

31 March 2015

**By email: [Elizabeth.Lanyon@justice.vic.gov.au](mailto:Elizabeth.Lanyon@justice.vic.gov.au)**

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Dear Elizabeth

### **Proposed re-make of Retirement Village Regulations**

The Consumer Action Law Centre (**Consumer Action**), COTA Victoria and Residents of Retirement Villages Victoria (**RRVV**) welcome the opportunity to provide feedback about the effectiveness of the *Retirement Villages (Records and Notices) Regulations 2005* (**Retirement Village Regulations**) and *Estate Agent (Retirement Villages) Regulations 2006* (**Estate Agent Regulations**).

#### **Overview**

Retirement village contracts can be long and complex. In our view, this limits the ability of residents to understand their rights and obligations, and to compare products offered by different providers.

We support the Victorian Government's commitment to improve transparency of retirement village contracts and pre-contractual disclosure. However, the effectiveness of these changes will be limited because they will only affect businesses regulated by the *Retirement Villages Act 1986* (**Retirement Villages Act**). Many other businesses, which are regulated under the *Residential Tenancies Act 1997* (**Residential Tenancies Act**) but are for all intents and purposes a 'retirement village', will not be affected.

This submission:

- outlines the importance of housing to older Victorians, and the barriers to older people making complaints;
- recommends that the Victorian Government and Consumer Affairs Victoria (**CAV**) consider more comprehensive reforms to provide that all retirement accommodation provided consistent protections for residents, and argues that a broad review of the retirement housing legislation is necessary;

- recommends improvements to the procedures for dealing with management complaints and resident disputes;
- argues that data in notices to the Director be made public, and additional data fields included;
- recommends rearranging the content of the fact sheet and disclosure document to ensure information relating to costs is more prominent;
- recommends tougher enforcement action by CAV to ensure that businesses are complying with disclosure requirements; and
- recommends that estate agents be prohibited from charging commissions for selling a property if the sale is not completed.

Our comments are detailed more fully below.

## 1. Importance of housing to older people

Research has shown that the importance of housing and accommodation is amplified with ageing. The housing situation of the aged is the culmination of a lifetime of opportunities and obstacles.<sup>1</sup> According to the Australian Bureau of Statistics (**ABS**), "older people place a high value on their home environment, as they are less likely to be in full-time employment, and consequently more likely to spend more time in their home, and in their immediate neighbourhood, than at any other period in their lives".<sup>2</sup>

The importance of stable, safe and secure accommodation for older people can make them exceptionally vulnerable to accommodation-related problems. Housing problems often present a greater level of stress and anxiety to older people than other age groups, which means that appropriate regulation for retirement housing is particularly important.<sup>3</sup>

## 2. Barriers to making complaints

Retirement housing problems are often 'hidden' as older people may be unwilling or unable to make complaints or enforce their legal rights. Many older people may have difficulty accessing complaint mechanisms and communicating their needs due to physical limitations, communication difficulties, or a lack of knowledge of their rights, entitlements, and the

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<sup>1</sup> Faulkner, D., 'Linkages among housing assistance, residential relocation and use of community health and social care among old adults: shelter and non-shelter implications for housing policy development positioning paper', *Australian Housing and Urban Research Institute*, 2001 as quoted in S. Ellison et. al., 'The legal needs of older people in NSW', *Law and Justice Foundation NSW*, 2004, p. 85, available at: [http://www.lawfoundation.net.au/ljf/site/articleIDs/6FFEB98D3C8D21F1CA25707E0024D3EB/\\$file/older\\_law\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/6FFEB98D3C8D21F1CA25707E0024D3EB/$file/older_law_report.pdf).

<sup>2</sup> 'Older People, New South Wales, Catalogue n.4108.1,' *Australian Bureau of Statistics*, 2000, p. 5 as quoted in S. Ellison et. al., 'The legal needs of older people in NSW', *Law and Justice Foundation NSW*, 2004, page 85, available at: [http://www.lawfoundation.net.au/ljf/site/articleIDs/6FFEB98D3C8D21F1CA25707E0024D3EB/\\$file/older\\_law\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/6FFEB98D3C8D21F1CA25707E0024D3EB/$file/older_law_report.pdf).

<sup>3</sup> 'Older People, New South Wales, Catalogue n.4108.1,' *Australian Bureau of Statistics*, 2000, p. 5 as quoted in S. Ellison et. al., 'The legal needs of older people in NSW', *Law and Justice Foundation NSW*, 2004, page 149, available at: [http://www.lawfoundation.net.au/ljf/site/articleIDs/6FFEB98D3C8D21F1CA25707E0024D3EB/\\$file/older\\_law\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/6FFEB98D3C8D21F1CA25707E0024D3EB/$file/older_law_report.pdf).

complaint mechanisms available.<sup>4</sup> Another barrier is the difficulty in accessing specialist advice, which is often both expensive and hard to find. In general, retirement housing residents are not wealthy, and may find it impossible to pay for specialist advice. The majority of residents are either fully or partially reliant on the age pension.<sup>5</sup>

There are also social barriers which leave some residents feeling too intimidated to complain. Residents may fear being labelled a trouble-maker by other residents, or damaging their relationship with staff and management.<sup>6</sup> As set out above, the importance of housing is amplified as we age, and older residents may fear losing their homes if they complain. We have received reports of outright bullying by retirement village managers in response to complaints, or to deter residents from making complaints.

Statistics relating to abuse in aged care is indicative of the barriers older residents face to seeking assistance. It is estimated that close to 70% of older people do not access legal services in instances of abuse because the situation is personal and individual and the older person may fear retribution from the abuser if they attempt to stop them.<sup>7</sup>

The Human Rights Commission has identified a number of general barriers impacting on older people's access to legal services, which included:

- technological barriers, particularly for telephone and web based services;
- a lack of awareness of where to obtain legal information and assistance;
- a lack of appropriately communicated legal information;
- the high cost of legal services;
- a lack of interest by some legal practitioners in older clients;
- difficulties in accessing legal aid, including restrictive eligibility tests;
- a lack of availability of legal aid for civil disputes;
- lack of specialised legal services for older people, particularly in rural, regional and remote areas; and
- lack of resources in community legal centres to tailor their services to the needs of older people.<sup>8</sup>

These factors together mean that government, regulators and the public are often unaware of the difficulties being faced by residents, and residents often feel powerless to enforce whatever rights they may have.

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<sup>4</sup> Dr. B. Black, 'Empowering and rights-based approaches to working with older people', *Alliance for the Prevention of Elder Abuse: Western Australia*, 2004, available at:

<http://apeawa.advocare.org.au/publications/empowering/rights-based-a/>

<sup>5</sup>L. Towart, 'Who Lives in Retirement Villages; are they wealthy enclaves, ghettos or connected communities?', University of Technology, 2013, available at: <http://www.soacconference.com.au/wp-content/uploads/2013/12/Towart-Social.pdf>.

<sup>6</sup> Above n. 4.

<sup>7</sup> D. Cripps et. al., 'Abuse of older people: Issues for lawyers', *Elder Law Review* Volume 1 No. 1, 2002, pp14-19, as quoted in Australian Human Rights Commission, 'Submission to the House of Representatives Standing Committee on Legal Affairs regarding Inquiry into Older People and the Law', 2006, available at: <https://www.humanrights.gov.au/inquiry-older-people-and-law#toc6>.

<sup>8</sup> S. Ellison et. al., 'The legal needs of older people in NSW', *Law and Justice Foundation NSW*, 2004 as quoted in Australian Human Rights Commission, 'Submission to the House of Representatives Standing Committee on Legal Affairs regarding Inquiry into Older People and the Law', 2006, available at: <https://www.humanrights.gov.au/inquiry-older-people-and-law#toc6>.

### 3. General remarks on current problems with regulation of retirement housing

As mentioned above, retirement housing issues are often 'hidden'. However, it is clear from our casework that there are a number of problems with the regulation of retirement housing in Victoria, and these problems are only going to be exacerbated as Victoria's population ages and the demand for retirement housing booms. At 30 June 2009, 13.6% of the population of Victoria was aged 65 years and over. This figure is expected to reach 23.1% in 2056.<sup>9</sup> In 2011, the Retirement Villages Association estimated that there were approximately 1,850 retirement villages in Australia, accommodating around 138,000 people around the country.<sup>10</sup> Jones Lang LaSalle estimated that the demand for new retiree accommodation between 2008 and 2023 would exceed 140,000 dwellings.<sup>11</sup>

As CAV notes in its consumer guide on retirement villages, many residential complexes market themselves as community-style accommodation for retirees but not everything that looks like a retirement village is regulated by the Retirement Villages Act.<sup>12</sup> This can lead to a real lack of clarity about which legislation applies to some of these accommodation types. In fact, we believe that this is a defining problem with the retirement accommodation industry—that it is regulated by multiple, overlapping pieces of legislation. In our view, this causes or contributes to many of the problems faced by residents of retirement accommodation.

Governing legislation for retirement accommodation operators is usually either the Retirement Villages Act, or the Residential Tenancies Act. However, other legislation including the *Owners Corporations Act 2006* and regulations under the Retirement Villages Act and the *Estate Agents Act 1980* are also relevant.

The Retirement Villages Act's definition of 'retirement village'<sup>13</sup> will generally determine which legislation applies. However, it can be very difficult to determine whether a development meets the Retirement Villages Act definition, especially in the case of not-for-profit villages. As a result, seemingly very similar developments can be governed by different legislation and the residents in those developments will enjoy different rights.<sup>14</sup> A disclosure regime might be assessed as costing less than stronger and more restrictive regulation as it does not limit the types of products offered, so has less impact on the market. However, disclosure alone will not stop the harm to residents unless the underlying product (in this case, retirement housing) is fair, safe and suitable. The net effect of these failings will be to impose costs on business and consumers.

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<sup>9</sup> Australian Bureau of Statistics, '1367.2 - State and Regional Indicators Victoria - Population Ageing in Victoria', June 2010, available at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/1367.2Chapter3Jun+2010>.

<sup>10</sup> Grant Thornton, 'Retirement living: Industry trends & prospects', January 2011,, available at: [http://www.grantthornton.com.au/files/retirement\\_living\\_report\\_1012.pdf](http://www.grantthornton.com.au/files/retirement_living_report_1012.pdf)

<sup>11</sup> Jones Lange LaSalle, 'Development available in the Retirement Living Sector: Is supply meeting demand or missing the mark?', 2008, available at:

<http://www.communityliving.net.au/home/DigitalAssets/research/joneslanglasalle/693921031/DigitalAssetsFile>

<sup>12</sup> Consumer Affairs Victoria, 'Retirement villages: Guide to choosing and living in a retirement village', 2014, available at: <http://www.consumer.vic.gov.au/library/publications/housing-and-accommodation/retirement-villages/retirement-villages-guide.pdf>.

<sup>13</sup> *Retirement Villages Act 1986* (Vic) s 3.

<sup>14</sup> Council on the Ageing Victoria, 'Submission to: Options Paper: Tenancy Policy Framework for Residential Parks', 2009, available at: [http://cotavic.org.au/wp-content/uploads/2011/01/microsoft\\_word\\_-\\_residential\\_parks\\_options\\_paper\\_final\\_july\\_09\\_web\\_version.pdf](http://cotavic.org.au/wp-content/uploads/2011/01/microsoft_word_-_residential_parks_options_paper_final_july_09_web_version.pdf)

We would like be quite clear that we do not oppose diversity and innovation in this or any market per se Diversity and innovation can be drivers of competition and generally provide benefits for consumers. However, much of the diversity in the retirement accommodation market appears to be exacerbating consumer confusion and detriment, rather than meeting residents' needs.

We recommend that the Government consider more comprehensive reforms to regulation of the retirement accommodation industry by undertaking a comprehensive review of the retirement housing sector. Ultimately the aim of such a review should be to ensure that all developments which effectively operate as retirement accommodation are regulated consistently, and that residents have appropriate consumer protections. In particular, we consider that reforms are urgently needed to:

- ensure retirement housing is safe and suitable for older people;
- provide easy access to free and effective external dispute resolution;
- ensure residents have fair contracts with transparent pricing; and
- promote financial transparency and accountability.

We recognise that these recommendations are beyond the scope of this review.

#### **4. Retirement Village Regulations**

***Does your organisation have any comments on the overall effectiveness of the regulations?***

##### A. General comments

We have based our comments on the overall effectiveness of the Retirement Village Regulations having regard to the objectives of the regulations, which are to:

1. provide a procedure for dealing with management complaints in retirement villages;
2. provide a procedure for dealing with resident disputes in retirement villages;
3. prescribe other particulars which must be included by the manager of a retirement village in a notice to the Director;
4. prescribe information for the purposes of the Retirement Villages Act;
5. prescribe the documents relating to a retirement village that a retired person, or a persona acting on behalf of a retired person, may request to inspect; and
6. prescribe other matters that must be included in a disclosure statement.

In relation to objectives 1 and 2, in our the view of Consumer Action, COTA Victoria, Housing for the Aged Action Group and RRVV, the Retirement Village Regulations have not provided an effective procedure for dealing with management complaints and resident disputes. Our comments in relation to dispute resolution are detailed in **sections 4(B) and (C)** below.

Objective 3 has been effective in that it has required information to be provided to the Director, but in our view the quality and transparency of this information could be improved. Our comments in relation to notices to the Director are detailed in **section 4(D)** below.

In relation to objectives 5 and 6, the Retirement Village Regulations have improved the overall effectiveness of disclosure to residents, although there is still work to be done in this space. Our comments in relation to disclosure are detailed in **sections 4(E) to (H)** below.

We do not wish to comment on objective 4.

## B. Dispute resolution

Schedule 1 of the Retirement Village Regulations prescribes a procedure for the creation and maintenance of a written record of a management complaint or resident dispute. Under sections 38E(4) and 38F(4) of the Retirement Village Act, if a dispute is not resolved within 72 hours the retirement village manager must create and maintain a written record of the complaint in accordance with this procedure.

Whilst we acknowledge that appropriate record keeping is important, we query the effectiveness of this procedure. We are unaware of any enforcement action taken by CAV to enforce these provisions, or the frequency of audits to ensure compliance. Given that residents are not entitled to access complaint records upon request, it seems there is little possibility of complaints being lodged in relation to non-compliance with these regulations.

Another weakness of the Retirement Village Regulations and the Retirement Village Act is that management is able to set out its own procedure for addressing complaints. Depending on the content of that procedure, a manager may not even be required to respond to a complaint or to deal with the complainant on an ongoing basis. The Retirement Village Regulations merely set out record keeping requirements if the manager does in fact choose to correspond with the complainant. We have received reports from residents that some managers do not respond adequately to complaints, or fail to respond at all.

We recommend that residents be provided with access to records relating to their complaints within a reasonable period (such as five business days) following a request for access by the resident.

We also recommend that the Retirement Village Regulations contain more prescriptive requirements for internal dispute resolution (**IDR**) procedures, having regard to AS/NZ ISO 10002-20014 *'Customer satisfaction - Guidelines for complaints handling in organisations'* (**the Australian Standard**). It is clear from feedback from residents that internal dispute resolution procedures are currently ineffective. Some guiding principles that could be applied in the regulations include:

- taking reasonable steps to ensure that residents know about the existence of your IDR procedures and how to make a complaint;
- having simple and accessible arrangements for making complaints or disputes;
- including clear response times for dealing with a complaint or dispute and making the complainant aware of these response times;
- where immediate acknowledgment of receipt of a complaint or dispute is not possible, acknowledging complaints as soon as practicable;

- responding to complaints or disputes promptly in accordance with the urgency of a complaint or dispute;
- addressing each complaint or dispute in an equitable, objective and unbiased manner through the complaints or disputes handling process; and
- top management ensuring that the complaints or disputes handling process operates effectively and efficiently.<sup>15</sup>

### C. External dispute resolution

At present, if disputes are unable to be resolved internally, disputes must be taken to the Victorian Civil and Administrative Tribunal (**VCAT**). The VCAT process involves a court-like, adversarial hearing, which is much more formal and intimidating for a consumer than an ombudsman process.

Although it is beyond the scope of this review, we wish to express our support for establishing a dedicated external dispute resolution scheme to resolve disputes between residents and retirement housing operators. This could either be government-run or an industry funded scheme comparable to existing operations like the Financial Ombudsman Service or the Public Transport Ombudsman Victoria. These services provide consumers with access to free and independent dispute resolution, and also create incentives for businesses to settle disputes internally, as they incur costs each time a case is brought against them. The advantage of an ombudsman process is that it remains informal and avoids some of the pitfalls of adversarial face-to-face dispute resolution where a power imbalance exists between the parties. An alternative to an ombudsman scheme might be:

- improved conciliation services at CAV, including providing CAV with binding powers;
- better community advocacy services; and
- a retirement villages list at VCAT to speed up applications and make the process more relevant to residents

The most effective and efficient option should be considered under of fuller review of the legislation.

Effective dispute resolution services contribute to compliance, monitoring and enforcement by providing information about common and systemic issues of complaint. They may also improve complaint handling standards by education providers themselves, by acting as an additional discipline to avoid complaints.

### D. Notices to the Director

Item 7 of the Retirement Village Regulations prescribes particulars of which a retirement village manager must notify the Director. Without this data being publicly available, it is difficult for us to comment as to the overall effectiveness of these regulations.

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<sup>15</sup> Principles from ASIC's RG165, available at: <http://download.asic.gov.au/media/1240913/rg165-published-13-june-2013.pdf>.

There would be significant public value in providing public access to data collected through this process. Currently, it is very difficult to obtain reliable, independent data on the size and nature of the retirement village industry. The current CAV public register of retirement villages provides organisation names and addresses, plus details of 'exemptions claimed'. Other information in notices to the Director, such as occupancy rates, the number of residents or units and the types of tenure, is not easily accessible. Access to this data would have significant research value and improve understanding of the industry. If made publicly accessible via a website, it could also be a useful tool for prospective residents researching different villages.

We support the collection of data from managers, particularly if this information is available to the public. In order to improve the quality of this data, and hence its public value, we recommend that:

- managers specify the total number of completed units (Item 7(a)), the total number of units that are neither occupied nor promised to a future resident (Item 7(b)) and the total number of supported residence (Item 7(d));
- managers list the facilities available to residents using the checklists provided in section 7 of the Factsheet;
- the amount of deferred management fees; and
- the amount of ingoing contributions.

This data would greatly assist with research to compare the fees, facilities and size of not-for-profit villages compared to for-profit villages. Requiring additional information such as ingoing contributions and the amounts of deferred management fees would also assist the Director to ensure that retirement villages are correctly listed on the public register. There is very minimal data available to allow comparison currently. We recommend that managers be required to report to the Director at least every 3 years to maximise the value of this data. In our view, the current requirement to notify the Director of any change in particulars is otherwise likely to be difficult to enforce and penalties too insignificant to ensure compliance.<sup>16</sup>

***Does your organisation have any comments on how the implementation of the disclosure requirements that commenced in 2014 has progress, including any issues or impacts?***

#### E. General comments

Before considering the specifics of the disclosure requirements in the Retirement Village Regulations, it is worthwhile discussing general principles of what makes effective disclosure in consumer products. We believe the guiding principles for designing disclosure documents for complex products should be that:

- disclosure documents provide only the information necessary for consumers to understand the key elements of the product and allow easy comparison with other products. Many items that form part of the contract can and should be left out of

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<sup>16</sup> *Retirement Villages Act 1986* (Vic) s 38L(3): failure to notify the Director incurs a 10 penalty unit fine (\$1,476.10).

disclosure documents entirely. Comprehensive disclosure documents (for example, Product Disclosure Statements for financial services) can be daunting and difficult to understand and so are not read by many consumers and not understood by many who do. Shorter documents setting out only key points will be more likely to be read and understood by consumers and so more useful;

- information should be disclosed in a way that is clear and able to be easily understood by residents who may have little expertise about retirement villages. Jargon and complex language should be avoided;
- the most important information should be disclosed most prominently (for example, on the front page and/or in larger or bold type), and less important information should be placed towards the end of the document. Standard wording like disclaimers should be given lowest priority, if included at all.
- disclosure documents should be uniform across an industry to allow consumers to easily compare the products on offer from different providers on a like-for-like basis.

We believe that effective disclosure will contribute to two broad objectives:

- improving comprehension by giving residents a better understanding of the contract they are entering into, accepting that many residents do not have the expertise to understand a complex contract or access to professional advice, either due to lack of resources or lack of experts in this area; and
- allowing comparison between competing retirement housing options, which helps the resident find the best deal for them and also improves competition between providers.

#### F. Disclosure document

In our view, the requirement under item 9(h) of the Retirement Village Regulations for the disclosure document to include details of the estimated refundable ingoing contribution after 1, 2, 5 and 10 years residence has provided much needed clarity to residents.

We recommend considering whether the total cost could also be expressed as a per month figure in this calculation, which would give residents an even clearer picture of the real costs of living in a village, and allow them to compare villages more easily. This figure would not be an exact representation of the cost of the unit, and would not take fee increases and other unpredictable elements into account. However, it may provide a useful approximation. As well as benefiting consumers, it will encourage competition between providers and may prevent disputes between residents and management.

Financial information will be the most important information to disclose. The cost of a unit, both upon entry and departure, will probably be the most significant factor in a consumer's choice of village and an uninformed choice can have considerable impacts on long term quality of life and financial stability. For this reason, in our view the 'Notices' section of the Disclosure Document on CAV's website should be at the end of the document, rather than the beginning.

The current system used by retirement village operators to collect fees (comprising ingoing, ongoing and exit fees) conceals the true cost of moving into a retirement village. For many,

deferred management fees (or exit fees), shares of capital gains and renovation costs are particularly unclear. An industry-commissioned study even acknowledged that "new residents are still not achieving a clear understanding of the contracts they enter when joining a village."<sup>17</sup> This complexity, which in our view is unnecessary, creates poor outcomes for consumers and in turn has a negative impact on competition.

We question the necessity of the deferred management fee structure. It appears to be unique to the retirement village industry, and not only causes confusion but is arguably an unfair contract term. We recommend that the Government consider prohibiting these fee structures via the Retirement Village Regulations or other legislation. Consumer Action has argued on behalf of residents of Willow Lodge that deferred management fee clauses are in fact unfair terms. This case is still before the Victorian Civil and Administrative Tribunal.<sup>18</sup> At a minimum, the Retirement Village Regulations should impose an industry standard for deferred management fees and shares of capital gains, which would make it easier for residents to compare villages and estimate their estimated return upon departure.

### G. Fact sheet

We support the ongoing use of key fact sheets, as in our view these have assisted residents to understand the key features of villages and to make more informed decisions. Key facts sheets are being increasingly adopted (for example for home loans, credit cards and insurance products) because evidence shows they are effective in explaining complex contracts to consumers. Research by Paul O'Shea of the University of Queensland showed that a key fact sheet disclosure model improved consumer comprehension of consumer credit products by between 400% and 1,800% (depending on the product type) over the standard disclosure model used in the financial services industry at the time of the study.<sup>19</sup> O'Shea's study found that, using the standard disclosure model, only 6% of consumers tested correctly answered questions about the true cost of a home loan contract, 15% on how long it would take to pay off their credit card by making only minimum payments and 29% on the total interest charges on a car loan. Using the disclosure model developed by O'Shea, "almost 100% of [consumers] could answer almost 100% of the same questions"<sup>20</sup>

While this study considered consumer credit rather than retirement villages' contracts, the challenges faced by consumers in trying to understand either of these kinds of contract are similar. In both cases, contracts are complex and require some specialist knowledge to understand them properly. Both also involve costs that are not transparent, meaning consumers find it difficult to judge the total cost of a product and compare the costs of competing products.

However, as mentioned above, financial information will be the most important information to disclose. Having regard to this, we recommend that sections 9 to 12 and 20, which relate to

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<sup>17</sup> McCrindle, 'The McCrindle Baynes Villages Census Report 2013', 2013, available at: <http://www.mccrindle.com.au/ResearchSummaries/2013/McCrindle-Baynes-Villages-Census-Report-2013-Executive-Summary.pdf>.

<sup>18</sup> Consumer Action Law Centre, 'Media Release: Pensioners head to VCAT to challenge 'deferred management fees'', 26 February 2015, available at: <http://consumeraction.org.au/pensioners-head-to-vcat-to-challenge-deferred-management-fees>.

<sup>19</sup> P. O'Shea, 'Simplification of Disclosure Regulation for the Consumer Credit Code: Empirical Research and Redesign - Final Report', *Uniquist Pty Ltd*, 2010, p. 6.

<sup>20</sup> O'Shea (2010), p. 232.

costs, be given more prominence. We suggest that these sections be located at the beginning of the document, after the nature of ownership and tenure (section 4).

***Does your organisation have any comments on whether there are problems with the operation or impact of the regulations?***

**H. Enforcement and compliance**

In addition to our comments above, we would like to draw CAV's attention to the problems regarding enforcement and compliance under the Retirement Village Regulations. In particular, we are concerned by reports that some retirement villages' operators are providing information in fact sheets and disclosure documents which do not accurately reflect contracts.

If the information in fact sheets and disclosure documents do not accurately reflect the contracts, there is little point in introducing a simplified disclosure regime. It is completely unreasonable to expect a potential resident to cross-check a fact sheet and disclosure statement with their contract. If they are required to do so, the disclosure regime is in fact further complicating matters, and defeats the purpose of introducing simplified disclosure. Contracts are incomprehensible to many residents and professional advice is hard to find and will be unaffordable for many<sup>21</sup> In particular, low income consumers who are considering moving into not-for-profit retirement villages would struggle to be able to afford professional advice to guide them through their contract. Housing for the Aged Action Group of (mostly low income) residents of Independent Living Units found that 79% did not seek any advice before moving into their new accommodation, and 69% said that they had no help understanding their contract.<sup>22</sup> For these residents to then have to cross-check these contracts with disclosure documents is unacceptable.

We believe there needs to be tougher penalties for providing misleading information in the fact sheets and disclosure documents. Currently, the maximum penalty is only 50 penalty units (\$7380.50),<sup>23</sup> which is unlikely to act as a deterrent for retirement village operators. However, increased penalties must be coupled with increased audits and enforcement action by CAV. In our view there is inadequate monitoring of compliance with these provisions, which is allowing operators to contravene their obligations and potentially mislead residents.

**5. Estate Agent Regulations**

***Does your organisation have any comments on the overall effectiveness of the regulations?***

The Estate Agent Regulation requires certain disclosures to residents where the agent is entitled to charge a commission for selling the resident's premises even if a sale is not completed because the prospective purchaser does not enter into a contract for services with the retirement village manager.

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<sup>21</sup> Consumer Affairs Victoria, 'Retirement villages: Contract and information disclosure options', October 2011, p. 14.

<sup>22</sup> Housing for the Aged Action Group (HAAG), 'Speak Out - Have Your Say on Housing: The Not For Profit Retirement Housing Community Education Project, Eastern Metropolitan Region of Melbourne', 2011, pp. 13-14.

<sup>23</sup> Retirement Villages Act 1986 (Vic) s 20(1).

We oppose older Victorians being charged commission for sales that never occur. In our view, estate agents should only be paid commissions for sales that are actually completed. We recommend that estate agents be prohibited from charging commissions in these circumstances. In the alternative, we recommend that commissions are limited to a percentage of any non-refundable deposit received by the resident. This would not include any deposit received by the retirement village operator.

***Does your organisation have any comments on whether there are problems with the operation or impact of the regulations?***

Please see our comments above.

If you require any further information in relation to this submission, please contact Katherine Temple at Consumer Action Law Centre on 03 8554 6912 or at [katherine@consumeraction.org.au](mailto:katherine@consumeraction.org.au).

Yours sincerely,

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Chief Executive Officer

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President

**RESIDENTS OF RETIREMENT VILLAGES VICTORIA**

