3 of this report reflect the information provided by the Queensland Parliament Library Research Service in its Client Information Brief dated 12 September 2012.
12 Retirement Villages Act 1999 section 5.
• in consideration for paying an ingoing contribution under the residence contract, acquires personally or for someone else a right to reside in a retirement village, however the right accrues and
• on payment of the relevant charge, acquires personally or for someone else a right to receive one or more services in relation to the retirement village.\textsuperscript{14}

The person with the right to reside in the village is the ‘resident’. The person controlling the operation of the retirement village is the ‘scheme operator’.

Retirement villages represent the main retirement accommodation option for older Australians although manufactured home residential parks are becoming more popular.\textsuperscript{15} Retirement villages arguably provide more protection to residents than do manufactured home parks as they have more security of tenure over the property through freehold title, or a registered lease or, for a licensed village, a statutory charge.\textsuperscript{16} Manufactured home owners own their home but the site on which the home is placed is leased from the park owner under a site agreement which does not have a fixed term and can be terminated in accordance with the legislation.

2.1.2 Types of retirement villages

Retirement village schemes can be:
• freehold - the resident holds freehold title to the accommodation unit
• leasehold - the resident’s lease is registered on the title to the retirement village land or
• licence schemes - the residence contract is not registered on the title and must be registered with the Office of Fair Trading.

There are also other types of arrangements, which include, for example, shareholders and company titles. At the public briefing held on 8 August 2012, Mr Mark Francis, Executive Director, Department of Housing and Public Works (DHPW), advised the Committee that:

Most villages are leasehold—that is, ownership of the units remains with the operator and residents take out a 99-year lease which is registered on the title deed for their unit. A variation on that model is licence arrangements whereby the resident’s lease is not registered on that title of deed. In some villages the resident holds the freehold title to their unit. Those villages tend to arise from existing group title schemes which were restructured and fell within the scope of the act back in history. In those villages there is overlap in the legislative requirements between the Retirement Villages Act and the Body Corporate and Community Management Act 1997.\textsuperscript{17}

\textsuperscript{14} Retirement Villages Act 1999 section 7(1).
\textsuperscript{15} Productivity Commission, Caring for Older Australians Report, p308.
\textsuperscript{16} ARQRV, Letter to the Minister for Housing and Public Works, Retirement Villages, the residents’ perspective, 30 July 2012, p3.
\textsuperscript{17} Mr Mark Francis, DHPW, public briefing 28 August 2012, Transcript, p12.
3 Best practice

Encouraging the adoption of best practice standards by the retirement village industry is an objective of the Act and an issue required to be considered by the Committee under the inquiry terms of reference. In its examination of the issue, the Committee considered the views of inquiry participants and took into account whether other states and territories have legislated mandatory accreditation, and alternative models to mandatory accreditation, that could support best practice in the retirement village industry.

3.1 Mandatory standards and accreditation

The Act does not currently prescribe or prohibit accreditation.\(^{18}\) Currently, retirement villages can elect to be accredited by two different programs. In general, peak industry groups and the Queensland Law Society (QLS) do not support the introduction of mandatory accreditation,\(^ {19}\) while the peak resident advocacy organisation - the Association of Residents of Queensland Retirement Villages (ARQRV) and some residents’ committees do.\(^ {20}\)

At the public hearing, Mr Timothy Francis, Executive Director at the Office of the Registrar, DHPW, explained the benefits and disadvantages of mandatory accreditation. The key advantages of a mandatory accreditation scheme are that basic standards would be ensured for all retirement villages, additional rights may be provided for residents which are difficult to legislate and it could assist in easier comparison of retirement villages.\(^ {21}\) On the other hand, he advised:

*It would be difficult to prescribe a one-size-fits-all set of accreditation standards. If the standards are pitched too high, that may prove prohibitively expensive for smaller villages. However, if set too low, that may actually reduce standards at high-end villages which already far exceed the base level. To ensure the standards are applicable to all villages, they would probably need to be very basic, which may render accreditation less useful than the present voluntary schemes which have a quality improvement type agenda. Mandatory accreditation would also create additional red tape for scheme operators, particularly in those villages which do not presently participate in an accreditation scheme.*\(^ {22}\)

The RVA believes that accreditation “... is one of the best ways to increase standards and the more villages that are accredited, the higher the standard across the industry.”\(^ {23}\) Leading Age Services Australia Queensland (LASAQ) notes that Queensland has traditionally had a higher percentage of villages accredited when compared to other states, and that accreditation develops better practice standards.\(^ {24}\)

The ARQRV and the Eaglemount Retirement Resort Residents’ Committee (ERRRC) would support a provision in the Act that required operators to comply with mandatory standards, rather than self-regulation by the retirement village industry.\(^ {25}\) National Seniors Australia recommends that the Act be amended to require accreditation based on the minimum standards that form part of the current RVA accreditation system. Also, that training is prescribed for managers of retirement villages, which


\(^{19}\) See for example, Retirement Village Association, *Submission 14*, p22

\(^{20}\) See for example, Submissions 5 and 10.

\(^{21}\) Mr Timothy Francis, DHPW, Public hearing, 26 October 2012, *Transcript*, p21.

\(^{22}\) Ibid.


\(^{24}\) Leading Age Services Australia Queensland, *Submission 22*, pp36-37.

\(^{25}\) Association of Residents of Queensland Retirement Villages Inc. (ARQRV) *Submission 5* and Eaglemount Retirement Resort Residents’ Committee (ERRRC) *Submission 10*. 
could include facility management; first aid; dealing respectfully with elderly people and financial management and budgeting.\footnote{National Seniors Australia, Submission 20, p9.}

The RVA, however, would not support a mandatory scheme due to the likely increased costs. Also, due to "...the strength of the current Accreditation Scheme, the fact that the industry is well serviced by independent and knowledgeable experts to assess villages and the impact mandatory Accreditation may have on villages."\footnote{Retirement Village Association, Submission 14, p46.} LASAQ argues there should not be mandatory accreditation, and believes that the cost of any village accreditation should be borne by both the resident body and operator. The reason LASAQ does not support mandatory accreditation is because of a concern that such a scheme may promote ‘low cost accreditation’ schemes that are not ground in best practice.\footnote{Leading Age Services Australia Queensland, Submission 22, pp37-38.}

The QLS supports the current voluntary accreditation system, due to the potential cost impact for large and small villages of a mandatory scheme.\footnote{Queensland Law Society, Submission 13, p13.}

A mixture of mandatory standards, best practice and an accreditation scheme is recommended by the Council on the Ageing Queensland (COTA), as an option to provide the best outcome for both residents and operators. The organisation notes that the Government has committed to an accreditation system for body corporate and the community management industry to increase professional standards. COTA also believes that this would also be of benefit to the retirement village industry, while adding that:

\begin{quote}
... matters affecting people’s homes are too important not to be subject to mandatory standards ... Where these areas of human activity are left to self-regulation, they frequently result in injustices and distress.\footnote{Council on the Ageing Queensland, Submission 12, p7.}
\end{quote}

3.1.1 Other states and territories

It appears that no Australian jurisdictions have mandatory accreditation schemes governed by legislation. Some retirement village legislation (in Queensland, New South Wales and the ACT) has an objective of encouraging best practice management in the running of the retirement village and all have a number of provisions aimed at protecting residents.

\textbf{Table 1:} Mandatory accreditation of retirement villages in other jurisdictions.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales</td>
<td>While the Retirement Villages Act 1999 (NSW) contains, as one of its objectives, encouraging the retirement village industry to adopt best practice management standards (section 3(f)), it does not mandate accreditation of villages.</td>
</tr>
<tr>
<td>Australian Capital</td>
<td>The Australian Capital Territory Legislative Assembly passed the Retirement Villages Act 2012 (ACT) replacing the previous mandatory Code of Practice operating under the Fair Trading (Australian Consumer Law) Act 1992. The new Act builds on and strengthens a number of rights and protections for residents that existed under the Code. The Act contains, as one of its objectives, encouraging the retirement village industry to adopt best practice management standards (section 6(f)) but there is no requirement for mandatory accreditation of villages.</td>
</tr>
</tbody>
</table>
Review of the Retirement Villages Act 1999

Best Practice

<table>
<thead>
<tr>
<th>State</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victoria</td>
<td>The Retirement Villages Act 1986 (Vic) also protects rights of residents but does not specify best practice as an objective.</td>
</tr>
<tr>
<td>Western Australia</td>
<td>A 2010 Statutory Review of the Western Australian Retirement Villages legislation found that it was not feasible or cost effective to abandon the voluntary ARVA scheme entirely and replace it with a government accreditation scheme given that the ARVA scheme is well established and supported by industry. A 2012 Bill to amend the Retirement Villages Act 1992 (WA) was introduced in August 2012 and is currently before the WA Parliament. While it introduces a number of additional protections for residents and obligations for operators and residents, it does not introduce accreditation requirements nor specify best practice as an objective.</td>
</tr>
<tr>
<td>South Australia</td>
<td>The Retirement Villages Act 1987 (SA) governs the rights and obligations of residents and owners of retirement villages. Again, there is no objective relating to best practice. If a village, or part thereof, has accommodation provided together with ‘personal care services’, the Supported Residential Facilities Act 1992 (SA) will be likely to apply and requires the premises to be licensed.</td>
</tr>
<tr>
<td>Tasmania</td>
<td>The relevant legislation for retirement villages in Tasmania is the Retirement Villages Act 2004 (Tas). While it also regulates the rights and obligations of residents and owners it does not require accreditation nor have best practice as an objective.</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>The Retirement Villages Act 1995 (NT) applies to retirement villages in the Northern Territory. While it provides for a code of practice clarifying the rights and obligations of residents and administering authorities of villages, there is no accreditation requirement.</td>
</tr>
</tbody>
</table>

3.1.2 Alternative options

At the public hearing held on 26 October 2012, the Committee was advised by DHPW of alternative options to mandatory accreditation. This included a system where the Act could identify what elements an accreditation standard must cover, and then the industry would develop the standards according to those elements. The role of the chief executive of a department would be to:

... examine those standards and ensure that all the essentials are covered, but you might be able to include, for example, for a high-end industry additional standards around customer service that are not necessarily appropriate in other circumstances—additional levels of customer service given the amount that residents might be paying to go into a particular village, for example.

This option could provide benefit to residents, through the development and regulation of best practice standards and through improving the quality of services delivered; and to industry though providing adequate flexibility and ultimately a competitive edge when advertising to prospective residents.

Mr Sammon, DHPW, referred to other legislation in which the chief executive officer of a department can approve best practice schemes. For example, the Security Providers Act 1993 provides for a chief

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33 Ibid, p22.
executive to approve an industry association, and require it to have a code of conduct that the
regulation then requires members of the association to adopt best practice industry standards. 34

Committee comment

The Committee believes that the retirement village industry in Queensland must aim for best
practice, given the objectives of the Act and the often vulnerable client group that receive services
from this industry. The needs of the industry should be balanced with the needs of residents by
reducing red tape while ensuring all residents receive at least a base quality of service. In addition,
any best practice schemes should be flexible enough to adapt to the future of the industry.
The Committee believes that a legislated voluntary code of conduct should be explored by the
Minister for Housing and Public Works, and that this should include consideration of the role of the
chief executive officer, amendments to legislation and the role of a possible industry body.

Recommendation 1

The Committee recommends that with a view to embedding best practice standards in the operation
of all retirement villages, the Minister for Housing and Public Works:

a) examine the benefits of a voluntary code of conduct for retirement village scheme operators
b) consider the role of the chief executive officer in administering such a code, and
c) seek amendment to legislation, if required.

3.1.3 Planning system

The RVA recommends that planning reforms should take place to meet increasing seniors housing
demand and affordability challenges. Specifically, reforms should consider the Sustainable Planning
Act 2009 (SPA), appropriate land zoning and promotion of available land. 35 Lend Lease support this
recommendation, while also noting the planning approach used in jurisdictions such as the ACT,
where land is identified and zoned specifically for seniors housing. 36

Reforms recommended by the RVA include, for example, acceleration of planning timeframes;
removal of disparity between local governments regarding the way seniors housing is assessed;
requiring land purchasers to include a portion of land developed for seniors housing; introduction of
zoning for seniors housing and including seniors housing targets for all developments. 37

LASAQ identified that the majority of red tape requirements experienced by the industry results from
“…interaction with [l]ocal [g]overnment for planning and development and/or redevelopment.”
Red tape at the local government level leads to blockages in housing supply. 38 LASAQ recommends
that the planning act be amended to cater for retirement village development and other senior
housing options in existing communities. 39

Similar issues were identified by the QLS, which recommends that the government, local council and
other authorities reduce the cost of development applications, infrastructure, set-up and

34 Security Providers Regulation 2008 Schedule 1A section 8.
35 Retirement Village Association, Submission 14, p34.
36 Lend Lease, Submission 21, p6.
38 Leading Age Services Australia Queensland, Submission 22, pp39-40.
39 Ibid, p46.
construction costs so that the ingoing contribution for residents can be reduced. This could also act to encourage retirement village development.\(^{40}\)

At the public briefing, Mr Andrew Giles, RVA, noted that a key barrier for retirement village developers is that they receive different treatment in different local government areas:

... one municipality or one council has a very high depth of knowledge around what retirement villages and indeed aged-care facilities are and why they are required; while in other municipalities you may run into situations where councils can be quite anti-development of these types of facilities because they feel it will age their community, and that is a real problem. So we do not often get clarity from one area to another about how a planning application in fact may be assessed.\(^{41}\)

The RVA advises that another limitation to expansion of the retirement village industry is the lack of access to cost effective land. This results in retirement villages being located on the fringes of urban areas where land is cheaper and there is reduced planning certainty for developers.\(^{42}\)

LASAQ believes that development and investment in the retirement village industry will not continue if there is uncertainty about future retirement village legislation.\(^{43}\)

\(^{40}\) Queensland Law Society, Submission 13, p8.

\(^{41}\) Mr Andrew Giles, RVA, public hearing, 28 August 2012, Transcript, p7.

\(^{42}\) Retirement Village Association, Submission 14, p27.

\(^{43}\) Leading Age Services Australia Queensland, Submission 22, p39.
4 Principle of fairness

4.1 Basic rights and obligations

A number of submissions noted that residence contracts are often between an elderly person who has limited understanding of retirement village schemes and a knowledgeable, experienced corporation that has access to more resources than the average resident. When dealing with prospective residents, operators are “... constrained only by the need to comply (to the minimum extent possible) with the law.”

The ARQRV is concerned that if the Act does not ensure or demand basic standards of fairness, these standards will generally not be delivered. The most common concern made to the ARQRV, and an issue that is considered to threaten the future viability of the retirement village industry, is that the Act allows residence contracts to deviate from basic standards of fairness expected for older members of society. At the public hearing, the President of the ARQRV explained:

... we see a need for the implementation of measures that provide residents with sufficient basic rights so as to offset the disempowering impact of exit charges. Done properly, such measures will not increase costs for village operators, but will greatly improve consumer confidence in retirement villages and will, in turn, we believe, secure the future viability of the industry.

The ERRRC recommends that the Act should place “... primary emphasis on protecting residents from any form of exploitation from SOs [scheme operators].” This would be in line with legislation in New South Wales, Western Australia, the Northern Territory and the ACT, which provide fundamental rights for residents and obligations on operators. The ARQRV believes that Queensland legislation should also include basic rights and obligations as follows:

(a) a resident’s right to privacy and freedom from uninvited attendances at their unit by management
(b) a resident’s right to peace, comfort and quiet enjoyment (of both their unit and the communal facilities)
(c) an obligation on the operator to take all reasonable steps to prevent a resident from interfering with the basic rights of any other resident
(d) the resident’s right to autonomy over their personal and financial affairs
(e) the resident’s right to access any information about themselves that is held by management
(f) limitations on the operator’s right to enter a resident’s unit
(g) a resident’s right to freedom from harassment and intimidation (by the operator or by other residents) and
(h) a residents’ right to express their views about issues affecting the village without fear of recrimination from the operator (in the form of public criticism or otherwise).

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44 The Association of Residents of Queensland Retirement Villages, Submission 5, p5.
45 Mr Les Armstrong, ARQRV, public briefing, 28 August 2012, Transcript, p10.
46 Eaglemount Retirement Resort Residents Committee, Submission 10, p5.
47 The Association of Residents of Queensland Retirement Villages, Submission 5, p19.
The President of the ARQRV told the Committee that protection of retirement village residents:

... must be imposed by law and not by industry self-regulation. An industry that profits from its customers cannot sensibly be expected to self-regulate, and we believe it is plainly evident that that is so in this particular case in Queensland. Queensland is lagging behind the other states in terms of consumer protections imposed by the Act and there is an urgent need to increase the consistency between the states in this regard.\(^\text{48}\)

LASAQ does not support the notion that residents’ rights and obligations be included in a residence contract. The organisation believes that contracts do not, and should not, include residents’ rights and obligations because there is no strong evidence that “... residents or scheme operators are negligent because of a lack of clarity and certainty about their rights and obligations.”\(^\text{49}\)

The QLS notes that the Act does not adequately recognise the rights and obligations of scheme operators with regard to non-residential owners.\(^\text{50}\)

Lend Lease believes that increased certainty about residents’ rights to “... peaceful enjoyment of their premises and to live in an environment where their rights are respected by other residents” is required in the Act.\(^\text{51}\) The RVA also believes that this is an area within the Act that could benefit from being strengthened. To address the gap in the current regulatory framework, RVA and Lend Lease recommend that Queensland Legislation should include similar provisions to those in section 83 of the Retirement Villages Act 1999 (NSW). That is, that residents be required to respect the rights of other residents.

The QLS also identified that the terms ‘right to reside’ and ‘residence contract’ are used interchangeably and synonymously in the Act, which may result in conflict and litigation due to the ambiguity. The QLS recommends that “… so there is no doubt (particularly about issues pertaining to termination), those terms be defined and used discretely (not synonymously) in the RVA [Retirement Villages Act].”\(^\text{52}\)

**Committee comment**

The Committee considers that the residents, their families and operators of retirement villages would benefit from some clearly articulated principles that guide interactions and relationships between these groups. These principles would assist in the resolution of many of the issues that have been brought to the Committee’s attention during the course of this Inquiry, increase prospective residents’ faith in the industry and ensure that both residents and operators are aware of some of their rights and obligations.

The Committee also notes the concern raised by QLS about the use of the terms ‘right to reside’ and ‘residence contract’ in the Act and that interpretation of the legislation would benefit from definitions of these terms, and to improve clarity, the removal of the interchangeable and synonymous use.

\(^{48}\) Mr Les Armstrong, ARQRV, public briefing, 28 August 2012, Transcript, p10.

\(^{49}\) Leading Age Services Australia Queensland, Submission 22, p34.

\(^{50}\) Queensland Law Society, Submission 13, p11.

\(^{51}\) Lend Lease, Submission 21, p5.

\(^{52}\) Queensland Law Society, Submission 13, p13.
**Recommendation 2**
The Committee recommends that the Minister for Housing and Public Works include principles in the Act for:

a) scheme operators in their management of villages and interaction with residents and their families, and  
b) residents in their interaction with operators, staff and other residents.

**Recommendation 3**
The Committee recommends that the principles referred to in recommendation 2 should cover the following matters:

a) residents’ right to peace, comfort and quiet enjoyment of their unit and communal facilities  
b) residents’ right to privacy and freedom from unplanned attendance at their unit by operators  
c) residents’ right to express their views about issues affecting the village without fear of public or private recrimination from the operator or other residents  
d) residents’ and operators’ right to freedom from harassment and intimidation by other residents and operator staff  
e) a requirement for residents to respect the rights of other residents and the operator of the village, and  
f) a requirement for operators to respect the rights of residents and persons working in the retirement village.

**Recommendation 4**
The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to:

a) include definitions of the terms ‘right to reside’ and ‘residence contract’, and  
b) ensure that the terms ‘right to reside’ and ‘residence contract’ are used appropriately in the Act, removing any assumptions that these terms are synonymous.

4.1.1 Operators’ response to correspondence from residents

Some inquiry participants expressed concern that retirement village operators are not required to, and often do not, respond to residents’ correspondence. When operators ignore correspondence received, the relationship between residents and the operator is affected, and so is the quality of lifestyle experienced by residents. The ARQRV suggests that “… many operators … rely on the fact that their residents are effectively a ‘captive market’ and often fail to respond adequately (or at all) to residents’ concerns.”

The Act is silent on operators’ obligation to respond to correspondence from residents. Mrs Weeks and Mr Masson believe that operators should be required to respond to correspondence, within a maximum time frame. The following case study provides an example of Mr Masson’s experience.
Case study 1 - Mr Robert Masson

“One significant issue which the Residents Association took up with RSL Care was in relation to a decision to allow a resident to have two dogs live in a fourth floor apartment, despite RSL Care having a ‘no pets’ policy in place. Several residents had to dispose of their pets in order to take up residence. Despite the resident initially admitting to other residents and to RSL Care that the dogs were pets, RSL Care later asserted that it was satisfied that the dogs were ‘assistance dogs’ under the Disability Discrimination Act 1992.

At a heated general meeting of residents it was unanimously decided to write to RSL Care pointing out that this was not a public place that the Act did not apply ... The Residents Association made a formal written complaint to the Executive Manager Operations (EMO) who was the person charged with resolving complaints. No reply to the Residents Association letter was ever received. Instead, the EMO, after numerous phone calls and emails, attended this facility and announced to residents that even if RSL Care had not made the correct decisions, there was no way they would retract it and that we should learn to live with it or obtain our own legal advice. Unfortunately, this resulted in much disharmony between residents some of whom have since exited the facility as a result. Residents were at a loss as to what could be done.”

It is a concern that operators generally only act if legislation requires them to do so, for example to involve residents in the development of budgets or to respond to correspondence from residents. The ARQRV adds, “[t]here is currently no legal requirement for operators to maintain minimum service levels, to respond to resident concerns in a timely and meaningful way, or to treat residents with a basic level of dignity, respect and compassion.”

Committee comment

The Committee believes that most operators work hard to maintain good relationships with residents of retirement villages. However, as indicated by some inquiry participants, a number of operators require their obligations to be clearly provided in legislation. The development and implementation of the principles outlined in recommendation 2 and 3 will help guide operators in their interactions with residents, and residents in their interaction with operators.

Residents depend on operators to, largely, manage key decisions about their living arrangements. Therefore, it is important that this relationship is maintained as far as possible. The Committee believes that operators have an obligation to respond to correspondence from residents in a timely manner. As such, the Committee recommends that the Act be amended to require that new residence contracts include an obligation on operators to respond to written correspondence from residents within six weeks, and that this requirement is also noted in Public Information Documents (PIDs). This recommendation will not affect operators that currently do the right thing, however, will provide guidance and parameters for those operators that require it.

56 Mr Robert Masson, Submission 1, p4.
57 Ibid, p3.
58 The Association of Residents of Queensland Retirement Villages, Submission 5, p3.
59 Ibid.
Recommendation 5
The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to require that new residence contracts include an obligation on operators to respond to written correspondence from residents within six weeks, and that this requirement is also noted in Public Information Documents.

4.2 Fair trading practice protections
Some inquiry participants do not believe that the Act provides adequate fair trading practice protections for residents, nor does it ensure that appropriate material is provided to residents to enable informed decisions to be made. Others, on the other hand, believe that the Act provides some of the most comprehensive protections in Australia.

COTA notes that fair trading practices, including provisions in the Fair Trading Act 1989, should be explained to prospective residents in plain English or in the relevant community language. In addition, COTA believes that training on the Fair Trading Act and the Retirement Villages Act should be provided to operators and their employees.60

The RVA believes that the Act provides excellent fair trading practice and consumer protections and that reform is not required in this regard. The organisation cites additional Queensland legislation that affords protection to residents of retirement villages, such as the Body Corporate and Community Management Act 1997, the Property Agents and Motor Dealers Act 2000 and the Land Sales Act 1984.61 The cooling off period provided by the Act also protects residents and assists them to make fully informed decisions. This view is supported by LASAQ, who suggests that the Act should not be strengthened to improve consumer protection due to the “… plethora of consumer directed legislation” and the comprehensive nature of the existing Act.62 Wesley Mission Brisbane also believes that overall, the Act provides adequate fair trading practice protections, citing, for example, provisions that prevent operators from engaging in misleading or deceptive conduct.63

The QLS notes that although the Act generally provides consumer protection and fair practices and, given operators already have incentives to achieve best practice, the level of regulation may prohibit flexibility for operators and the industry to grow and develop.64 To ensure the future viability of the retirement village industry (see term of reference six), QLS believes an appropriate balance between regulation, consumer protection and flexibility is required.

LASAQ also believes that the Act provides adequate fair trading practices, which is evidenced by the small number of Queensland Civil and Administrative Tribunal (QCAT) cases reported over the last ten years.65 Perspectives on the number of cases reported by the Tribunal are explored further on page 20-21.

A number of issues of concern about consumer protection were identified by National Seniors Australia. Each of these issues is considered in the relevant sections. National Seniors Australia recommends that minimum consumer protection standards and practices be included in contract and disclosure documents.66

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60 Council on the Ageing Queensland, Submission 12, p6.
62 Leading Age Services Australia Queensland, Submission 22, pp8-9.
63 Wesley Mission Brisbane, Submission 17, p2.
64 Queensland Law Society, Submission 13, p4.
65 Leading Age Services Australia Queensland, Submission 22, p7.
66 National Seniors Australia, Submission 20, p3.
Committee comment

The Committee agrees that the Act and other legislation provides a level of fair trading practice protection for residents of retirement village. To ensure that these protections are as clear as possible, it is recommended that fact sheets be developed and made accessible to prospective and current residents, and operators, on the Department’s website. These fact sheets should bring together all fair trading practice protections included in relevant legislation. This will ensure residents are aware of fair trading protections both when entering a village and as potential issues arise.

Recommendation 6

The Committee recommends that the Minister for Housing and Public Works ensure that fair trading practice protections, including those provided by other relevant legislation such as the Fair Trading Act 1989, are available to all prospective and current residents of retirement villages through:

a) drafting fact sheets in plain English and relevant community languages and
b) placing the fact sheets on the Department of Housing and Public Works website.

4.3 Is a resident an owner or a renter

There is general consensus among inquiry participants that retirement village residents do not have equal access to local and federal government subsidies that would help reduce their cost of living, when compared to people who live in private housing or, for example manufactured home parks.

Mrs Noreen Weeks, a resident of a retirement village, believes that the Act is biased towards scheme operators, specifically with regard to the lack of clarity about whether residents are ‘owners’ or ‘renters’ and hence, any benefits they may be entitled to. Mr Robert Masson, member of a residents association, highlighted similar issues. Both submissions explained that Centrelink considers residents as home owners after they pay an ingoing contribution greater than $139,500 to a retirement village, with a lesser amount deeming a resident a ‘renter’ and rent assistance then becoming available. On the other hand, they advise the Local Government Act 2009 does not consider residents of retirement villages to be owners.

This means that residents are not entitled to the pensioner water subsidy or the pensioner rates subsidy rebate provided to home owner pensioners, nor rent assistance. Mrs Weeks believes that if the owner/renter issue was resolved “… many other anomalies may be easier to rectify.”

Ms Kim Teudt, General Manager of Churches of Christ Care, also identified this issue adding that there is variation between council areas about entitlement to rebates, for example on rates, “[t]hose sorts of things really need to be looked at, because some little changes to those sorts of areas will make a huge difference to the affordability factor for consumers …”

Furthermore, Lend Lease, LASAQ and the RVA consider residents of retirement villages to be disadvantaged due to rent assistance not being available. Residents of manufactured home parks and other forms of accommodation are entitled to rent assistance, administered by the Federal Government. Lend Lease believes that this inquiry should recommend changes to the scheme so that it is available to residents of retirement villages.

67 Mrs Noreen Weeks, Submission 7, p1.
68 Mr Robert Masson, Submission 1, p5.
69 Mrs Noreen Weeks, Submission 7, p1.
70 Ms Kim Teudt, General Manager, Churches of Christ Care, public briefing 28 August 2012, Transcript, p7.
71 Lend Lease, Submission 21, p5.
The RVA adds that all pensioners should be treated equally, regardless of where they live. Therefore, pensioners who live in retirement villages should “... receive recognition for costs they pay that reduce the impost on their local council” such as the pensioner water rebate and a reduction in council rates.\textsuperscript{72} LASAQ notes that the inconsistent concessions available to pensioners across the State disadvantage residents of retirement villages and that there should be a requirement that these concessions are allocated consistently by local councils.\textsuperscript{73}

**Committee comment**

The Committee is concerned that residents of retirement villages do not have access to the pensioner water subsidy, pensioner rates subsidy rebate and rent assistance and believes they should not be disadvantaged financially for choosing this accommodation option. Unfortunately, this issue is not within the scope of this inquiry.

**Recommendation 7**

The Committee recommends that the Minister for Housing and Public Works notify relevant local and federal government authorities of the Committee’s concern that the pensioner water subsidy, pensioner rates subsidy rebate and rent assistance are not available to residents of retirement villages and ask the relevant authorities to investigate whether the subsidies can be extended to include residents of retirement villages.

4.4 Non-retirement village accommodation

The submissions from Lend Lease and the RVA identify that some accommodation is promoted as a retirement village, even though it is not regulated by the Act. This can affect both residents and operators, as there may be a misconception that the alternative accommodation is of the same standard and complies with industry accreditation. Operators of retirement villages can be disadvantaged by the inaccurate promotion of alternative accommodation as a retirement village, as these operators “… incur significant cost and are put to considerable effort to comply with the Act and meet the standards for industry Accreditation.” Residents may also be disadvantaged through being misled that they will “… enjoy the benefits that result from the compliance regime imposed by the Act and the standards upheld throughout the industry accreditation.”\textsuperscript{74}

Ms Kim Teudt, Board Member, LASAQ, identified that there is a misunderstanding by some people about the type of accommodation they live in:

*There is still a great deal of confusion around what is a retirement village. A large number of complaints come through from people who do not actually live in retirement villages. They do think genuinely that they have bought into a retirement village when they have not. I do believe that restricting people to look and feel like a retirement village and perhaps promote themselves as a retirement village needs to be looked at carefully.*\textsuperscript{75}

The RVA recommends that the Act include a provision similar to section 17(1) of the *Retirement Villages Act 1999* (NSW), which protects consumers from misleading advertising about retirement villages. The RVA also recommends that industry and residents are consulted on the final wording of this section before it is introduced into the Parliament.\textsuperscript{76} These recommendations are also supported by Lend Lease.\textsuperscript{77}

\textsuperscript{72} Retirement Village Association, \textit{Submission 14}, p31.
\textsuperscript{73} Leading Age Services Australia Queensland, \textit{Submission 22}, p25 and 42.
\textsuperscript{74} Retirement Village Association, \textit{Submission 14}, p44.
\textsuperscript{75} Ms Kim Teudt, Board Member, LASAQ, public hearing, 26 October 2012, \textit{Transcript}, p5.
\textsuperscript{76} Retirement Village Association, \textit{Submission 14}, p45.
\textsuperscript{77} Lend Lease, \textit{Submission 21}, p7.
Committee comment

The Committee believes residents should be protected and fully informed when they are making a decision about accommodation options and the Committee believes that people who manage or control residential premises should not be able to represent accommodation as a retirement village unless the accommodation is a retirement village within the meaning of the Act.

Recommendation 8

The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to prevent persons who manage or control residential premises from representing that complex as a retirement village, unless the complex is a retirement village within the meaning of the Retirement Villages Act 1999.

4.5 Legal advice for potential residents

COTA notes that residents may be particularly vulnerable when they begin living in a retirement village as it is a time of significant change in their lives, involving moving from often established homes into a different way of living, an unfamiliar environment and with different people. However, residents of retirement villages rarely seek advice before they sign contractual documentation and, in contrast to retail shop leases, they are not required to.

This issue was also identified at the public hearing by Ms Linda Clay, the daughter of a former retirement village resident, who stated:

*I feel that the vulnerable people in our society – and my mother is one case in point – really need as much protection as the legislation can provide for them ... She was very supposedly independent, but she was uneducated. She never went past grade 6, so she was exceptionally vulnerable signing this contract and we are trying to pick up the pieces at the moment.*

This increases the importance of PIDs being as clear as possible, so that prospective residents are assisted to make informed decisions. Dr Cradduck and Ms Blake recommend that the Act be amended to require prospective residents to obtain legal and financial advice before entering into a residence contract. Also, that confirmation of receipt of the advice be required to be provided to the operator before the contract is signed. A consequence for the operator of failing to obtain such documents could be that they are precluded from charging an exit fee to the resident. The onus of proof should be on the operator to show that advice was provided to the prospective resident at the appropriate time.

At the public hearing, Mr Timothy Francis, DHPW, informed the Committee that “… legislation cannot make potential residents obtain such [legal and financial] advice, but it can provide protection for consumers by way of clearly stated rights and obligations.”

Lend Lease recommends that prospective residents be required to obtain legal and other relevant professional advice about the PID and their residence contract, before signing. If a prospective resident chose not to seek professional advice, these people could be required to acknowledge they were aware of their right to obtain advice, however, chose not to take it.

The ARQRV agrees that residents of retirement villages rarely seek legal advice, or receive inadequate legal advice, before they enter into a residence contract. The organisation adds that those who do receive thorough legal advice often learn of the inadequacies in the Act and that

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78 Council on the Ageing Queensland, Submission 12, p5.
79 Ms Linda Clay, public hearing 26 October 2012, Transcript, p2.
80 Dr Lucy Cradduck and Ms Andrea Blake, Queensland University of Technology, Submission 3, pp.2 and 4.
81 Mr Timothy Francis, DHPW, Public hearing 26 October 2012, Transcript, p22.
retirement village living may not be the most appropriate retirement option, and withdraw before the cooling-off period expires.82

Committee comment
Legal and financial advice can be highly beneficial for residents before they sign residence contracts, as it is for those buying a house or making any significant investment. However, the Committee understands that this can also be an expensive exercise.

The Committee does not believe that obtaining legal and financial advice should be mandatory. However, to ensure that prospective residents are at least aware of their right to obtain this advice, and at least consider this option, the Committee believes that residents should be required to ‘opt out’ if they decide against obtaining advice before signing a residence contract.

Recommendation 9
The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to ensure that prospective residents of retirement villages who choose not to obtain legal and financial advice be required to advise that they are aware of their right to obtain this advice and to sign a provision to this effect in their residence contract.

Recommendation 10
The Committee recommends that the Minister for Housing and Public Works include a provision in the Public Information Document that highlights the importance of obtaining independent financial and legal advice before residents sign residence contracts.

4.6 Opportunities for residents to be involved in decision-making

LASAQ considers there to be adequate opportunities for residents to be involved in the financial administration of their village, through “… village management reports, information sessions pre Budget preparation, the Budgetary process itself and Budget monitoring reports.”83 The organisation believes that the Act provides an appropriate level of information, oversight and involvement in protecting residents’ financial interests. National Seniors Australia and the RVA also believe the Act provides reasonable opportunities for residents to be involved, with the RVA noting:

The very nature of the RV [retirement village] model affords residents with a significant level of power. In particular, where both operator and resident share capital gain, both have an interest in the investment being maintained, and in the culture of the village being a happy one. It is a true partnership model.84

National Seniors Australia believes that residents have reasonable opportunities to be involved in decisions that affect their financial obligations, however, the key issue is whether “… residents want to exercise these rights, know of their rights or simply do not do so out of fear of intimidation.”85 Issues about fear of intimidation are considered further in section 4.7.3 of this report.

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82 The Association of Residents of Queensland Retirement Villages, Submission 5, p6.
83 Leading Age Services Australia Queensland, Submission 22, p48.
84 Retirement Village Association, Submission 14, p51.
85 National Seniors Australia, Submission 20, p11.
The RVA advises that “...becoming a resident of a retirement village involves a decision to relinquish to the scheme operator a range of decision-making responsibilities that a person might otherwise have whilst living in their own home or in a rental or strata setting”.\(^{86}\) Wesley Mission Brisbane adds that operators bear the “…full legal responsibility for the operation of the village” and therefore should not have to pass their responsibility to residents.\(^{87}\)

Conversely, the QLS believes that residents have limited rights to participate in decision making under the Act, while non-resident owners do not have even these rights.\(^{88}\) A key concern of the ARQRV is the lack of resident involvement required by the Act in the development and adoption of budgets, as budgets can be implemented by an operator without approval from residents. This is in contrast to New South Wales and ACT legislation, in which an operator must seek residents’ approval of a budget. Individual residents in Queensland cannot currently request a copy of a budget as the Act limits this to resident committees only.\(^{89}\) The RVA, on the other hand, believes that this represents an appropriate level of involvement for residents.\(^{90}\)

Furthermore, the RVA identified residents have a right to vote on special resolutions about whether to approve increases to the general services charge above CPI, to introduce a new service and service charge or to approve a capital improvement. Residents also have a right to receive quarterly statements and annual financial reports and explanations about expenditure that exceeds budget estimates. The RVA considers that this represents an appropriate level of involvement in, and control over, financial decisions, noting that:

> Affording individual residents direct control over decisions that affect their financial obligations and/or interest in their property, would risk operators being placed in a position where they are unable to fulfil their contractual obligations to other residents and would compromise the interest of the broader residents community at a village.\(^{91}\)

Resident committees are identified by the RVA as another way in which residents can be involved in decisions about their retirement village, should they wish.

The Act requires a scheme operator to attend a residents committee meeting about budgets, if requested by the committee.\(^{92}\) Mr Masson wonders if the intention of this provision is for an operator to discuss a draft budget with residents before it is adopted. To ensure the Act is clear in this regard, Mr Masson believes “…there should be some provision for comments or requests by residents to be taken on board by the operator.”\(^{93}\)

Mrs Weeks provided a similar point of view, noting that although she has the opportunity to discuss a draft budget with an operator, the legislation does not provide her with the opportunity to vote on it before it is adopted.\(^{94}\) The result is that operators are not required by the Act to take on board residents’ views.

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\(^{87}\) National Seniors Australia, *Submission 17*, p4.


\(^{89}\) Retirement Villages Act 1999 section 102A(3).


\(^{91}\) Ibid, p50.

\(^{92}\) Retirement Villages Act 1999 section 129B.

\(^{93}\) Mr Robert Masson, *Submission 1*, p3.

\(^{94}\) Mrs Noreen Weeks, *Submission 7*, p2.
**Committee comment**

The Committee notes the concerns expressed by some residents about their level of involvement in the financial decisions that affect their village. The Committee appreciates that some residents would prefer not to be involved in these decisions, and that others seek a higher level of involvement.

The Committee believes that at a basic level, residents must at least have access to the financial information and decisions that affect their financial position. Also, that it is good practice for operators to discuss any financial changes that will affect residents’ financial position, and to take on board their concerns. The role of the operator to manage a village must also be respected by residents.

The Committee considers there are adequate provisions for resident involvement in decision making under the current model. However, recommendation 37 (explore alternative models), recommendation 2 and 3 (key principles) and recommendation 5 (operators’ obligation to respond to correspondence) may also assist in resolving issues relating to the involvement of residents in retirement village decision making.

### 4.7 Dispute resolution

Many submissions note that the Act does not support a timely, informal and cost-effective process for resolving disputes between residents and operators.\(^{95}\) Other submissions, on the other hand, believe that the current process is working well.\(^{96}\)

LASAQ considers there is a high level of awareness about the right to complain within retirement villages and that the dispute resolution process in the Act is effective and comprehensive.\(^{97}\) Both the RVA and LASAQ explain that the dispute resolution process is required to be included in the PID and that a resident’s dispute resolution rights are provided in their contract. However, the ERRRC notes that they did not receive adequate information about this process when they entered the retirement village.\(^{98}\)

The Act does not provide a resolution process for disputes between residents. LASAQ notes that “… incidences of victimisation or harassment occurring between residents in a village” are not currently covered by the Act.\(^{99}\) The RVA recommends that the Act should require “… residents of retirement villages not to behave in ways that unreasonably interfere with the peace, comfort and quiet enjoyment of their fellow residents, or that result in a resident being harassed or intimidated.”\(^{100}\) Also, that aggrieved residents should have the option of applying to QCAT for dispute resolution, and operators could have the option of terminating a resident’s right to reside in a retirement village for repeat offences.\(^{101}\)

A requirement for all retirement villages to have an internal dispute resolution process is supported by the ERRRC, who notes that this process should be supervised by an advocate or the Ombudsman.\(^{102}\)

The ARQRV explains that as most complaints do not end up at court or QCAT, operators may be unaware of the extent of the level of dissatisfaction experienced by retirement village residents. Compounding this problem is that “… many affected residents are too old, too weary, too unwell, or

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\(^{95}\) See for example, *Submissions 1, 5, 7 and 10.*

\(^{96}\) See for example, Retirement Village Association *Submissions 14* and Leading Age Services Australia Queensland *Submission 22.*

\(^{97}\) Leading Age Services Australia Queensland, *Submission 22,* pp51-52.


\(^{99}\) Leading Age Services Australia Queensland, *Submission 22,* p52.

\(^{100}\) Retirement Village Association, *Submission 14,* p55.

\(^{101}\) Ibid.

too intimidated to take any action.”^103 Also, acting on complaints, for example through the media, may jeopardise the resident’s capital investment in the village, which further deters disputes from being resolved. Intimidation of residents is considered in more detail in section 4.7.3 of this report.

The RVA also notes the low number of complaints that end up at QCAT and considers that this demonstrates that the dispute resolution system is “... comprehensive and working.”^104 LASAQ states that the low number of complaints demonstrates that the Act has adequate fair trading practices in place.^^105

4.7.1 Resident satisfaction

The ARQRV believes that the attitude of baby boomers will largely determine the continued success of the retirement village industry. There are an increasing number of complaints and general scepticism about retirement villages among baby boomers, so the ARQRV is concerned that the level of resident dissatisfaction “... presents a significant risk to the future viability of the industry.”^106 The majority of complaints made to the ARQRV over the past ten years have been brought by, or made with the support of, children of affected residents “... and having witnessed their parents’ situation, they are sworn off the village concept for life.”^107 This issue was also identified by National Seniors Australia.^^108

Conversely, LASAQ believes that “… the overwhelming majority of residents are satisfied with living in their retirement village community ...”^109

To improve consumer confidence in the retirement village industry, the ARQRV believes that consumer protection needs to be increased. Specifically, to “... offset the disempowering effect of a business model based on exit charges, which is a root cause of residents' dissatisfaction.”^110

See chapter 7 of this report for detailed analysis of issues regarding exit fees and section 4.2 for examination of fair trading practice protections afforded to residents.

A national rating program of retirement villages is being developed and published on the independent website www.villages.com.au. Residents will be able to rate their retirement village, which will allow prospective residents to compare peoples’ experiences of villages. This is a “... proven commercial process of self-improvement” that may force operators to address problems to prevent unresolved issues from impacting on future ‘sales’.^^111 Public rating of retirement villages may assist in increasing consumer confidence and hence the future viability of the retirement industry, and assist people to make informed decisions (see term of reference one) when choosing a retirement village.

4.7.2 Who and what does the dispute resolution process apply to?

Mr Masson identified that the Act does not define what a ‘dispute’ is, and it is unclear about whether Part 9 of the Act (Dispute Resolution) applies to disputes other than contractual disputes between a resident and an operator.^^112 Adding to this uncertainty is that the QCAT website indicates that the dispute resolution process of internal negotiation, mediation then a hearing may only apply to disputes about a contract, “[s]ometimes disagreements between residents and retirement village

^103 The Association of Residents of Queensland Retirement Villages, Submission 5, p1.
^104 Retirement Village Association, Submission 14, p53.
^105 Leading Age Services Australia Queensland, Submission 22, p7.
^106 The Association of Residents of Queensland Retirement Villages, Submission 5, p1.
^107 Ibid.
^108 National Seniors Australia, Submission 20, p6.
^109 Leading Age Services Australia Queensland, Submission 22, p10.
^110 The Association of Residents of Queensland Retirement Villages, Submission 5, p2.
^111 Ibid, p3.
^112 Mr Robert Masson, Submission 1, p4.
operators (operator) regarding the residence contract occur. To manage these, a three-step process exists...”\(^{113}\)

If the dispute resolution process is intended to apply more broadly than only to issues between residents and operators about residence contracts, the Act would benefit from amendment. This would assist residents make informed decisions (term of reference one) and understand their rights and obligations (term of reference four).

If the dispute resolution process is not intended to apply more broadly, alternative dispute resolution processes should be provided in the Act so that residents and operators are clear on how to resolve all types of disputes. Mr Masson noted that “*‘My experiences here at Sapphire over the last 3 years has shown that there are many situations where there is potential for complaints to be made other than contractual.’*”\(^{114}\) He provided the example of residents having little recourse to address issues of inappropriate actions by staff in managing the village. He also observed that “... apart from contractual disputes there appears to be no recourse to an outside body.”\(^{115}\) Mr Masson’s experience is expanded in case study 1 (see page 23).

The ARQRV believes that the dispute resolution process provided by the Act only applies to disputes about a residence contract or a breach of the Act, and that this is unreasonably narrow. This is because some disputes are about other legislation, such as the Fair Trading Act 1989 when operator behaviour is alleged to have been misleading and deceptive. In these cases, residents are forced to bring court action. To resolve this issue, the ARQRV argues that the definition of ‘retirement village dispute’ should be expanded to allow any dispute between an operator and a resident to be addressed.\(^{116}\)

The QLS recommends that internal dispute resolution processes and the dispute resolution process under the Act apply to existing non-resident owners. Also, that section 21 of the Act be amended to apply to non-resident owners and that the amended PID includes the following statement:

> That a resident and/or owner of a right to reside in an accommodation unit may seek confidential mediation services from the Dispute Resolution Centre about a dispute between them or a dispute with the resident and/or owner of a right to reside in another accommodation unit; proactively complain to the scheme operator, or any authority or body having jurisdiction ... [and] proactively negotiate with the scheme operator or any other interested party (if the scheme operator or other party agree to negotiate).\(^{117}\)

**Committee comment**

Dispute resolution is an important part of the Act. The Committee agrees with Mr Masson, that the Act should be clear about who the process applies to. This includes whether the dispute resolution process is available to non-resident owners, as identified by the Queensland Law Society.

**Recommendation 11**

The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to clarify who, and what, the dispute resolution process applies to, specifically confirming whether the process applies to disputes between residents.

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\(^{114}\) Mr Robert Masson, Submission 1, p5.

\(^{115}\) Ibid.

\(^{116}\) The Association of Residents of Queensland Retirement Villages, Submission 5, p21.

\(^{117}\) Queensland Law Society, Submission 13, p18.
Recommendation 12
The Committee recommends that the Department of Housing and Public Works develop a fact sheet on the dispute resolution process and options available for disputes between residents, between residents and operators and those that involve non-resident owners, and that this fact sheet is published on the Departmental website.

Recommendation 13
The Committee recommends that the Minister for Housing and Public Works examine the dispute resolution options available to non-resident owners and seek amendment to the Retirement Villages Act 1999 if required.

4.7.3 Fear of intimidation and repercussion
Due to the fear of possible retribution, “[m]any [residents] are afraid of challenging or even making requests of the operator . . .”\(^{118}\) Mr Edward Withers, a resident of a retirement village, advised that managers at his village attempt to “… enforce rules with intimidation and threats.”\(^{119}\)

With regard to including a provision regarding residents’ right to complain in the Act, the ERRRC notes that a degree of fear would still remain amongst residents.\(^{120}\) To address the fear of intimidation experienced by residents, National Seniors Australia believes that resident’s committees should play an expanded role in dispute resolution.\(^{121}\)

The RVA considers that fear and intimidatory behaviour has the potential to occur in any environment.\(^{122}\) The ARQRV believes that residents should be protected from public and private recrimination by an operator through strengthening of the Act in line with Victorian legislation because:

... if disgruntled residents openly complain or even bring legal action they face intimidatory tactics in response from some operators, including things like unsolicited and threatening attendances at the resident’s unit by management, often there are village wide circulars criticising that resident’s particular position and suggesting that perhaps that person’s attitude is detrimental to the viability of the village ...\(^{123}\)

Committee comment
The Committee is concerned about reports of intimidatory behaviour used by operators towards residents, including during the resolution of a dispute. Operators are in position of power and have a duty of care to act professionally and respectfully towards residents, especially during stressful times such as those involving a dispute with a resident.

The Committee agrees that intimidatory behaviour has the potential to occur in any environment, however, that this does not excuse nor justify this type of behaviour. Residents need to feel comfortable expressing concerns without fear of intimidation or incurring increased fees.

Given residents are often less experienced than operators in formal and informal dispute resolution processes, that this is often a stressful time for them and that operators are in a position of power, the Committee considers legislation is required to deter this type of behaviour. The principles recommended will assist in communicating the standard of behaviour expected of both residents and operators (recommendation 2 and 3), however, strengthening of the legislation may serve to deter

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118 Mr Robert Masson, Submission 1, p4.
119 Mr Edward Withers, Submission 4, p2.
120 Eaglemount Retirement Resort Residents Committee, Submission 10, p8.
121 National Seniors Australia, Submission 20, p11.
122 Retirement Village Association, Submission 14, p54.
this type of behaviour even further.

**Recommendation 14**

The Committee recommends that the Minister for Housing and Public Works seek amendment to the *Retirement Villages Act 1999* to insert provisions that will deter operators and residents from engaging in harassment and intimidatory behaviour towards one another, other residents and staff of retirement villages.

### 4.7.4 Legal representation

COTA notes that the Act does not prohibit residents and operators from being represented by a lawyer. However, residents generally cannot afford the costs associated with such representation. Therefore, dispute resolution processes that do not require legal representation are more likely to be accessible to residents.\(^{124}\)

LASAQ notes that QCAT is reluctant to permit legal representation for operators, whereas residents are sometimes represented by a skilled advocate, which can result in unequal representation.\(^{125}\)

The QLS advises that “... lawyers may not appear for a party before QCAT without leave to appear.”\(^{126}\) Currently, QCAT is restricted when determining whether leave will be provided for legal representation by the following criteria:

- the party is a State agency;
- the proceeding is likely to involve complex questions of fact or law;
- another party to the proceeding is represented in the proceeding; and/or
- all of the parties have agreed to the party being represented in the proceeding.\(^{127}\)

As elderly residents may consider the facts about a dispute complex or confusing, and the experience of appearing before QCAT without legal representation daunting, stressful and often untenable, the QLS recommends that legal representation be permitted under the Act. National Seniors Australia considers the costs associated with legal representation at QCAT can be prohibitive for residents who are on limited incomes.\(^{128}\) This is considered further in section 4.7.5 of this report.

### 4.7.5 Cost of dispute resolution

The financial costs associated with a dispute resolution process when some operators pass their legal costs on to residents as part of a retirement villages operating costs. This acts as a disincentive for residents to use the dispute resolution process provided by the Act as it is likely that all residents will have to pay for the dispute. In effect, a resident who commences a dispute resolution is forced to fund the operator’s case.\(^{129}\) COTA also identified this issue, advising that “… scheme operators pass on the costs of their legal representation to all residents by increasing the general service charge.”\(^{130}\)

The only restriction about passing on costs associated with a dispute resolution process provided by the Act is a restriction on operators from charging residents costs awarded against an operator by

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125 Ibid, p55.
127 *Queensland Civil and Administrative Tribunal Act 2009* section 43(3).
The ARQRV identified that this restriction is weak, as it is rare that QCAT awards costs, and also because it does not limit an operator from passing on their legal costs to residents.

The ARQRV notes that operators admit to passing on these costs to residents when they distribute circulars to all residents confirming that all residents will meet the cost of dispute resolution through the general service charge. This again creates a disincentive for residents to commence a dispute resolution process as it risks backlash from fellow residents and ostracism from the village community. South Australian legislation prevents operators from charging legal expenses to residents, and the ARQRV believes that Queensland should adopt a similar provision.

**Committee comment**
The Committee agrees that operator costs associated with dispute resolution should not be passed on to residents and that options to prevent this from occurring should be explored by the Minister.

**Recommendation 15**
The Committee recommends that the Minister for Housing and Public Works explore options to ensure that operators do not pass on their costs associated with the dispute resolution process, including legal fees, to residents of retirement villages, so that the process fairly and adequately protects the interests of both parties.

### 4.7.6 Effectiveness of QCAT

LASAQ considers QCAT to be effective in actively resolving disputes in a timely way. However, the ERRRC does not believe that the QCAT process is effective in resolving disputes for residents of retirement villages. They note that the process is protracted, there are many delays and the procedures are cumbersome. In addition, mediation is generally ineffective as “…an impasse has usually been reached by the time a dispute is declared.” National Seniors Australia also expressed concern about the delays in accessing QCAT.

Due to a lack of data regarding the number of applications lodged; those that proceed to mediation; are resolved through mediation; proceed to a hearing or are settled prior to a hearing, the RVA does not believe there is sufficient data to assess the effectiveness of QCAT. The RVA recommends that the Government make this data available. However, the RVA considers QCAT to be generally effective in resolving disputes.

LASAQ notes that QCAT permits residents to change their original claim during proceedings, which disadvantages operators as they do not have time to consider the new grounds. The organisation recommends that QCAT develop fact sheets to identify stages in a dispute resolution process and offer training for people and organisations that are unfamiliar with the process.

To improve the current process, the RVA recommends that the Committee engage with QCAT about the effectiveness of the current dispute resolution system and consider reforms such as:

- Reduce unmeritorious and frivolous claims brought by residents;
- Introduce a process that allows residents to change their claim through the course of a dispute, through formally amending their original claim; and

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131 Retirement Villages Act 1999 section 102(7).
132 The Association of Residents of Queensland Retirement Villages, Submission 5, p21.
133 Leading Age Services Australia Queensland, Submission 22, p55.
135 National Seniors Australia, Submission 20, p11.
136 Retirement Village Association, Submission 14, p55.
137 Leading Age Services Australia Queensland, Submission 22, p55-56.
• Ensure that legal representation or advice is available to QCAT and parties to disputes.  

Committee comment
The Committee notes the issues identified by inquiry participants about the effectiveness of QCAT and believes that any future reforms of QCAT should consider how to reduce unmeritorious and frivolous claims brought by residents and operators and a process that allows residents to change their claim through the course of a dispute, through formally amending their original claim.

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138 Retirement Village Association, Submission 14, p56-57.
5 Financial matters

Differing views were provided to the Committee about the certainty, accountability and transparency for residents about their financial obligations. Some expressed concern about issues such as increased charges and the financial arrangements when a resident leaves a retirement village, where as others noted that the Act provides a high level of certainty about residents’ financial obligations.

The RVA considers that the Act provides residents with extensive certainty, accountability and transparency with regard to their financial obligations, while noting that “…it is unrealistic for anyone … to expect absolute certainty about the costs of living in any environment.”¹¹³⁹ The Act ensures that residents are fully informed through, for example, the residence contract, the PID, limiting increases to the general services charge to CPI (except for some cost increases that are not within an operator’s control) and mandating consultation with residents about budgets. The RVA considers that any retrospective changes to the regulatory framework, including to residence contracts, would reduce confidence in the industry by residents, operators and investors.¹⁴⁰

On the other hand, National Seniors Australia does not believe there is adequate certainty about the financial obligations of residents, noting that “[s]ome longer term residents have expressed the view that they would not have entered a retirement village if they had been better informed about the costs associated with leaving a village.”¹⁴¹

5.1 Budget development

Mrs Weeks considers the Act favours operators, rather than residents, in the development of budgets. Mrs Weeks paid a similar amount to live in a retirement village as she did to live in a strata title unit, however, does not have the same “…legal input, supervision and management transparency rights…” with regard to budget management.¹⁴²

Mr Masson has additional concerns about the development of budgets by operators. Specifically, that the Act may allow operators to manipulate costs to keep them artificially low until such time that more apartments are sold or occupied.¹⁴³ Mr Masson experienced a 15.22% increase in general services charge at Sapphire in 2011/12, when the operator absorbed a staff wage increase when 36 out of 60 apartments were vacant. He believes that if the true cost of wage increases had been included in the general services charge, the increase would have been greater than 22%.

This kind of practice “…could mislead intending purchasers as to the true cost of the general services levy.”¹⁴⁴ The result of which is that potential residents may not be able to make informed decisions due to the nature of the information provided by operators. Mrs Weeks recommends that the Act include more specific details regarding the disclosure of income and expenditure statements in retirement village budgets. Also, that greater accountability be required for money paid by residents for ‘license to occupy’, including the interest gained on such investments.¹⁴⁵

The ERRRC also identified issues about budget management by scheme operators. To ensure that general services charge expenses do not increase by more than CPI, as required by section 106 of the Act, the ERRRC believes that operators instead categorise expenses under section 107 of the Act, which allows increases in excess of CPI. This includes expenses such as rates, taxes, charges, salary,

¹¹³⁹ Retirement Village Association, Submission 14, p37.
¹⁴⁰ Ibid, p36.
¹⁴¹ National Seniors Australia, Submission 20, p4.
¹⁴² Mrs Noreen Weeks, Submission 7, p2.
¹⁴³ Mr Robert Masson, Submission 1, p3.
¹⁴⁴ Ibid.
¹⁴⁵ Mrs Noreen Weeks, Submission 7, p2.
wages, insurance premiums, excesses and maintenance reserve fund contributions.\textsuperscript{146} As a result, the ERRRC advised that there is “... no certainty in regard to financial obligations.” \textsuperscript{147} The ERRRC recommends that charges such as the general services charge, maintenance reserve fund and the capital reserve fund are required to be regulated more closely.

LASAQ agrees these provisions in the Act are inadequate, however, for different reasons. Utilities are considered an expense under section 106 rather than section 107, which means these charges cannot increase by more than CPI each year. As this expense is outside the control of operators, LASAQ notes that the restrictions on the increases pose operational difficulties for operators.\textsuperscript{148}

Although operators require residents to comply with quantity surveyor recommendations with regard to the amount of maintenance reserve fund contributions, ERRRC has advised that operators themselves do not always comply with these recommendations when determining how much they pay to the capital reserve fund.\textsuperscript{149}

**Committee comment**

The Committee considers there are issues associated with section 106 and 107 of the Act that require more detailed examination than time has permitted during this inquiry. Both residents and operators have expressed legitimate concerns, for different reasons, that require further analysis.

**Recommendation 16**

The Committee recommends that the Department of Housing and Public Works examine issues associated with section 106 and 107 of the *Retirement Villages Act 1999* with regard to:

a) the potential for operators to move costs between these sections to the detriment of residents

b) whether operators are disadvantaged through limitations imposed by the specific charges in these sections, and

c) including this information in the Public Information Document so that there is clarity for prospective residents regarding what charges can be increased within and beyond CPI, when this can occur and how operators can increase these charges.

5.2 Charges

5.2.1 Increased charges

National Seniors Australia believes that many residents are uncertain about their right to accept or reject increases to the general services charge, so recommend that operators be required by the Act to inform residents of their rights at the time of notifying them of any increase.\textsuperscript{150} LASAQ suggests that a benefit of the general services charge is that it is set on an annual basis, which provides residents with advice about their weekly costs for the financial year, before it commences.\textsuperscript{151} However, the unpredictable rate at which residents’ ongoing service charge can be increased by operators is of significant concern to residents, due to their generally fixed income and hence the impact on their capacity to pay and also because the extent of the potential increases is

\textsuperscript{146} *Retirement Villages Act 1999* s107.

\textsuperscript{147} Eaglemount Retirement Village Residents’ Committee, *Submission 10*, p2-3.

\textsuperscript{148} Leading Age Services Australia Queensland, *Submission 22*, p8.

\textsuperscript{149} Eaglemount Retirement Village Residents’ Committee, *Submission 10*, p3.

\textsuperscript{150} National Seniors Australia, *Submission 20*, p4.

\textsuperscript{151} Leading Age Services Australia Queensland, *Submission 22*, p25.
not disclosed when a resident enters a village. The ARQRV explains that most residents have fixed incomes such as a pension, and although charges may be affordable when they enter a village, they often increase to a point where they are no longer affordable.\footnote{152} This was also raised by a retirement village resident who explained that people on a pension are worried about how they are going to pay increasing charges.\footnote{153} COTA stated “[g]eneral services charges can outstrip a resident’s capacity to pay, even if they were affordable when the resident first entered the retirement village.”\footnote{154}

Another issue that affects a resident’s understanding of their financial obligations is the misconception that the general services charge can only be increased by CPI each year. The ARQRV is aware of increases of up to 35% at a village in a single year. COTA has also observed that many residents are surprised by the steep increase in the general services charge, which is exacerbated by the lack of input these residents have to the decision making process. The lack of opportunities for residents to be involved in decisions that affect their financial obligations is contrasted by COTA to the Body Corporate and Community Management Act 1997 whereby owners are responsible for financial decisions through the Annual General Meeting.\footnote{155} Increased charges under section 106 and 107 of the Act are considered in section 5.1 of this report.

The Act provides how a general services charge can be increased, however, in a recent case before QCAT a Tribunal member acknowledged that these provisions are difficult to interpret:

\begin{quote}
It may be observed in passing that the Act is very poorly drafted and contains a number of errors and inconsistencies, some of which have already been identified and are the subject of proposed corrective amendments; others have not been addressed. Suffice it to say that it has made the task of interpreting the provisions unnecessarily difficult.
\end{quote}

The ARQRV is also concerned that some budget items can be increased by an operator without any restriction, such as contributions to the maintenance reserve fund. The ARQRV recommends amendments to the Act that provide increased certainty for residents with regard to increases in their financial obligations. Regular and unpredictable fee increases cause additional stress to residents when operators refuse to provide information about increases when requested by residents, because the Act does not require it.\footnote{157} As a result of this lack of information, residents are often unable to check that operators are complying with the Act.

Wesley Mission Brisbane considers that two key issues about finances require clarity to reduce the current prohibitive management and administrative burden on operators. These are the consent process to increase the general services charge and liaison requirements with resident committees about financial performance. With regard to consultation about financial performance of retirement villages, Wesley Mission Brisbane considers that the majority of questions from residents are unwarranted, and they take up a significant amount of time for management time, which is an unrecoverable cost.

\textbf{Committee comment}

The Committee is concerned about the issues raised by inquiry participants regarding fee increases, and the lack of clarity provided by the Act on these matters (as identified by QCAT). If adopted, Recommendation 16 will contribute to resolving some of the issues associated with fee increases, however, many issues will still remain. While the Committee appreciates that it is inevitable that fees and charges need to increase, residents should be clear about when charges can increase, how they can be increased and their rights to object to any increase.

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\footnote{152} The Association of Residents of Queensland Retirement Villages, Submission 5, p12.  
\footnote{153} Private submission, Submission 9, p1.  
\footnote{154} Council on the Ageing Queensland, Submission 12, p6.  
\footnote{155} Ibid.  
\footnote{156} Ash v Australian Residential Homes Ltd [2012] QCAT 23, [33].  
\footnote{157} Association of Residents of Queensland Retirement Villages, Submission 5, the p13.
\end{flushleft}
Recommendation 17

The Committee recommends that the Department of Housing and Public Works consider issues regarding fee increases and review whether the Retirement Villages Act 1999 provides adequate certainty and clarity for residents regarding when charges can increase, how they can be increased and residents’ rights to object to any increase and that the Minister for Housing and Public Works seek amendments to the Act if required.

Recommendation 18

The Committee recommends that the Department of Housing and Public Works develop a fact sheet on retirement village fee increases which translates relevant provisions of the Act into plain English and clearly identifies the rights and options available to both operators and residents.

5.2.2 Incomplete retirement village

Aveo Cleveland Residents’ Committee highlighted an issue about incomplete retirement villages, the effect of this on residents and the lack of guidance provided by the Act. At Aveo Cleveland, 119 accommodation units have been completed out of the proposed 175 units. Residents were advised that all units would be completed by 2006. Unfortunately, because infrastructure has been put in place for all 175 units, residents are paying “...full operating costs and have been severely disadvantaged financially.”

A retirement village resident expressed similar concerns in his submission, noting that the owners of the village have overcharged residents through charging general services based on a larger number of units than have actually been completed. They believe that although this practice may be legal, it is “...immoral and unfair.”

The Act does not protect residents who move into an incomplete village and as a result, there is reduced certainty and accountability in relation to their financial obligations. The Residents’ Committee sought legal advice on this matter and found that due to the silence in the Act, the operator was not in breach.

The Residents’ Committee believes that a scheme operator should be required to pay the general services charge and maintenance reserve fund contributions for incomplete units, where the number of completed units does not equal the number of units on the development application. LASAQ identifies that operators are required to pay these charges both for new unsold units and for vacant units that are being re-sold.

Mr George Hannaford, from the Gardens on Lindfield Retirement Village Residents’ Forum Committee, has experienced a similar issue at his retirement village. Currently, there are 163 units occupied (52%) out of a total of 311 that will be available once completed. The operator has agreed to pay 16% of charges such as rates, however, Mr Hannaford believes the operator should pay a ‘fairer’ amount, that is proportional to the percentage of uncompleted units.

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\[158\] Aveo Cleveland Residents’ Committee, Submission 16, p1.
\[159\] Confidential submission, Submission 8, p2.
\[161\] Aveo Cleveland Residents’ Committee, Submission 16, p1.
\[162\] Ibid, pp1-2.
Committee comment
The Committee notes that the Act provides that residents are only responsible for their portion of the general services charge for the period they reside in their unit. It is not satisfactory that this provision is interpreted in different ways by different operators. The Committee believes that a provision that has the potential to affect the financial position of residents to such a degree should not be open to such varied interpretation, as it is likely to disadvantage residents.

The Act would benefit from clarification of payment responsibilities for charges such as the general services charge, in the event that there are incomplete or vacant units. A more equitable provision would require residents to pay a pro-rata amount for the units that have been completed. For example, if 50% of the units had been completed and were being occupied, residents should be required to pay 50% of the total general services charge for the retirement village. The Committee also recommends that this provision be included in the PID.

The Act provides that only residents are responsible for contributing to the maintenance reserve fund. The Committee is concerned that the Act is silent on who pays this contribution in the event that a retirement village has incomplete or vacant units. As the development of units are generally outside the control of individual residents, the Committee does not believe that residents should be required to pay this contribution. As such, the Committee recommends that the Act be amended to provide an exception to residents being the sole contributors to the fund, in the event that there are incomplete or vacant units.

Recommendation 19
The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to clarify that residents are only required to pay a pro-rata amount of general services charge when there are incomplete or vacant units in retirement villages, and that this information is also included in the Public Information Document.

Recommendation 20
The Committee recommends that the Minister for Housing and Public Works consider whether residents and operators should be required to pay pro-rata maintenance reserve fund contributions when there are incomplete or vacant units in a retirement village, and that this requirement be included in the Retirement Villages Act 1999 and in the Public Information Document.

5.2.3 Sales commission
Operators are prevented from charging former residents a fee, charge or commission for selling a resident’s right to reside in a retirement village. However, the ARQRV advises that operators avoid this restriction through creating a separate company to sell rights to reside in villages. As these companies are not ‘scheme operators’ this provision of the Act does not apply so fees can be charged. At the public hearing, Mr Les Armstrong, President of ARQRV, told the Committee that “…we need to close loopholes in the Act which allow former residents to be charged a sales commission despite the very specific prohibition against that in section 68(3).” The ARQRV recommends that the Act be amended so that operators and its related entities are prevented from charging fees and commission.

163 Retirement Villages Act 1999 section 103(5).
164 Retirement Villages Act 1999 section 97(2).
165 Retirement Villages Act 1999 section 68(3).
166 Mr Les Armstrong, President, Association of Residents of Queensland Retirement Villages, public hearing, 26 October 2012, p4.
167 The Association of Residents of Queensland Retirement Villages, Submission 5, p14.
Another way that operators charge former residents for selling their right to reside is through charging a lump sum as part of the cost of sale provided for in section 68(1). Up to $8,000 can be charged by operators to outgoing residents for costs incurred internally. To prevent this from occurring, the ARQRV recommends that section 68(1) only applies to evidenced, invoiced costs paid to third parties for the purpose of the sale, such as valuation and advertising fees.\(^{168}\)

The third way that operators charge former residents a fee, charge or commission for selling a resident’s right to reside in a retirement village is through charging a termination fee when residents leave a village. As a resident cannot sell their unit without terminating their right to reside, this charge is a fee for selling. The ARQRV recommends that the Act prohibits operators from charging fees for terminating a right to reside in a retirement village.\(^{169}\)

**Committee comment**

The Committee notes that the costs of the sale of a right to reside are to be shared by the former resident and the scheme operator in the same proportion that they share the ingoing contribution upon sale of the right to reside.\(^{170}\) Also, that operators are not permitted to charge former residents a fee, charge or commission for selling a resident’s right to reside in a retirement village. However, the Committee also notes that unfortunately, this still occurs through ulterior methods.

To ensure that residents and operators are clear on their rights and obligations to charge, and be charged, fees when selling a right to reside in a retirement village, the Committee recommends that the Minister clarify operators’ obligations in this regard. Also, that a fact sheet be developed and published on the Department’s website, which includes examples of scenarios that are permitted, and those that are not permitted, when a right to reside is being sold.

**Recommendation 21**

The Committee recommends that the Minister for Housing and Public Works seek amendment to the *Retirement Villages Act 1999* to prohibit operators and their related entities from charging former residents a:

a) fee, charge or commission for selling a resident’s right to reside in a retirement village

b) lump sum to former residents as part of the cost of sale of a right to reside, and

c) termination fee when residents leave a village.

**Recommendation 22**

The Committee recommends that the Minister for Housing and Public Works clarify operators’ obligations regarding charging fees to prospective, current and former residents for selling rights to reside in a retirement village through developing and publishing on the Department’s website a fact sheet, and including these obligations in plain English in the Public Information Document.

### 5.3 Capital gains

Capital gains in the retirement village industry are considered to be the difference between a departing resident’s incoming contribution and the incoming contribution paid by a new resident.\(^{171}\)

There is uncertainty for many residents about how capital gains should be calculated when both the resident and operator will share in the capital gain.

The ARQRV identified an issue that results in a departing resident receiving less capital gain that they had been led to expect. Operators can reduce the new ingoing contribution used to calculate the

\(^{168}\) Ibid, p17.

\(^{169}\) Ibid, p18.

\(^{170}\) *Retirement Villages Act 1999* section 68(1).

departing resident’s capital gain, through applying an exit fee to the new resident’s incoming contribution. This reduces the capital gain for the departing resident by the rate of the exit fee.\(^{172}\)

An operator can sell a unit with a different contract that artificially reduces the exit entitlement for the outgoing resident. The ARQRV is concerned that the Act assumes former and new residents both sign the same types of contracts, however, contract terms can vary significantly between residents with regard to exit fees, capital gain entitlement and ingoing contributions. It is recommended that the Act prevent operators from artificially decreasing an outgoing resident’s exit entitlement through selling a unit subject to a less valuable contract. This could be achieved through disclosing the type of contract being offered so that former residents are fully informed when negotiating the resale value with the operator. Also, in the event that a less valuable contract is negotiated for an incoming resident, the Act should require that an outgoing resident’s exit entitlement be calculated based upon the value of a similar contract to the original one.\(^{173}\)

Residents in freehold villages (rather than leasehold or licence schemes) are required to pay the full cost of reinstatement of their accommodation unit when they leave.\(^ {174}\) The ARQRV believes this provision is incorrectly based on the assumption that these residents also receive 100% of any capital gain. Accommodation units under leasehold and licence schemes on the other hand are charged reinstatement works only to the extent they share in capital gains on the unit (unless there was ‘accelerated wear’ or ‘deliberate damage’). The ARQRV believes this methodology should also apply to freehold interest schemes.\(^ {175}\) Reinstatement obligations are considered further in section 5.5 of this report.

A residence contract can be drafted to allow any decrease in value of a unit to be met by the resident in full, and any increase in value be provided in full to the operator. The ARQRV believes that the Act should require that operators and residents accept the same level of risk for capital gains and losses. That is, if an operator retains 100% of any capital gain, they also accept 100% of any capital loss.\(^ {176}\)

**Committee comment**

The Committee is concerned that residents can receive less capital gain than they had been led to expect when they signed their residence contract. Given the first objective of the Act is to promote consumer protection and fair trading practices, the Committee considers this to be an unintended consequence of certain provisions and that this should be resolved.

The Committee is also concerned that some residents may be signing contracts that would result in them incurring any capital loss experienced by their right to reside, while also providing a disproportionate percentage of any capital gain to the operator. This does not appear to be a fair provision of a contract, especially if there had not been full disclosure by the operator before the contract was signed.

The Committee believes that residents and operators should share in capital gains and losses equally, that is, contracts should be prohibited from permitting operators to receive a larger percentage of any capital gain than they would be responsible for any capital loss.

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\(^{172}\) Ibid.

\(^{173}\) Ibid, p18.

\(^{174}\) Retirement Villages Act 1999 section 61.

\(^{175}\) The Association of Residents of Queensland Retirement Villages, Submission 5, p8.

\(^{176}\) Ibid, p7.
Recommendation 23
The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to ensure that capital gains are provided fairly to residents and operators according to the residence contract and that there is no option for operators to artificially reduce the amount of capital gain provided to residents through reducing the new ingoing contribution or selling the right to reside under a less favourable contract.

Recommendation 24
The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to ensure that residents and operators share the same percentage of any capital loss as they share any capital gain.

5.4 Capital replacement
The Act allows operators to include a requirement in contracts that requires residents to pay the maintenance, repair and replacement costs of capital items such as ovens and air conditioners. The ARQRV is concerned that when operators make residents personally responsible for the maintenance and repair, that the Act also requires they be responsible for the replacement of those capital items. The ARQRV is also concerned that this information is not currently included in the PID. As such, this organisation recommends that the Act be amended to allow a resident to be required to pay for the maintenance and repair of an item in their unit, but not for the replacement of the item.\footnote{177}{The Association of Residents of Queensland Retirement Villages, Submission 5, p8.}

This issue was also identified by Mr Robert Turk, the son of a retirement village resident, who adds that in addition to renewing all whitegoods, under leases such as his mother’s, residents are contractually required to remove all improvements made to a villa. There is no option for an incoming resident to be consulted upon whether they would like to keep, for example, the alarm system, external shutters and roof covers, before they are removed. Mr Turk recommends that this option should be made available to incoming residents, before they are removed at the cost of the former resident.\footnote{178}{Mr Robert Turk, Submission 11, p2.}

Committee comment
The Committee agrees with Mr Turk, that it does not make sense to require the removal of an improvement to a retirement village unit, such as an air conditioning unit or an alarm system that the next resident may desire.

Recommendation 25
The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to provide that outgoing residents are not required to remove improvements made to a unit before an incoming resident has been consulted regarding whether they would like to keep the improvements; and that if an incoming resident decides to keep the improvement, that the Act provides it does not have to be removed.
5.5 Reinstatement works

Many submissions identified issues regarding financial responsibilities for reinstatement works, the extent of works required to be completed under the Act, definitions of key terms and time frames for reinstatement works.\(^{179}\)

The ARQRV believes there is uncertainty for residents and operators about the responsibility for reinstatement works, and the extent of the works to be completed. This results in frequent disputes when residents leave retirement villages. The ERRRC adds that the Act is confusing with regard to the rights and obligations of residents and operators to reinstate a unit after it is vacated.

The Act defines reinstatement work for an accommodation unit as the replacements or repairs needed to reinstate an accommodation unit to a marketable condition, considering the condition of the accommodation unit at the start of the former resident’s occupation; and the general condition of other comparable accommodation units in the retirement village.\(^{180}\) COTA notes that there are frequent disputes between residents and operators about who accepts financial responsibility for reinstatement works. A clear definition of ‘reinstatement work’, contrasted to ‘refurbishment’, would improve clarity on this issue.\(^{181}\)

The Act requires accommodation units to be reinstated to a ‘marketable condition’, which is subjective and not defined. The ARQRV argues that the definition allows for extensive works such as replacing kitchens and bathrooms while residents sometimes argue that ‘marketable condition’ calls for limited works such as minor repairs and replacing some items.\(^{182}\) Mr Mark Francis, DHPW, told the Committee that units are required to be reinstated to ‘as new’ marketable condition.\(^{183}\)

National Seniors Australia notes that operators ‘refurbish’ units rather than ‘reinstate’ them, at the resident’s expense, which is not permitted by the Act.\(^{184}\) This issue was evidenced by the terminology used in a submission written by a solicitor on behalf of two operators of a retirement village, and in the submission from LASAQ. Both submissions refer to ‘refurbishment’ which is not provided by the Act. The solicitor stated, “[t]here is also the practical difficulty of reaching agreement as to the refurbishment costs”.\(^{185}\) This reveals the varying interpretation and uncertainty about what state a unit is required to be reinstated to, and hence why conflict arises.

If the operator and resident agree on the reinstatement works, a 90 day time limit commences in which the operator must complete the works. In the event that reinstatement works cannot be agreed, the Act is silent on the time limit for completion of the works which is reported to disadvantage residents due to the impact on the time taken to sell the unit. The right of a resident to have their unit reinstated and sold in a timely manner is not supported by the Act. Furthermore, the dispute resolution process provided by the Act is not useful in addressing these types of disputes due to the length of time it can take for resolution to be achieved.

The ARQRV considers that the Act should be amended to clearly define reinstatement works, as proposed by COTA; clarify who is responsible for meeting the costs of fair wear and tear; allow residents to apply directly to QCAT if reinstatement works have not been agreed to within 90 days of a resident leaving a retirement village and provide a clear distinction between the cost of reinstatement works and refurbishment.\(^{186}\)

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179 See for example, Submissions 5, 11, 19 and 20.
180 Retirement Villages Act 1999 Schedule, section 4, dictionary.
183 Mr Mark Francis, DHPW, public briefing 28 August 2012, Transcript, p13.
184 National Seniors Australia, Submission 20, p6.
185 Finemore Walters and Story on behalf of David and Aneta Torrisi, Submission 19, p2.
186 The Association of Residents of Queensland Retirement Villages, Submission 5, p14.
The Act provides that a resident is required to pay for reinstatement work under freehold interest schemes.\(^{187}\) There are different payment responsibilities under leasehold or licence schemes, for contracts entered into before and after the 2006 amendments to the Act. For contracts entered into since these amendments, a resident is required to pay for reinstatement works to the extent that they caused accelerated wear or deliberate damage; the former resident and operator pay an amount that is proportionate to any capital gains that will be shared; or in other circumstances the scheme operator is required to pay.\(^{188}\) The scheme operator pays for the cost of reinstatement works from the capital replacement fund.\(^{189}\)

Another issue about reinstatement provisions of the Act, identified by Ms Linda Clay, is that “[r]esidents are not provided with the ability to undertake this work themselves so that the unit can be listed for sale at an earlier date... there is no room for negotiation in relation to vacated residences.”\(^{190}\)

**Committee comment**

The Committee is concerned about the level of uncertainty regarding aspects of reinstatement work, such as what a ‘marketable condition’ is, financial responsibilities of operators and residents to reinstate a unit and the resolution of disputes about reinstatement works. The competing interests of operators and residents at the time of reinstatement works may be exacerbated by a lack of clarity in legislation. As it is likely that reinstatement works generally take place during a time of significant change and hence heightened emotion in a former resident or their family’s lives, the importance of having clarity in the legislation increases.

Without clear legislation on the responsibilities to reinstate accommodation units, and what ‘reinstatement’ means, it is possible that amendments to a unit may take place that exceed reinstatement and turn into a refurbishment. The Committee believes that the definition of reinstatement works would benefit from amendment, to clearly provide what a ‘marketable condition’ is and to prevent excessive reinstatement from taking place.

The Committee also believes that the Act should provide for what happens in the event that reinstatement works cannot be agreed within the time limit provided by the Act. A lengthy dispute about reinstatement disadvantages both former residents and operators and is not in the best interest of the industry as a whole.

**Recommendation 26**

The Committee recommends that the Minister for Housing and Public Works seek amendment to the *Retirement Villages Act 1999* to:

- a) provide a definition of ‘marketable condition’ as currently used in the definition of ‘reinstatement work’
- b) provide a definition of ‘vacate’
- c) clarify the extent of reinstatement work that is required to be undertaken, including an example of appropriate reinstatement work, and
- d) provide for what happens in the event that reinstatement work cannot be agreed by the former resident and operator within the current time limit provided by the Act.

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\(^{187}\) *Retirement Villages Act 1999* s61.

\(^{188}\) *Retirement Villages Act 1999* s62(3).

\(^{189}\) *Retirement Villages Act 1999* s62(4).

\(^{190}\) Ms Linda Clay, *Submission 15*, p3.
Recommendation 27

The Committee recommends that the Department of Housing and Public Works develop a fact sheet on ‘reinstatement of retirement village units’ that clearly outlines the financial responsibilities of residents and operators as provided in the Act; timeframes for key decisions; is written in plain English, in a number of relevant community languages and is published on the Department’s website.

5.6 Resale value of accommodation

The Committee notes that if a former resident’s premises has not sold within six months of the termination of their right to reside and the former resident has not been paid an exit entitlement, the Act requires the operator and resident to reconsider the value of the right to reside at least every three months.\textsuperscript{191} Lend Lease believes this provision is problematic as it creates a significant compliance burden for operators. This is because former residents, or the legal representative of their estate, are often not interested in re-engaging with an operator to reconsider the resale value every three months. As operators are also required to promptly communicate all offers for the premises, amongst other things,\textsuperscript{192} Lend Lease considers the requirement to periodically reconsider the resale value as unnecessary.

5.7 Financial responsibilities when leaving a retirement village

Mr Robert Turk, the son of a retirement village resident, raises a number of concerns about the contract between his mother and her retirement village. When his mother leaves the retirement village, she will not be able to sell her lease to an interested third party, rather she will surrender the lease back to the operator who will attempt to sell the lease and deduct their 40% exit fee. While the villa is vacant, the operator will continue to charge the former resident a monthly administration fee. Adding to this uncertainty is that many elderly residents are reaching the end of their lives, which means that more vacant properties will be available for re-lease at the same time. This retirement village will soon have a number of premises available for re-lease, in addition to the brand new apartments that are yet to be leased.

LASAQ notes that vacating residents are only required to pay the general services charge for up to three months after their contract has been terminated, which is the time period provided for reinstatement of a unit (assuming the operator and resident have agreed on the reinstatement works to be completed). After this time, and up to nine months after the contract is terminated, the operator and former resident share the costs. After nine months, the operator alone is required to pay for the costs.\textsuperscript{193} National Seniors Australia, on the other hand, believes that the maximum length of time former residents should be required to pay fees after they vacate be limited to six months. Refer to section 5.5 of this report for further examination of issues regarding reinstatement works.

The submission from Finemore Walters and Story Solicitors, on behalf of Mr and Mrs Torrisi identifies that there is no definition of ‘vacates’ in the Act, which creates “…practical difficulties and confusion between residents and scheme operators...”\textsuperscript{194} It is unclear whether a resident has vacated a unit when they leave a unit, give formal notification to the operator, when they remove all of their belongings or when they return the key to the unit (see recommendation 26).

\textsuperscript{191} Retirement Village Act 1999 section 67(2).
\textsuperscript{192} Retirement Villages Act 1999 section 65(3)
\textsuperscript{193} Leading Age Services Australia Queensland, Submission 22, p33.
\textsuperscript{194} Finemore Walters and Story Solicitors on behalf of David and Aneta Torrisi, Submission 19, p2.
The QLS notes that operators are motivated to facilitate an early resale of accommodation units as they do not realise their exit fee until the unit sells. Also, the operator may be required to pay some or all of the general services charge for the unsold unit.\footnote{Queensland Law Society, Submission 13, p7.}

Mr Turk is concerned that this capital may be needed to fund the purchase of a new property for the former resident, however, it remains unavailable for an indefinite period of time. This does not provide certainty for residents in relation to their financial obligations. This issue was also raised by the ARQRV who notes that the Act does not require operators to pay any exit fee to a resident who has left a retirement village until the unit ‘sells’, which can be months or even years after the resident has left.\footnote{The Association of Residents of Queensland Retirement Villages, Submission 5, p2.}

To prevent this situation from continuing to occur, Mr Turk believes that an operator should be required to take ownership of vacated premises and immediately return the capital owed to the former resident, based on a pre-agreed price or market price determined by an independent valuer. Alternatively, a leasee should be permitted to on-sell or transfer a lease to a third party independent of an operator.

On the other hand, LASAQ believes that operators take the burden of responsibility for vacated residences, as they are required to address all processes regarding:

\begin{quote}
... cessation of the lease, the reinstatement and/or refurbishment of the unit and its marketing for a quick turn around so the Exit Fee can be realised and an incoming contribution realised for the operator.\footnote{Leading Age Services Australia Queensland, Submission 22, p22.}
\end{quote}

5.7.1 **Closure of retirement villages**

Many inquiry participants identified that the Act does not currently provide for when a retirement village closes down, or when an operator plans to close a retirement village.\footnote{See for example, Submissions 5, 6, 13 and 22.} The QLS does not believe that the Act provides certainty about the management of funds in the event that a village closes down.\footnote{Queensland Law Society, Submission 13, p11.} Mr Francis, DHPW, noted that this is a key issue raised with the Department.\footnote{Mr Timothy Francis, DHPW, public hearing 26 October 2012, Transcript, p19.}

The impact of retirement village closure on residents was noted by National Seniors Australia:

\begin{quote}
Closure has the potential of causing enormous detriment to residents who may be unable to relocate to similar facilities in a suitable location due to both the costs involved and availability. At the same time, closure may suit the village operators who may be able to realise significant capital gains through redevelopment. Consequently, closure of deregistration of a retirement village scheme will not have the same major impact on the village owner.\footnote{National Seniors Association, Submission 20, p9.}
\end{quote}

National Seniors Australia is concerned that if retirement villages do not remain commercially viable, operators may redevelop them. Adding to this concern is that returns made by retirement village developments are “... lower than other traditional forms of property, according to the Retirement Villages Association Strategic Plan 2010-2012 ...”.\footnote{National Seniors Association, Submission 20, p7.}

The Committee was advised by ARQRV that the Act needs to prevent an operator from making business decisions that reduce the value of a retirement village, as this can have a significant impact.
on residents.\textsuperscript{203} If a unit cannot be sold due to the potential or planned closure of a village, the resident will not receive their exit payment. If the unit does sell, it is likely it will have been devalued and a smaller exit entitlement will be provided to the resident. The ARQRV believes that residents need to be protected from such occurrences, through the Act including a deadline by which residents must be paid an exit payment (see recommendation 34).

Furthermore, unit valuations are currently based on the assumption that a village is operating as a going concern.\textsuperscript{204} The ARQRV drew the Committee’s attention to the retirement village Urimbirra, which has been reduced in value to the point “... it is now worthless.”\textsuperscript{205} The ERRRC agrees that the exit entitlement calculation should be adjusted in the event that a retirement village is closing down.\textsuperscript{206}

Current provisions for deciding on the resale value of an accommodation unit require that where an operator and resident cannot agree on a resale price, a valuer is to provide a valuation of the ‘right to reside’ within 14 days.\textsuperscript{207} The ARQRV identified that this provision is not adequate as there is no guidance on the assumptions on which a valuation should be based; the operator has to appoint the valuer; operators are not required to provide previous sales data to a valuer and it is unclear whether a unit should be valued based on the outgoing resident’s contract or the contract offered to an incoming resident. To address these issues, the ARQRV recommends that similar provisions to the \textit{Retail Shop Leases Act 1994} should be included in the Act. That is, in the event that a unit cannot sell for fair market value because of the imminent closure of a retirement village, the Act requires an operator to buy back the unit within a certain time period.\textsuperscript{208}

National Seniors Australia recommends that the Act specifies a longer timeframe for winding down a retirement village; that surplus funds are returned proportionately to existing residents, including those that left within the previous 12 months; that operators be required to pay closure expenses; the general services charge should be reduced as the village winds down; reinstatement costs are cancelled when a village is winding down; units should be valued on the basis they were continuing to operate, or compared against similar units in other villages; that residents receive compensation (as included in NSW legislation); and that the exit entitlement is paid sooner than if the village had continued.\textsuperscript{209}

Committee comment

The Committee is concerned that the Act is silent on what happens in the event a retirement village closes down. It is acknowledged that this does not frequently occur; however, even one unexpected closure has the potential to displace, inconvenience and disadvantage many, often vulnerable, residents.

Therefore, the Committee believes it is prudent for the Act to provide for this type of situation and recommends that the Act be amended to ensure the obligations on operators are clear, for example, to pay exit entitlements; when exit entitlements must be paid; how other fees and charges are reimbursed; how units are valued and how much notice is required to be provided to residents. The Committee recommends that legislation from other states is considered by the Department, and that the Minister seek the inclusion of appropriate provisions in the \textit{Retirement Villages Act 1999} to ensure that residents are protected in the event of a village closing down.

\textsuperscript{203} The Association of Residents of Queensland Retirement Villages, \textit{Submission 5}, p14.
\textsuperscript{204} Ibid.
\textsuperscript{205} Mr Les Armstrong, ARQRV, public hearing 26 October 2012, \textit{Transcript} p4.
\textsuperscript{206} Eaglemount Retirement Resort Residents Committee, \textit{Submission 10}, p5.
\textsuperscript{207} \textit{Retirement Villages Act 1999} section 60(2).
\textsuperscript{208} The Association of Residents of Queensland Retirement Villages, \textit{Submission 5}, p14.
\textsuperscript{209} National Seniors Australia, \textit{Submission 20}, p8.
Recommendation 28

The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to provide for the protection of residents in the event that a retirement village closes down, or is in the process of closing down.
6 Public Information Document (PID)

Many submissions identified problems with the current Public Information Document (PID), including its length, complexity, the way that information is arranged and repetition.\(^{210}\) There is concern that because of these issues residents may not be making informed decisions when choosing on a retirement village to live in.

6.1 Current PID

Dr Lucy Cradduck and Ms Andrea Blake\(^{211}\) believe that PIDs should assist prospective residents to make fully informed decisions independent of legal and financial advice. Unfortunately, case law shows that prospective residents find lengthy PIDs confusing, which can result in unrealistic expectations and a misunderstanding of their rights. According to Dr Cradduck and Ms Blake, three basic questions should be answered by prospective residents from reading a PID – “If is this RV [retirement village], in all respects, right for me? If I need to leave, what do I need to do? And how much money will be available to me, and when, if I need to leave?”\(^{212}\)

Ms Linda Clay is the daughter of a former retirement village resident, whose mother was provided with a lengthy contract and conditions of sale when she moved into a retirement village, that she did not comprehend:

> My mother having limited educational knowledge did not understand it. Nor could she afford to hire a lawyer to explain the intricacies of the document. Being very independent at this stage, she would not take our advice or listen to our cautions.\(^{213}\)

Mr Mark Tucker-Evans, COTA, believes that the current PID is “... pretty waffly and it is not in plain English. Therefore, older people who are at the worst stage of their life making these big decisions are often confused and do not quite understand what is going on.”\(^{214}\)

When there is an inconsistency between a PID and a residence contract, the Act provides that the provision that is more beneficial to the resident prevails.\(^{215}\) However, COTA notes that many residents are not aware of this. Also, residents do not always understand other aspects of their contract such as the type of title they have over their accommodation (freehold, leasehold or licence). Resident contracts are not always written in plain English and can vary in quality, from vague and general to complex and confusing.\(^{216}\) Mr Wim Boog agrees that many residents do not understand their PID and that a “… more user friendly PID in plain English” is required.\(^{217}\)

Although PIDs should be presented in a way that is clear and easy to understand, the presentation of consumer protection information as required by the Act is not as clear as required by other legislation. For example, prospective residents entering into a residence contract are not advised that the arrangement is different from buying into a strata arrangement. The terminology used on retirement village websites that described the ‘purchasing’ of a retirement village unit can also be misleading to prospective residents as “… the transaction usually is not in fact a purchase.”\(^{218}\)

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\(^{210}\) See for example, Submissions 3, 5, 6, 10, 13, 14, 17 20 and 21.

\(^{211}\) Dr Lucy Cradduck is a Solicitor and a lecturer at the law faculty of the Queensland University of Technology. Ms Andrea Blake is a Registered Valuer and a Senior Lecturer at the Science and Engineering Faculty of the Queensland University of Technology.

\(^{212}\) Dr Lucy Cradduck and Ms Andrea Blake, Queensland University of Technology, Submission 3, p1.

\(^{213}\) Ms Linda Clay, Submission 15, p1.

\(^{214}\) Mr Mark Tucker-Evans, COTA, public hearing, 26 October 2012, Transcript, p11.

\(^{215}\) Retirement Villages Act 1999 section 37(3).

\(^{216}\) Council on the Ageing Queensland, Submission 12, p5.

\(^{217}\) Mr Wim Boog, Submission 6, p2.

\(^{218}\) Dr Lucy Cradduck and Ms Andrea Blake, Queensland University of Technology, Submission 3, p2.
The ARQRV adds that important information is missing from the PID, such as the extent to which ongoing fees and charges can increase, which is a significant cause of resident discontent due to retirees generally fixed incomes.

Dr Cradduck and Ms Blake advise that rules and other documentation attached to PIDs create long and complex documents, which was an issue also identified by the ARQRV and the RVA. The extra documents attached to PIDs are more similar to commercial leasing documents than to residential tenancy agreements or body corporate bylaws. The legal language, terminology and order of information provided in these documents can confuse residents.\(^{219}\) Information contained in the documents is not clearly separated, for an inexperienced reader, between purchase, operation and exit matters. The result of these issues is that “... informed choice comes at the voluntary cost of obtaining legal advice just to understand the tenure arrangements let alone the leasing/licensing documentation and any RV [retirement village] rules.”\(^{220}\)

The QLS considers that the PID provides relevant information, however, is repetitive and requires simplification.\(^{221}\) In addition, amendment of the PID is required with regard to freehold schemes and non-resident owners.

PIDs include a method to calculate exit fees, however, some residents do not understand what their exit fee will be in practice. Unfortunately, this issue is often only realised when a resident wishes to leave a retirement village, or when they have passed away and their estate is being administered by an executor.\(^{222}\) Issues about exit fees are considered in detail in chapter 7 of this report.

### 6.2 How to improve the PID

To improve the current PID, COTA recommends that all residence contracts be consistent with PIDs; that PIDs are provided early enough to enable the comparison of PIDs from a number of retirement villages; that PIDs are written in plain English and that copies of PIDs are available in a number of community languages.\(^ {223}\) It would also assist prospective residents if operators had an example residence contract that reflected best practice.

Dr Cradduck and Ms Blake advise that information in PIDs needs to be presented more clearly, with regard to the location of information in the document and the actual information included. They recommend that the Act prescribes a format of PIDs that is shorter and easier to understand than the current document, and that the tenure (such as freehold, leasehold, licence), terms, participation in capital gains or loss and exit fees are clearly included. Also, that relevant PIDs are made available on the website of every retirement village, to ensure that it is not only a retirement village lifestyle that is sold to prospective residents.\(^ {224}\) This is also supported by the ARQRV.\(^ {225}\) At the public hearing, Dr Cradduck highlighted the current difficulty faced by people trying to inform themselves about information in PIDs before they enter a retirement village, as described in the following case study.

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219 Dr Lucy Cradduck and Ms Andrea Blake, Queensland University of Technology, Submission 3, p2.
220 Ibid.
221 Queensland Law Society, Submission 13, p4.
222 Dr Lucy Cradduck and Ms Andrea Blake, Queensland University of Technology, Submission 3, p2.
223 Council on the Ageing Queensland, Submission 12, p5.
224 Dr Lucy Cradduck and Ms Andrea Blake, Queensland University of Technology, Submission 3, p2.
225 The Association of Residents of Queensland Retirement Villages, Submission 5, p10.
Case study 2 – Dr Lucy Cradduck

“... an older couple ... is looking within the next two years to move to a village. This couple has no immediate need by health or other reasons to do so but is trying to make themselves informed. They have made some inquiries through various villages. Unfortunately, because there is no immediate need or desire for them to move, they have as of this morning still not received the promised public information documents or other paperwork from the respective villages that they have in several conversations been advised would be sent.

I appreciate that people are very busy and I appreciate that villages operate on a commercial basis, but ... one of the big issues we have is people not being informed and here we have a couple who is seeking actively to make themselves informed and they are not able to do so ...

In the digital economy these documents should be available on the website. I was the one who did a lot of searching for most of that particular data between Andrea and I and I can recall reaching a very high level of frustration when I am digitally literate, I know how to find documents on websites, I know what I am reading, I know what to look for because I have advised on these documents and yet I could not find the information that I needed to be able to advise anybody, let alone inform myself."226

The ARQRV believes that PIDs should be shorter and simplified, focussing on critical issues only, with the lengthy attachments to the PID provided with the residence contract. These changes would ensure that critical information is not lost in a lengthy document. Lend Lease identifies that the Queensland PID is the longest and most cumbersome of all states, so agrees that the current PID would benefit from being simplified.227 Dr Cradduck and Ms Blake recommend that the Act be amended to require documents attached to the PID, such as the lease or licence, other accommodation terms or retirement village rules, be provided to a prospective resident as clearly identified separate documents. The RVA notes that:

*The longer the document the more likely it will confuse a prospective resident or the prospective resident will simply not read the critical information necessary to make an informed decision, which is clearly the objective of all stakeholders within the industry.*228

With regard to the timing of providing a PID, the ARQRV advises that it is generally provided to residents after they have selected a specific unit within a retirement village. This means that PIDs are provided at a late stage, which effectively restricts a comparison of PIDs between villages. Some villages require residents to complete an ‘application to reside’ form and pay a refundable deposit before a PID is provided.229 The ARQRV would prefer that PIDs were published earlier, or that additional information was disclosed before a PID is provided, to enable informed decision making to occur.

Mr Mark Tucker-Evans, COTA, told the Committee that “... simpler, standardised retirement village contracts that clarify the financial and legal commitments residents are making when they move into retirement villages” are also required.230 However, he also warns that any amendment to the PID must still ensure the document contains “... sufficient critical information to ensure potential residents are fully advised of their rights and obligations.”231

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226 Dr Lucy Cradduck, Lecturer, Faculty of Law, Queensland University of Technology, public hearing 26 October 2012, p14.
227 Lend Lease, Submission 21, p3.
228 Retirement Village Association, Submission 14, p20.
229 The Association of Residents of Queensland Retirement Villages, Submission 5, p10.
230 Mr Mark Tucker-Evans, Chief Executive, Council on the Aging, public hearing, 26 October 2012, p10.
231 Mr Tim Francis, Executive Director, Office of the Registrar, National Regulatory System, public hearing, 26 October 2012, p21.
6.3 Alternative PID options

Two amended PIDs have been developed, one by a former Ministerial Working Party and the other by peak operator bodies. National Seniors Australia advised that the Ministerial Working Party developed an improved PID before the 2012 State election. The amended document took into account the PID used in New South Wales and changed the structure of the PID, clearly identifying important information so that prospective residents could more easily compare different villages. Resident-specific information was grouped together in one place and duplicate information was removed. National Seniors Australia recommends that each model of retirement village should have a specific PID, rather than requiring all models to fit a single generic PID. Also, that the Committee takes into account the work completed by the Ministerial Working Party.

A simplified PID has also been developed by the RVA and LASAQ in consultation with the ARQRV. Lend Lease and LASAQ support the amended PID being developed by these organisations. The QLS also supports the development of a prescribed proforma PID, provided it ensures adequate flexibility and disclosure. Also, the amended PID, and the Act, should “... encourage and allow flexibility and viable options for future financial models – for example a management fee or rent type model ... based on an indexed and/or reviewable lump sum or formula.” Alternative models to the exit fee are explored further in section 7.7 of this report.

The RVA advises that the amended PID has been developed to comply with the current Act. Duplicate information has been removed and the format has been amended to make the document easier to read and understand by prospective residents. Another key amendment to the PID is the location of information. Critical information is more prominent and appears earlier in the document, and resident-specific (rather than generic) information appears in the one location. The RVA believe this will assist resident to more easily compare retirement villages.

To build on the changes included in the RVA’s revised PID, the Act could be amended to simplify the mandatory content required to be included in the current PID.

Committee comment

The Committee understands there are many concerns about the current PID from residents, academics, operators, lawyers and peak organisations and that this document would benefit from significant amendment. The PID is a very important document that needs to be as clear as possible to assist prospective residents make informed decisions.

Therefore, the Committee recommends that a new PID be developed, taking into account the two revised PIDs referred to in the section above, in order to simplify the document; improve the layout of information; reduce its length and complexity; remove repetition where possible; be written in plain English and key considerations (such as tenure, capital gains, reinstatement obligations and exit fee calculations) are included.

The Committee also considers that generic PIDs should be made available on retirement village websites, without residents having to provide personal information to obtain a copy, to assist residents to compare villages and make informed decisions. Also, that operators are required to provide completed PIDs to residents at least 10 business days before an application for a right to reside is completed, before any contract is signed and before any funds are paid to an operator by a prospective resident.

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232 National Seniors Australia, Submission 20, p4.
233 Lend Lease, Submission 21, p3 and Leading Age Services Australia Queensland, Submission 22, p10.
234 Queensland Law Society, Submission 13, p5.
236 Leading Age Services Australia Queensland, Submission 22, p10.
Recommendation 29
The Committee recommends that the Department of Housing and Public Works develop a new Public Information Document to improve the layout of information, reduce the length and complexity, simplify, remove unnecessary repetition, ensure information is provided in plain English and that key terms and considerations are included.

Recommendation 30
The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to require:

a) operators to place the Public Information Document on their retirement village websites
b) the Public Information Document be made available to prospective residents online or in hard copy without their personal information first being sought
c) any amendments to a Public Information Document be made available on the website within three business days of the amendments being approved and
d) the Public Information Document be provided to prospective residents when they are provided with the general prospectus.

Recommendation 31
The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to require the Public Information Document be provided to prospective residents by operators at least 10 business days before an application for a right to reside is completed, before any contract is signed and before any funds are paid to an operator by a prospective resident.
7 Exit fees

7.1 Background on model

Exit fees are essentially a ‘buy now, pay later’ mechanism, allowing residents to enjoy a quality of life that they might not be able to afford if they had to pay up front. The relative balance between what is paid as an ingoing contribution and what is paid as an exit fee will vary depending on individual contracts. Exit fees represent the profit to the operator and are regulated by individual contracts rather than by the State.

In the main, exit fees are calculated as a percentage of the value of the unit at the time of vacating. The value can be determined by the sale price, or some other agreed method such as a proportion of the ingoing fee. The calculation method is agreed in the contract. This percentage typically increases the longer a resident stays in the village, and often increases in yearly increments, for example, after one year, 10%; after two years, 15% and after three years, 20%.\(^{237}\)

Contracts often feature variations to this basic approach, such as adding a proportion of any capital gain in the exit fee, or a very high percentage exit fee in compensation for a very low ingoing payment. Many retirement villages have total exit costs to the resident of between 35% and 50% of the sale price of the unit.

In Queensland, the contract determines the means of calculation. The only aspect of exit fees that is regulated is that where a contract provides that an exit fee is based on a percentage of the value of the unit at the time of vacating, then:

a) the fee is calculated from the date the unit was vacated, not the date it is sold and
b) the percentage is calculated on a pro-rata basis in respect of any incomplete year of residence.

NSW and the ACT also regulate for a daily rather than annual calculation of any exit fees that are based on length of residence.

Mr Robin Lyons, Minter Ellison Lawyers, advised the Committee that “…the way the Act is currently drafted almost railroads operators into that model whether they like it or not and whether in fact they want to even respond to the market.”\(^{238}\) At the public hearing, Mr Andrew Macintosh, Queensland Regional Committee, RVA, explained that:

...this model was developed in the eighties and it is tired ... At times it is a complex bit of mathematics to understand, but bear in mind that out there in the world beyond Australia’s shores there are all sorts of models for retirement villages. At the moment there are a couple we cannot implement here in Queensland because the Act is restricting that."\(^{239}\)

The President of the ARQRV added that the exit fee model originally started in the not-for-profit sector:

...when the church associations had operated those villages and they usually had a legal duty to act in the best interests of their members, the residents. Now, however, with the corporatisation of villages, the operator has a legal duty to act in the best interests of the

\(^{237}\) Until Queensland’s law was amended in 2011, in some contracts, no matter when the resident left the village within any given year, the resident paid the exit fee based upon the percentage for that year. Thus, a resident leaving a village after one year and one day could be required to pay an exit fee based on two whole years of occupation (or, depending on specific terms of the contract, the first year plus part of the second year, such as a month or a quarter).

\(^{238}\) Mr Robin Lyons, Partner, Minter Ellison Lawyers, public hearing, 26 October 2012, Transcript, p6.

\(^{239}\) Mr Andrew Macintosh, Chair, Queensland Regional Committee, Retirement Village Association, public hearing, 26 October 2012, Transcript, p6.
shareholders or the financiers, who are not residents and whose interests often do not align with those of the residents—'often', I say, but generally never.\footnote{Mr Les Armstrong, ARQRV, public briefing, 28 August 2012, Transcript, p10.}

\subsection*{7.1.1 Rationale for regulating in Queensland}

Exit fees are generally calculated on the basis of the length of time a resident has resided in a unit. In 2011, amendments to the Act provided that a daily, rather than yearly, pro rata calculation method will apply. This also avoids the outgoing resident and incoming resident from being charged for the same period – which would be a ‘double dip’, in effect. The amendments included the formula for how the exit fee must be calculated in those instances, to remove any potential for confusion.

The issue had caused some confusion\footnote{The ARQRV advised at the time that a large proportion of the approximately 4000 complaints that it received annually from concerned residents and their families related to the calculation of exit fees.} and had been the subject of legal proceedings which were initiated in the Queensland Commercial and Consumer Tribunal and then heard on appeal in the District Court. This matter, Saunders v Paragon Property Investments Pty Ltd (the Paragon case), drove the amendments to the Act.

The former Director-General, Department of Justice and the Attorney-General, expressed the aim of the proposed amendment when he told the former Legal Affairs, Police, Corrective Services and Emergency Services Committee (LAPCSESC): “… what we are trying to ensure is that if somebody leaves part way through a year they are not actually being forced to pay a full year’s fees. It is as simple as that”.

The facts of the case are that a resident had occupied a retirement village for two years and one day. The residence contract imposed an exit fee which accrued at a rate of 5% of the sale price per year of residence. On that basis, the resident was charged an exit fee of 15%. The resident argued that the exit fee should be calculated pro-rata on a daily basis for that last day of occupation.

The Tribunal dismissed the resident’s application, agreeing with the retirement village operator’s interpretation of section 15(2) of the Act, that the exit fee was correctly charged on a yearly basis. The Tribunal found that section 15(2) did not prescribe the method of calculation of the exit fees, but only a point in time in a particular year at which exit fees were to be calculated.

The resident appealed to the District Court, where the Judge found in favour of the resident. However, the decision relates more to the District Court’s determination of the period of time that the resident occupied the village (for two years rather than for two years and one day), rather than an interpretation of how section 15(2) operates. Though not strictly necessary, the Judge also considered whether section 15(2) of the Act should be interpreted as requiring exit fees to be calculated on a daily basis.

The Judge suggested “fairness is regarded as promoted by apportionment” (of exit fees), and one of the objects of the Act is to promote fair trading practices in operating retirement villages. The Judge saw no undue disadvantage to a resident if a daily calculation method was employed, but rather referred to the alternative, yearly calculation method as providing a windfall to operators.

Following on from this, the Judge saw no threat to the viability of a village under the daily calculation method, as he “… could not imagine any prudent operator designing a project whose profitability or viability depended upon windfalls”. The Judge accepted the daily calculation method applied to exit fees, unless an alternative method was expressly stipulated in a residence contract. Elsewhere, the Judge referred to the daily method as the more natural approach to calculating exit fees.

DHPW’s advice to the LAPCSESC at the time was that the case did not amount to a definitive ruling of law in relation to the circumstances in which a daily calculation method should be read into a
residence contract. However, the Judge’s view on the issue was clearly expressed, and the proposed amendment does adopt the important consumer fairness principle espoused in the case.

One of the objectives of the amendment which regulated this element of exit fees was to clarify any doubts raised as to how the Paragon judgment should be interpreted as applying to existing contracts.

7.2 Resident satisfaction with exit fee model

Some organisations and individuals believe that the current model of exit fees, also called a deferred management fee, is disempowering to residents and gives operators a significant commercial advantage over residents.242 Others, however, advise that exit fees increase the affordability of retirement village living and the model should not be changed.243

The ARQRV advises that the Act does not limit exit fees charged by operators, while COTA believes that exit fees should be capped.244 On the other hand, LASAQ considers that “[i]t would be the death knell for the industry if [e]xit [f]ees were capped and non-market forces imposed on the industry.”245

The ARQRV advises that “… the only common feature in all villages is that residents lose a large portion of their capital when they leave the village; and the operator can only derive a profit when residents leave or die.”246 As exit fees represent an operator’s primary source of profit, this profit depends on the regular turnover of units. The ARQRV identifies there is a conflict between the legal duty of operators to act in the best interest of shareholders and to maximise returns, with the interests of residents. LASAQ notes that exit fees provide “… reassurance to financiers that there is a sound business case for the development of a village and its ongoing viability.”247

LASAQ notes that although some residents may be dissatisfied with the exit fee model “… the majority … accept that their exit fee enables them to leverage a standard of living not available to them in the general community.”248

The Committee was told that a consequence of the exit fee model is that “… an operator has little or no economic incentive to ensure that residents remain satisfied with the village and the services provided.”249 The ERRRC and Mr Wim Boog add that the current model locks residents into a village, which may affect how responsive operators are to residents’ requests.250 This was also the experience of Ms Linda Clay’s mother, who noted that “[t]he residents are seen as a captive audience who do not have bargaining power.”251 Another consequence is that operators may be less likely to negotiate the sale price of a unit to protect profit margins on the sale. As there is no avenue for residents to complain about these issues, operators have a significant commercial advantage over residents.252

When a unit takes a long time to sell an operator’s profit is delayed, which can impact the cash flow of the business.253 Operators also do not have the option of increasing their profit margin on

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242 See for example, Submissions 3, 5, 10 and 11.
243 See for example, Submissions 14, 21 and 22.
244 Council on the Ageing Queensland, Submission 12, p.6.
245 Leading Age Services Australia Queensland, Submission 22, p31.
246 The Association of Residents of Queensland Retirement Villages, Submission 5, p.2.
247 Leading Age Services Australia Queensland, Submission 22, p14.
249 Ibid, p2.
250 The Association of Residents of Queensland Retirement Villages, Submission 5, p2.
251 Ms Linda Clay, Submission 15, p2.
252 The Association of Residents of Queensland Retirement Villages, Submission 5, p3.
253 The Association of Residents of Queensland Retirement Villages, Submission 5, p2.
retirement village units that are for sale, as they are locked in to the exit fee arrangement agreed with the resident when the residence contract was originally signed. The QLS also notes that operators are also locked-in to the exit fee model as a whole, due to the restrictive nature of the Act.\textsuperscript{254}

In industries such as consumer finance exit fees are considered to disempower consumers and limit competition, so the use of such fees is being restricted.\textsuperscript{255} The ARQRV acknowledges that it is unlikely that exit fees can be prohibited in the retirement village industry as they represent the only source of profit for operators.\textsuperscript{256} Instead, the ARQRV believes that the Act should recognise the imbalance of power resulting from the exit fee model, between operators and residents. Also, that measures should be implemented in the retirement village sector that offset the effect of exit charges to empower residents.\textsuperscript{257}

The ARQRV believes that residents are required by the Act to adopt more market risk than operators as a result of the exit fee model:

\begin{quote}
It is fundamentally unfair for an operator to pass all of the market risk onto the former resident, yet it is currently permitted by the Act and so it has become a common feature of residence contracts.\textsuperscript{258}
\end{quote}

The level of risk accepted by retirement villages residents is not believed to be equivalent to the risk accepted by people who sell a private residence, for the following reasons:

- Private sellers have access to recent sales data, whereas former residents negotiate a sale price with an operator without access to this data. An operator is not required to share historical sales data with the former resident, or any valuer.
- Former residents largely do not have control over the saleability of a unit, such as the presentation and maintenance of the village, and marketing of the unit or village.
- Private sellers receive 100\% of the sale price (less fees and charges), whereas former residents pay the operator an exit fee and often a share in any capital gains.
- A former resident cannot use the capital that is tied up in their former unit as security for a bridging loan to fund their next residence.
- A former resident must negotiate the sale price of their unit with the operator, who is often in a stronger position to be able to endure a slow real estate market.

These factors are reported to reduce the affordability of retirement village living when compared to living in a private residence.

7.3 Calculation of exit fee

There is currently no consistent way that exit fee calculations are communicated in residence contracts. This means that “... it is practically impossible for residents to meaningfully compare the exit charges from one village to another” and competition between villages is limited.\textsuperscript{259} The ARQRV would like to see a standard format for exit fee disclosure to allow easier comparison between villages.\textsuperscript{260} This form could include the total maximum exit charge possible, as a dollar amount, and a

\begin{footnotes}
\item[256] Ibid.
\item[257] Ibid.
\item[258] Ibid, p6.
\item[259] Ibid, p10.
\item[260] Mr Les Armstrong, President, ARQRV, public hearing, 26 October 2012, \textit{Transcript}, p3.
\end{footnotes}
standardised score for the village’s exit fee calculation to enable comparison of these fees between villages. This is also supported by Mr Andrew Cairns from LASAQ.\footnote{Mr Andrew Cairns, LASQA, public hearing, 26 October 2012, Transcript, p7.}

Submissions to the Committee from Dr Cradduck and Ms Blake; and the ARQRV, identified that exit fees are unique to the retirement village industry.\footnote{Submissions 3 and 5.} Exit fees are calculated in different ways by different operators, for example as a percentage of an ingoing contribution, a percentage of the final sale price or either of these two options in addition to sharing any increase in value of the unit. COTA notes that exit fees are a “…considerable source of tension and unhappiness for many retirement village residents” and that fee structures are often not well understood by prospective residents and existing residents.\footnote{Council on the Ageing Queensland, Submission 12, p6.}

The QLS recommends that the Act clarify that the exit fee and ingoing contribution are “… distinct and separate payments and obligations, and that one does not form and will not be construed as forming part of the other even if by agreement the former is funded in whole or part from the latter settlement of a resale.”\footnote{Queensland Law Society, Submission 13, p13.} See recommendations 23 and 35.

At the public hearing, Mr Cairns highlighted potential tax implications of ensuring that a former resident’s exit entitlement be calculated independently of an ingoing resident’s ingoing contribution. He stated that:

\begin{quote}
One of the major constraints for for-profit operators at the moment is that an exit fee that is linked to the original ingoing contribution is subject to income tax before the money is earned. That is fatal for a for-profit operator. If you can quantify what the exit fee is then you have to pay tax as soon as that amount starts to accrue. That is under the current public ruling 2004/D5 ... That is a constraint ...it is something that needs to be seriously considered because for-profit operators link their exit fees primarily to the future ingoing contribution—that is, the ingoing contribution that the next resident will pay, not what the initial resident paid.\footnote{Mr Andrew Cairns, Representative, LASAQ, public hearing, 26 October 2012, Transcript, p7.}
\end{quote}

7.4 Estimation of exit fee

The RVA believes that the calculation of exit fees is transparent and provides a balance for operators and residents. The RVA notes that section 54 of the Act allows residents to obtain an estimate of their exit entitlement every six months. After stating they are considering leaving the village, operators are obliged to provide this information to residents.\footnote{Retirement Village Association, Submission 14, p36.} Despite the provision in the Act, LASAQ notes that “[i]t is not necessary for a resident to state to the scheme operator why they want to receive an estimate of their exit fee.”\footnote{Leading Age Services Australia Queensland Australia, Submission 22, p26.}

As calculation of an exit fee is burdensome on operators, the RVA considers the restriction on how often and in what circumstances the calculation can be provided to residents as a balance between both parties. LASAQ supports this view, noting that smaller villages with limited resources cannot respond immediately to requests for complex exit fee quotes.\footnote{Ibid.} However, some villages provide annual statements about a resident’s exit fee. The QLS advises that the calculation of exit fees is not difficult for operators, as they use the formula and information included in the PID and residence contract.\footnote{Queensland Law Society, Submission 13, p9.}
The ERRRC does not agree with the requirement for residents to state they are considering leaving a village in order to receive an estimate of their exit fee entitlement, and believes that this information should be available to residents at all times. The QLS recommends that exit fee calculations should be able to be requested by residents every nine months, and they should not be required to state that they are considering terminating their right to reside in the village. However, if both of these changes are not adopted, the provision should remain as it currently stands.

Dr Cradduck and Ms Blake recommend that the standard form village contract developed in New South Wales be considered by the Committee. A standard contract may assist in the comparison of villages by prospective residents, including with regard to understanding exit fee calculations. The Retirement Villages Act 1999 (NSW) provides for a standard form of village contract, to be prescribed by regulation.

7.5 Daily rate for calculation of exit fees

The Act was amended in 2012 to prescribe that an exit fee for residence contracts entered into from the time the amendments commenced is to be calculated on a daily rate, rather than an annual rate, after the first year (see section 7.1.1 of this report). This also applies to pre-existing contracts where no calculation method is prescribed. The RVA believes that these amendments have created uncertainty for contracts that were entered into before the section commenced, as the section is vague and limited guidance is provided. As such, the RVA considers that this amendment has contributed to increased disputes. The QLS also notes that this amendment has not improved certainty in the calculation of exit fees.

The ARQRV is concerned that exit fees can still be calculated on an annual basis for contracts entered into before the amendment to the Act commenced (1 March 2012), which is “... for almost all current contracts.” This means that residents under these contracts who leave a retirement village after two years and one day, are likely to be charged an exit fee calculated on three years, which the ARQRV believes is fundamentally unfair. As such, the organisation recommends that the Act be amended so that section 53A applies to all contracts entered into since 1 July 2000. That is, the exit fee would be calculated on a daily, rather than annual basis, in line with legislation in the ACT and New South Wales. LASAQ agrees that this amendment to the Act is confusing for existing contracts. The ERRRC on the other hand, believes that the changes implemented have provided improved certainty and transparency about the financial obligations of residents.

7.6 Nursing home bond

The Aveo Residents’ Association explains that some residents have difficulty paying the bond when moving into a nursing home from a retirement village, as their money is not accessible until the unit ‘sells’. This issue was also identified by National Seniors Australia and the ARQRV, who add that

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270 Eaglemount Retirement Resort Residents’ Committee, Submission 10, p4.
272 Dr Lucy Cradduck and Ms Andrea Blake, Submission 3, p4.
273 Retirement Villages Act 1999 (NSW) section 43.
275 Queensland Law Society, Submission 13, p10.
276 The Association of Residents of Queensland Retirement Villages, Submission 5, p7.
278 Leading Age Services Australia Queensland Australia, Submission 22, p32.
279 Eaglemount Retirement Resort Residents’ Committee, Submission 10, p5.
280 Ms Moya Rix, Secretary, Aveo Robina Residents’ Association, Submission 2, p1.
former residents may pay significant interest penalties on unpaid nursing home bonds while their unit remains unsold. Alternatively, former residents may find themselves effectively homeless.\textsuperscript{281}

LASAQ also identified this issue, noting the requirement to pay interest also applies to elderly residents from the general community who move into an aged care facility. These residents are also required to pay interest until their bond is finalised, for example if they are awaiting the sale of their former home.\textsuperscript{282}

To address this problem, the Aveo Residents' Association believes that operators should be required by the Act to buy a unit that has not sold within six months of being vacated, when it can be evidenced that the outgoing resident requires proceeds from the sale to pay a bond at a nursing home. Also, that the amount paid by the operator be based on an independent valuation. Similarly, the ARQRV recommends that operators should be required by the Act to pay former residents a portion of the exit entitlement if the unit remains unsold for a certain period of time. Mr Robert Turk also believes that operators should be required to take back ownership of a vacated leased unit.\textsuperscript{283}

The Committee was advised that legislation in Victoria, Tasmania, the Northern Territory and New South Wales have provision for paying outgoing residents within six months of vacating a unit, in appropriate circumstances and COTA believe that this should also apply in Queensland.\textsuperscript{284}

Lend Lease warns against any significant changes to the existing legislation regarding exit fees, including changes that adversely affect an operator's receipt of the deferred management fee. This is because this model "... is the principal driver of affordability in the retirement villages sector."\textsuperscript{285}

7.7 Alternative models

Lend Lease identified issues associated with the single operating model that is currently available, in which "... operators rely on a deferred management fee for profit."\textsuperscript{286} There is concern that alternative models, such as rental and fee-for-service options, are not available to the industry under the Act. Current regulatory requirements of the Act do not support these or other alternative models. Lend Lease notes that unless the regulatory burden is reduced, the introduction of innovative operating models is not likely to occur.

The RVA also identified that the lack of models for retirement villages is an issue that "... stifles flexibility and inhibits the industry's ability to respond to the changing needs of the market."\textsuperscript{287} This 'one size fits all' approach limits the introduction of alternative accommodation models. The RVA believes a more appropriate model would allow operators to implement any model that is contractually agreed with residents.

The QLS raise the question of whether the exit fee model "... will be suitable or necessary for residents or scheme operators in the future ..." due to the changing demographic and financial position of residents.\textsuperscript{288} Another reason why the exit fee model should be questioned is due to the delays experienced by prospective residents when selling their existing homes in a difficult economic climate which in turn affects the resale of units. The QLS suggests the following models should be considered:

\begin{itemize}
\item The Association of Residents of Queensland Retirement Villages, Submission 5, p6.
\item Leading Age Services Australia Queensland, Submission 22, p15.
\item Mr Robert Turk, Submission 11, p1.
\item Submissions 5 and 12.
\item Lend Lease, Submission 21, p5.
\item Ibid, p4.
\item Retirement Village Association, Submission 14, p46.
\item Queensland Law Society, Submission 13, p5.
\end{itemize}
A management fee or rent-type model, with weekly, monthly or other periodic payment, aligned to the aged or DVA pension if applicable and based on an indexed and/or reviewable lump sum formula, with or without an exit fee component, sharing of capital gain upon resale and a sinking fund for common property under the BCCM to be contributed to be residents on a pro rata basis for replacement of property.\textsuperscript{289}

LASAQ notes that some villages permit residents to pay a premium on the entry price to the village instead of paying an exit fee, however, that this option is not popular as it reduces the amount of money residents have to invest and to fund their quality of living during their time in the village.\textsuperscript{290} The organisation recommends that the Act be amended to allow scheme operators to offer “... different options without having to rely on the [e]xit [f]ee... New generations of seniors will want other options.”\textsuperscript{291}

At the public hearing, Mr Macintosh identified a model used in America that does not rely on fees or a general service charge, rather, “[p]eople pay a fee on a monthly basis ... [it] has options whereby people pay a certain amount per month and that pays for everything ... There are no additional fees.”\textsuperscript{292} Ms Kim Teudt, General Manager, Churches of Christ Care, advised that future generations of residents of retirement villages will want flexible financial options and services, so the Act needs to be able to provide this.\textsuperscript{293}

Mr Robert Bird from National Senior Australia told the Committee that people from lower socioeconomic groups do not have “... the same advantage to go to a village that the higher socioeconomic group does.”\textsuperscript{294} National Seniors Australia supports the provision of alternative accommodation models, which reflect the socioeconomic needs of the general community.\textsuperscript{295}

**Committee comment**

The Committee agrees that there should be a consistent way that exit fee calculations are communicated to residents, so that they understand how their exit fee will be calculated, or if they are prospective residents, so that they can more easily compare these provisions between retirement villages. It is of the utmost importance that prospective residents are as informed as possible before entering a retirement village so they do not experience uncertainty while living in the village, and so that there are no significant surprises for them or their families when they leave the village. The Committee is concerned that residents are entering retirement villages without understanding key financial information.

The Committee has not received any strong evidence to explain why residents should be required to state their intention to leave a village before they are able to get an estimate of their exit entitlement. Accessing this information is important to assist residents make informed decisions and residents should not have to explain why they seek this information.

The work involved in calculating an estimate of an exit entitlement is appreciated by the Committee, so the Committee believes a time limit should remain on the frequency in which residents can seek an estimate of their exit entitlement.

To this end, it is recommended that the Act be amended so that residents are not required to state their intention to leave a village before they are able to get an estimate of their exit entitlement. The Committee also recommends that the frequency in which residents can obtain an estimate of their...

\textsuperscript{289} Queensland Law Society, Submission 13, p6.
\textsuperscript{290} Leading Age Services Australia Queensland Australia, Submission 22, p14.
\textsuperscript{291} Ibid, p20.
\textsuperscript{292} Mr Andrew Macintosh, RVA, public hearing October 26 2012, Transcript, p5.
\textsuperscript{293} Ms Kim Teudt, General Manager, Churches of Christ Care, public briefing, 28 August 2012, Transcript, p5.
\textsuperscript{294} Mr Robert Bird, Member, Policy Advisor Group at National Senior Australia, public hearing, 26 October 2012, Transcript, p12.
\textsuperscript{295} National Seniors Australia, Submission 20, p2.
exit entitlement increase to twelve months.

The Committee notes that it is in the best interest of scheme operators and residents to sell a right to reside as soon as possible after a former resident vacates a unit. However, there are circumstances where lengthy delays are experienced in the sale of a right to reside and serious consequences can result for former residents.

While the majority of former residents, or their estates, are able to wait for payment of their exit entitlement with no significant consequence, the Committee believes that the current situation where some former residents find themselves in is not acceptable. When residents are reaching the end of their life and find themselves in a position where they require an increased level of care, however, cannot access their money to pay for this care (or pay significant interest penalties to access it), the Act is not meeting its objects. Former residents should not be disadvantaged for choosing retirement village living and should be assisted to transition to any increased level of care that cannot be provided while residing in a retirement village.

The Committee believes there are certain circumstances whereby residents should be able to access their exit entitlement within a given time period, rather than waiting until their right to reside sells, as provided for in legislation in other jurisdictions. This includes when a former resident requires the funds to pay a bond when moving into a nursing home or where they would experience severe hardship, such as homelessness, if they were not paid their exit entitlement in this time.

The Committee agrees that a vacating resident’s exit entitlement should be calculated independently of an incoming resident’s ingoing contribution. The current provisions do not provide adequate certainty for residents and have the potential to be misused by operators to increase their profit and reduce the exit entitlement owed to residents. Increased transparency is required in how exit entitlements are calculated, to increase fairness for residents and to reduce the potential for abuse of the provisions. The tax implications of requiring outgoing residents’ exit entitlements to be calculated independently of incoming residents’ ingoing contributions are noted by the Committee and as such, it is recommended that these are considered with regard to any amendment.

Given the difficulties faced by many residents, their families and legal representatives in comparing villages, and the difficulty these people experience in understanding some contractual provisions such as exit fees, the Committee recommends that the Act be amended to provide for the prescription of standard form contracts between residents and operators of retirement villages.

The Committee strongly agrees that alternative models of accommodation for retirees needs to be explored to meet the needs of current and future generations. While the current model meets the needs of some, it does not meet the needs of all. Future models need to provide improved flexibility for residents and the industry as a whole.

**Recommendation 32**

The Committee recommends that the Minister for Housing and Public Works seek amendment to the *Retirement Villages Act 1999* to require that residence contracts include the detailed formulas that will be used to calculate exit fees.

**Recommendation 33**

The Committee recommends that the Minister for Housing and Public Works seek amendment to the *Retirement Villages Act 1999* to remove the requirement under section 54 that require residents to give written notice stating they are considering terminating their right to reside in the village, in order to obtain an estimate of their exit entitlement; and operators be required to give an estimate of a resident’s exit entitlement if requested once every twelve months and when the resident is leaving the village.
Recommendation 34
The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to ensure that residents receive their exit entitlement from an operator within six months of terminating their right to reside in exceptional circumstances, such as if they would experience severe hardship if they did not receive this money or if the village has closed or is closing down.

Recommendation 35
The Committee recommends that the Minister for Housing and Public Works consider seeking amendment to the Retirement Villages Act 1999 to provide that a vacating resident’s exit entitlement is calculated independently of an incoming resident’s ingoing contribution and that this is clearly provided in the contract and Public Information Document, with consideration given to potential tax implications.

Recommendation 36
The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to provide for the prescription of standard form contracts for retirement villages to facilitate the comparison of retirement villages and provide increased clarity of provisions such as those relating to exit fees, and in doing so considers the draft New South Wales standard form village contract as an example.

Recommendation 37
The Committee recommends that the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to provide alternative financial models for retirement village living, for example periodic payments, that provide improved choice and flexibility for residents and operators, do not include an exit fee (deferred management fee) and are available to prospective residents from lower socio economic positions.
## Appendix A – List of submissions

<table>
<thead>
<tr>
<th>#</th>
<th>Submitter</th>
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<tbody>
<tr>
<td>1</td>
<td>Mr Robert Masson</td>
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<tr>
<td>2</td>
<td>Aveo Robina Residents’ Association</td>
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<tr>
<td>3</td>
<td>Dr Lucy Cradduck and Ms Andrea Blake</td>
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<td>4</td>
<td>Mr Edward Withers</td>
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<td>5</td>
<td>Association of Residents of Queensland Retirement Villages Inc. (ARQRV)</td>
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<tr>
<td>6</td>
<td>Mr Wim Boog</td>
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<td>6a</td>
<td>Mr Wim Boog – submission attachment</td>
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<td>7</td>
<td>Mrs Noreen Weeks</td>
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<td>8</td>
<td>Confidential</td>
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<td>9</td>
<td>Private</td>
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<td>10</td>
<td>Eaglemount Retirement Resort Residents Committee</td>
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<td>11</td>
<td>Mr Robert Turk</td>
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<td>12</td>
<td>Council on the Ageing Queensland</td>
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<td>13</td>
<td>Queensland Law Society</td>
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<td>14</td>
<td>Retirement Village Association</td>
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<td>14a</td>
<td>Retirement Village Association – Attachment B</td>
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<td>15</td>
<td>Ms Linda Clay</td>
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<td>16</td>
<td>Aveo Cleveland Residents’ Committee</td>
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<td>17</td>
<td>Wesley Mission Brisbane</td>
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<td>18</td>
<td>Mr George Hannaford</td>
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<td>19</td>
<td>Finemore Walters and Story</td>
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<td>20</td>
<td>National Seniors Australia</td>
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<td>Lend Lease</td>
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<td>22</td>
<td>Leading Age Services</td>
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<td>23</td>
<td>Mr Douglas Hoggan</td>
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Appendix B – Witnesses at Public Briefing

<table>
<thead>
<tr>
<th>Witnesses at the Public Briefing, 28 August 2012</th>
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<tbody>
<tr>
<td>Mr Andrew Giles, Chair, Queensland Regional Committee, Retirement Village Association</td>
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<tr>
<td>Mr Andrew MacIntosh, Queensland State Manager, Operations, Aveo Retirement Villages, FKP Limited</td>
</tr>
<tr>
<td>Ms Kim Teudt, Board Member, Leading Aged Services Australia Queensland</td>
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<tr>
<td>Mr Les Armstrong, President, Association of Residents of Queensland Retirement Villages</td>
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<tr>
<td>Mr Mark Francis, Executive Director, Policy and Performance, Department of Housing and Public Works</td>
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<tr>
<td>Mr Terry Green, Acting Manager, Residential Services Unit, Department of Housing and Public Works</td>
</tr>
<tr>
<td>Mr Damian Sammon, Director, Office of the Registrar, National Regulatory System</td>
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<tr>
<td>Mr Mark Zgrajewski, Principal Legal Officer, Office of the Registrar, National Regulatory System</td>
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## Witnesses at the Public Hearing, 26 October 2012

<table>
<thead>
<tr>
<th>Witness Name</th>
<th>Position/Role details</th>
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<tbody>
<tr>
<td>Mr Les Armstrong</td>
<td>President, Association of Residents of Queensland Retirement Villages</td>
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<tr>
<td>Ms Linda Clay</td>
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<td>Mr Robert Masson</td>
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<tr>
<td>Mr Andrew Cairns</td>
<td>Representative, Leading Aged Services Australia Queensland</td>
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<tr>
<td>Mr Mark Eagleston</td>
<td>General Manager, Retirement Village Association</td>
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<tr>
<td>Mr Robin Lyons</td>
<td>Partner, Minter Ellison Lawyers</td>
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<tr>
<td>Mr Andrew MacIntosh</td>
<td>Chair, Queensland Regional Committee, Retirement Village Association</td>
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<tr>
<td>Ms Geri Taylor</td>
<td>Policy and Retirement Living, Leading Aged Services Australia Queensland</td>
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<tr>
<td>Ms Kim Teudt</td>
<td>Board Member, Leading Aged Services Australia Queensland</td>
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<tr>
<td>Mr Robert Bird</td>
<td>Member, Policy Advisory Group, National Seniors Australia Queensland</td>
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<td>Mr Ronald Holt</td>
<td>Member, Policy Advisory Group, National Seniors Australia Queensland</td>
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<tr>
<td>Ms Vera Somerwil</td>
<td>Chair, Policy Advisory Group, National Seniors Australia Queensland</td>
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<tr>
<td>Mr Mark Tucker-Evans</td>
<td>Chief Executive, Council on the Ageing Queensland</td>
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<tr>
<td>Dr Lucy Cradduck</td>
<td>Lecturer, Faculty of Law, Queensland University of Technology</td>
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<tr>
<td>Mr Matthew Dunn</td>
<td>Principal Policy Adviser, Queensland Law Society</td>
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<tr>
<td>Mr David Netherton</td>
<td>Director of Pacific Law and Representative of Elder Law Committee, Queensland Law Society</td>
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<tr>
<td>Miss Louise Pennisi</td>
<td>Policy Solicitor, Queensland Law Society</td>
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<tr>
<td>Mr Patrick Flynn</td>
<td>Senior Business Services Officer, Department of Housing and Public Works</td>
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<tr>
<td>Mr Timothy Francis</td>
<td>Executive Director, Office of the Registrar, National Regulatory System</td>
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<td>Name</td>
<td>Role and Organization</td>
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<td>Mr Terry Green</td>
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