



Older Victorians need strong legal protections to live with dignity and to enjoy a good quality of life in their residence of choice.

Housing for the Aged Action Group (HAAG), Residents of Retirement Villages Victoria (RRVV), Council on the Ageing Victoria (COTA Vic) and Consumer Action Law Centre (CALC) all believe that the law regulating the retirement living sector needs to be overhauled to offer more robust protections for those living in retirement villages, residential parks and independent living units.

Reform is urgently needed to:

1. Ensure retirement housing is safe and suitable for older people
2. Provide easy access to free and effective dispute resolution
3. Ensure contracts are fair and prices are transparent
4. Require financial transparency and accountability

Ensure retirement housing is safe and suitable for older people

Most matters affecting the day-to-day life of residents of retirement housing are determined by individual contracts. Many contracts are overly complex, and others are too vague, leaving many residents uncertain of their rights and how to enforce them. Many residents, particularly those with low incomes, are living in housing which does not meet the needs of older people.

Low income residents have little if any choice about which retirement village, park or unit they move into—they simply need to take what they can afford. The law must place obligations on providers of all kinds of retirement housing so that homes meet minimum requirements relating to safety and suitability.

Case Study

A man in his eighties living in a retirement village in suburban Melbourne is no longer able to use the taps in his home because of limited use of his hands. He has asked for a new tap which will be easier to use, but six months later nothing has changed.

Another resident in the same village has lived in her unit for over 25 years. In that time there has never been any work done to upgrade the unit—neither the electric stove, bathroom, kitchen, carpets or curtains have ever been replaced. This resident feels unsafe using the shower on her own because it has no handrails.

One seventy year old resident lives in second floor unit. There is no lift. She says she feels capable of using the stairs now but thinks she will struggle in future.

Many residents in this village are on low incomes and one year contracts. As a result they have little security of tenure in their current village and have few other affordable options available to them. One couple haven't fully unpacked their belongings because they feel they have no security and will be required to move after their 12 month term ends.

Easy access to free and effective dispute resolution

Currently, access to dispute resolution for residents of retirement villages in Victoria is difficult and prolonged. Many residents don't understand their options, and specialist legal advice is hard to find and often costly. Consumer Affairs Victoria's conciliation service is free to use, but cannot make binding determinations and will not be appropriate for all disputes. VCAT can hear most disputes, but retirement village residents can wait up to six months for a hearing in VCAT's Civil List.

Utilities, telecommunications, financial services and many other Australian industry sectors have accessible, independent dispute resolution processes which work well for both business and consumers, and are free for consumers to use. New Zealand has a dispute resolution process specifically designed for retirement village disputes which is free for residents. There are clearly many dispute resolution options that may work better than the current system.

Case Study

The following is from the account of one resident on their experience with the CAV Conciliation process:

...following the CAV conciliation a draft agreement was drawn up and it was agreed that it needed to be taken to the Annual Meeting for approval by residents. This draft agreement was sent to CAV and CAV regarded this as a successful outcome.

At the Annual meeting, [management] again failed to keep the requirements of the RV Act... when I went back to CAV to seek further assistance they told me I should take the matter to VCAT.

Fair contracts and transparent pricing

Contracts and pricing for retirement village living can be opaque and, in some cases, unfair. Most residents leaving retirement housing will be required to pay some or all of the following fees:

- **A deferred management fee (DMF):** an amount determined by a formula, usually based on the ingoing contribution the resident paid or the sale price. Some DMFs are now up to 40% of either the sale price or the ingoing contribution. The DMF may also give management a large portion of any Capital Improved Value on the home.
- **Reinstatement or renovation costs:** a requirement to either pay to restore the unit to its original condition, or pay for improvements to bring the unit up to date;
- **Contribution to 'long term maintenance fund':** an amount determined by a formula, usually based on the price the resident paid or the sale price;
- **Sale costs:** advertising, marketing and legal costs for selling the unit, and/or a sales commission.

None of these costs can be exactly quantified at the time the consumer enters a contract, meaning that the total cost of living in a village is difficult to ascertain, and it is hard to compare the costs of different villages.

Residents report that their contracts, which look reasonable on the surface, later prove to stack all power in favour of managers or owners.

Many residents decide to move into a village on the basis of promises that certain facilities will be built, but these promises aren't always kept. Forcing management to fulfil these commitments can be difficult because of the way individual contracts are worded.

Case Study

Residents (or their estates) of one village in a Melbourne suburb are being billed for over \$50,000 in improvements to their units when they move out or pass away. This is on top of paying DMFs of up to 35 per cent of the ingoing contribution for the unit.

This means residents can be paying exit fees of \$190,000 on an ingoing contribution of \$400,000 (a DMF of \$140,000 plus renovation costs of \$50,000).

The improvement work that village management requires to be done is extensive—replacing kitchen cabinets and appliances, bathrooms and carpets, and installing new features (like air conditioning) that were not in the unit previously. Residents have no say in what changes are to be made even though residents must pay for the work. Residents may recoup some of this money through an increased sale price for the unit, but there is no guarantee of this and any increase in sale price also increases the return to management.

The management's power to require refurbishment can only be found with a very close analysis of the contract which is over 60 pages long. Much of the detail is not in the body of the contract but buried in the 'definition and interpretation' section.

By this point, residents may have exhausted all savings and are reliant on the pension. After paying large refurbishment costs, many residents are left without enough to enter a nursing home.

Case Study

A number of residents of a village in suburban Melbourne moved into the village when it was in the early stages of development. Residents were promised that communal facilities would be built. Three years later, the facilities are still not built.

Part of the difficulty residents have is that, despite the promises made by management during the sale process, the contract only gives residents use of communal facilities 'as and when they become available'.

Residents made formal complaints about the owner's failure to build promised facilities and the dispute was conciliated through Consumer Affairs Victoria. The village owners did not take the action required by the conciliation process, and the only option left to the residents is to take the matter to court.

This is one of many villages in Victoria where residents are living for years on what are effectively building sites without the facilities they were promised. Residents feel they are powerless—they are unable to force management to complete the promised work, but also cannot afford to leave the village. After paying DMFs and other exit costs they would not be able to afford most other housing options.

The 2013 contract and disclosure reforms led to some improvements in cost disclosure, prohibited some of the most unfair contract terms, and will make contracts easier to compare. This is a good start. However, with contracts in some villages over 100 pages long, prospective residents still have little chance of fully understanding their rights and obligations when they sign. Further reform is required to ensure that retirement housing contracts are fair and older Victorians can have certainty about their financial situation.

Financial transparency and accountability

Residents pay significant amounts of money in ongoing fees and contributions to capital funds which they expect will fund shared facilities. However, residents report that they are kept in the dark about how much money managers are collecting across the village and how much is spent on things that benefit residents.

The Retirement Villages Act requires retirement village management to report details on income and expenditure at annual meetings with residents, but more detailed disclosure is not required. More information could be made available to residents on request so they can be assured that their fees and contributions are being spent appropriately.

Case Study

One company, which owns several retirement villages, charges thousands of dollars in payroll tax to the maintenance accounts of each of their villages. It is not clear why such a large amount should be billed to residents, as each village has no more than two employees on moderate salaries. This same company levies fees for capital works (such as establishing new gardens) even though it already receives regular maintenance fees.

Another village owner reportedly takes tens of thousands of dollars from the maintenance account for 'Owners Drawings'.

In both cases, residents have legitimate queries about what their fees are paying for, but information is not made available to explain spending.

Next Steps

We believe the best way to approach these problems is to undertake a broad-based review of the retirement housing sector and the Retirement Villages Act in the next term of Parliament. This review would allow all stakeholders to have a say about what is working and what needs to change.

While a review would consider a broader range of issues than those mentioned here, the four matters listed above require urgent attention and should be considered as early as possible in the next term.