

## RETIREMENT VILLAGES - NOT A LIFESTYLE AT ANY COST

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### 1. Introduction

#### 1.1. About Consumer Affairs Victoria

Consumer Affairs Victoria is a business unit located within the Department of Justice. It has approximately 320 staff and funds 22 community based agencies, and is responsible for maintaining an effective framework for consumer protection services in Victoria.

The vision of Consumer Affairs Victoria is for **Confident Consumers** and **Protected Communities**. Its objectives are to protect and promote the interests of consumers, to ensure markets work in the interests of consumers and the broad community, and to improve access to consumer protection services, particularly vulnerable groups.

The objectives and activities of Consumer Affairs Victoria are underpinned by eight basic consumer rights which have been enshrined in the United Nations Guidelines for Consumer Protection. These are:

- the right to safety;
- the right to be informed;
- the right to have choices;
- the right to be heard;
- the right to consumer education;
- the right to redress;
- the right to a healthy environment; and
- the right to satisfy basic needs.

#### 1.2. Consumer protection and competition in the marketplace

Consumer protection aims to defend and promote the rights of consumers, (especially vulnerable and disadvantaged consumers) and achieve social justice. Helping markets work better is a method for achieving this aim. A major element of a healthy marketplace is the existence of effective competition and a sound consumer protection framework. This facilitates a competitive marketplace and helps to build both consumer and trader confidence.

Helping consumers make choices is one approach to the problem of market failure arising from information asymmetries which, in turn, can help improve competition.

Consumer protection strategies can also involve restricting competition by constraining the activities of suppliers. This may be manifested by market interventions such as banning or restricting certain behaviour by legislation or mandatory industry codes of conduct.<sup>1</sup> Intervention is in the public interest, if the benefits produced, outweigh the costs associated with restricting competition. However, this needs to be assessed in each situation, with consideration to any possible unintended consequences of such an approach.

### 2. Review of the Retirement Villages Act

#### 2.1. About the Retirement Villages Act

The *Retirement Villages Act* 1986 and *Retirement Village Regulations* 1999 provide the regulatory framework for the retirement village industry in Victoria. The main objective of the legislation is to clarify and protect the rights of persons who live in, or wish to live in, retirement villages.

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<sup>1</sup> Voluntary codes of conduct are also adopted within a competitive marketplace. They are sometimes used to give an individual business or members of an industry association a competitive edge.

A review of the *Retirement Villages Act* commenced in April 2002. A key feature of the review has been stakeholder consultation.

## **2.2. Approach to the review**

The *Retirement Villages Act* has provided residents and retirement village operators with the freedom to contract while providing some basic consumer protections.

It is considered, however, that retirement village operators are likely to have greater experience and knowledge of the marketplace, potentially placing them in a stronger position within the marketplace. For example, residents who are considering entering into a retirement village residence contract are usually making a once in a lifetime decision of a significant financial nature, whereas operators will often enter into contracts with residents.

While it is considered appropriate for regulatory intervention to ameliorate the imbalance of bargaining power between the parties and address areas of market failure, Consumer Affairs Victoria has taken a transparency approach wherever possible. In other words, the emphasis of the review has been to ensure that prospective retirement village residents have adequate information and support to make active and informed choices and decisions.

## **2.3. Thematic issues arising in the review**

The review has revealed a range of concerns within the retirement village marketplace and with the *Retirement Villages Act*. Some of these concerns will require legislative amendment.

Major thematic concerns raised by residents and residents groups included:

- Difficulty understanding contracts and the various fee arrangements contained within contracts (particularly the deferred management fee);
- Lack of clarity regarding residents' rights to participate in village decision making; and
- Lack of dispute resolution options.

On the other hand, village operators' broad concerns focused on:

- Difficulty complying with different legislation (in particular, the Victorian *Retirement Villages Act* and the Commonwealth *Aged Care Act*);
- Balancing the needs of residents and operators to ensure that villages remain viable; and
- Maintenance of consumer confidence in the retirement village industry.

## **3. Responding to concerns with contracts and fees**

Many residents submitted that the contractual arrangements and fee structures in their retirement village residence contracts were difficult to understand. Contracts commonly contain arrangements for an ingoing contribution (ingoing fee), maintenance charges (ongoing fee) and a deferred management fee (outgoing fee). Fee arrangements are often presented in a complex formula which some residents find difficult to interpret. Many residents reported being unaware of the fee amounts (dollar sums) until they had been residing in their units for, in some cases, years. This was despite seeking legal advice concerning their contract prior to entering the agreement. This has resulted in some residents feeling very disgruntled, some even claiming that their retirement village fees are unfair and unreasonable.

In responding to this concern, Consumer Affairs Victoria contracted Beverly Kliger & Associates and the Institute of Social Research, Swinburne University of Technology to undertake an analysis of the fairness and reasonableness of the various financial arrangements associated with deferred management fees. The project had two components:

- An analysis and reporting on the fairness and reasonableness of current financial arrangements; and
- The development of a financial modelling device and financial assessment tool for prospective residents.

The project commenced in October 2002 and was completed in May 2003.

## **4. Assessing Fairness and reasonableness of retirement village contracts**

### **4.1. Retirement Village Marketplace**

Living in a retirement village is an attractive option for a growing number of older people. It offers security, companionship and access to the services they consider important. However, retirement villages are diverse, some being large complexes with elaborate facilities while others consist of a few residential units on their own. This diversity is reflected in funding and legal (contractual) arrangements with costs of residence and services being paid on entry, as a monthly charge, on exit, or a combination of two or more of these options.

While many older people enter a retirement village believing they are purchasing a unit, this is not the case. Many secure a licence to occupy, and even the villages that offer title (strata title) do so with an encumbrance on the title or condition of sale that vests control of sale to the village operator. So, while retirement villages are an attractive accommodation option for many older people, it is one that carries significant financial and occupational risks. These risks are often not well understood<sup>2</sup>.

Not only are there different forms of villages but, in Victoria, there are a range of complex legal and financial arrangements the most predominate being: long-term lease or licence; a periodic tenancy; or title by fee simple<sup>3</sup>.

Moreover, it must be remembered that retirement village consumers are a particular 'demographic' with unique attributes linked to age that impact on their decision making and choices. These attributes include the realisation that as we age, our ability to keep up with the 'real value' of money deteriorates. The loss of contact with work and regular income makes it difficult to keep up with price movements, particularly in times of inflation. Old age brings with it frailty, and sometimes a declining ability to cope with the complexities associated with personal finances.

In addition many of the current generation of retirees have spent their lives engaged in a gendered division of domestic labour in which men assumed responsibility for money matters. However, women tend to out-live men, requiring the surviving partner sometimes to take on responsibilities they have not previously had to be concerned with.

There are also non-price aspects of retirement village living that have an important bearing on a person's wellbeing and quality of life. The most prevalent non-price considerations include:

- Security (both physical and perception of) within the individual accommodation unit, the complex and the surrounding neighbourhood;
- Friendship and opportunities for sociability arising from shared living spaces and facilities, as well as higher density living with people at a similar stage of the life cycle;
- Proximity of the village to facilities and services in the area;
- Appropriateness of the services and facilities within the village;
- Proximity to family, especially children and grandchildren;
- Maintenance of physical facilities at a high level made possible by a common sinking fund and professional property management.

All of these services are important. But they are very difficult to measure financially.

The important financial elements of fair value for residents that the project focused on are set out below in Table 1.

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<sup>2</sup> <http://www.beehive.govt.nz/briefings/socialpolicy/seniorcitizens/chapter7.cfm>

<sup>3</sup> Fee simple means owning the title to the land.

**Table 1. Characteristics of Fair Value for Residents**

Characteristic	Description
Affordability	Affordability has a number of components: <ul style="list-style-type: none"> <li>• Level of capital input: ingoing contribution and deferred management fee;</li> <li>• Ongoing outlay: the percent of income that is expended over time and the proportion of total income spent on housing.</li> </ul>
Mobility: Ability to exit the village	Ability to leave due to change of circumstances such as diminishing health, loss of a partner, children moving out of the area, or simply a realisation that they may not have chosen wisely and that they would like to live a more independent life.
Transparency: the ability to make an informed choice	The ability to make an informed choice is associated with being provided with information to enable consumers to: <ul style="list-style-type: none"> <li>• Make a reasonable assessment of the costs and services on offer;</li> <li>• Compare these costs and services with similar offers from other retirement villages;</li> <li>• Understand the type and level of services and facilities provided as part of purchase price and ongoing costs associated with living in a retirement village;</li> <li>• Compare the costs with the purchase or rental of similar sized accommodation in a similar location not within a retirement village.</li> </ul>

## 4.2 Are retirement village contracts fair and reasonable?

In reviewing a range of contracts, we were struck by the financial complexity of the options available to prospective residents. Those interested in this form of accommodation must consider not just the financial complexities of each specific contract, but also the fee and services regime that operate within a village, and the way this is presented to prospective residents.

It was not surprising to read submissions to the review of the *Retirement Village Act* which suggested that some older people had been exposed to unanticipated costs or complicated and consequently misunderstood financial terms and conditions, which left them less than fully satisfied with their current living arrangements.

For example, all contracts set out a regime of fees including service fees. In one contract there were 15 different items for which a service fee was payable and stated '*outgoings which are now or may be hereafter rated, taxed, charges assess or imposed*'. However, the services covered by the Deferred Management Fee were not explicitly set out in any contract. In fact, industry representatives admitted that the term Deferred Management Fee does not properly indicate what the fee is for.

Overall, the retirement village documentation is complex, technical and legally based. There is little if any 'plain language' explanation except for the disclosure statements required under the *Retirement Village Act* 1986. The contract documentation does not appear to take account of the experiences, conditions, and vulnerabilities that are more common among, or specific to, older people such as diminished mental or physical capacity. This complexity results in an information imbalance between the retirement village operator and consumers that may lead to some operators gaining an unfair advantage.

Consumer Affairs Victoria is considering how to overcome this imbalance, to ensure consumers are sufficiently informed and provided with adequate protections. One option is to ensure that residents are provided with plain language summaries and explanations of complex, technical and legally based documentation that relates to financial arrangements.

Plain language summaries and explanations could accompany all contracts setting out:

- Each cost – that is, details of the services being provided for each fee and charge; and
- The conditions relating to exiting the village – that is, the costs, charges and/or any timeframe or limitation imposed when a resident wishes to leave a retirement village.

Moreover, prospective residents of retirement villages should be provided with sufficient information to enable them to:

- **Assess** the costs and services on offer from the retirement village operator;
- **Choose** between retirement villages by comparing the costs charged and services offered by one retirement village operator with the costs and services of other retirement village operators;
- **Understand** the type and level of services and facilities provided by a retirement village operator as part of the ingoing contribution (purchase price) and ongoing costs associated with living in a retirement village; and
- **Compare** the costs of living in a retirement village with the purchase or rental of similar sized non-retirement village accommodation in a similar location.

Furthermore, a prospective resident should be able to make these assessments using different time frames and types of accommodation in a retirement village.

As part of the consultant's brief, a prototype financial modelling tool has been developed to respond to each of these dimensions of choice in an easily understandable way.

### 4.3 Making retirement village costs of entry and exit transparent

The Retirement Villages Consumer Assessment Tool (ReVCAT) has been developed with input from industry and consumer representatives at a number of demonstrations of the tool during the development process.

The Tool allows prospective retirement village residents to assess the financial cost and consequences of entering into a residence contract. Consisting of a series of interlinked Excel spreadsheets, it provides the following variables:

- Purchase price of the property bought by resident;
- Years of residency;
- Interest rate as determined by the ten-year Commonwealth Bond Rate (CBR) and detailed daily. This can be accessed at <http://www.rba.gov.au/Statistics/Bulletin/F02Dhist.xls>;
- Monthly body corporate fee or monthly service fee (maintenance charge);
- Regular costs paid by the resident;
- The extent to which the deferred management fee (DMF) is applied;
- The purchase price of the unit or residence right;
- The CPI as applied to maintenance charges and as applied to annual living costs;
- The cost of the sale of the unit or residence right;
- Financial penalties when and if applicable; and
- The comparative cost of remaining in a family home.

The ReVCAT consists of a series of eight linked spreadsheets. Four spreadsheets are hidden and comprise the mathematical engines for three visible spreadsheets. These sheets can be made visible through normal spreadsheet functions, although this is not recommended when the spreadsheet is to be used by a prospective resident. The fourth visible spreadsheet is the 'front door' to the model through which access to the remaining visible spreadsheets is obtained. The four visible spreadsheets receive user input with three allowing calculations and presentations. The areas addressed by the Retirement Villages Consumer Assessment Tool are presented below in Table 2.

**Table 2. Areas addressed by the Retirement Villages Consumer Assessment Tool**

Name of Visible Spreadsheet	Activity	Corresponding Hidden Spreadsheet(s)
Start New	Allows entry to calculation and presentation spreadsheets.	Not Applicable
Exit Fees	Calculates departure costs for three different methods of calculating deferred management fees. Allows user opportunity to create three different scenarios for each method. Presents results of calculations graphically.	Graph Data
Investment	Calculates return on investment for three different methods of calculating deferred management fees.	GraphData2

	Linked to Exit Fees spreadsheet and utilises same input data to determine results. Presents results of calculations graphically.	
Cost of Living	Calculates regular annual living costs for resident of retirement village and compares costs to similar non-retirement village accommodation in a unit. Spreadsheet incorporates an index for inflation. Linked to Exit Fees spreadsheet and utilises same input data to determine results. Presents a listing of lifestyle benefits of retirement villages for information of prospective residents.	Maint_Data Cost of Living Inflation

Movement between spreadsheets is by hyperlinks, while movement around individual spreadsheets can be done by usual cursor or arrow activity. Currently, the hyperlinks are located below the calculation and presentation sections of Exit Fees, Investment and Cost Of Living spreadsheets. While this is cumbersome, their location reflects the first stage development of the model discussed earlier. Hyperlinks on the 'front door' appear on screen when the model is opened.

The spreadsheets are protected and may not be changed without authorisation.

#### **4.4 Who can operate the tool?**

It will be necessary for operators of the ReVCAT to undertake a training course to ensure the quality of information provided.

It is considered appropriate that retirement village operators operate the ReVCAT with prospective consumers in the first instance. However, it would be advisable for prospective residents to seek independent advice concerning the ReVCAT findings.

### **5. Conclusion**

Prospective retirement village residents are entitled to understand the cost (in dollar terms) of moving into, living in and moving out of, a retirement village so that they can make active and effective choices. On the other hand, retirement village operators should not be unduly prevented from fairly and reasonably competing in the marketplace by offering a wide range of contractual and fee arrangements which may appeal to prospective customers.

While still a prototype and not yet approved for use by government, early trials demonstrate the potential for the Retirement Villages Consumer Assessment Tool to strike a balance between the needs of both residents and retirement village operators and, in turn, help build a consumer protection framework for a healthy and competitive retirement village marketplace.