

Retirement Housing Law Reviews: An Australia-wide Perspective

August 2015

- 'Retirement housing' includes a variety of different housing types, including retirement villages, residential parks, rental villages, Independent Living Units and semi-supported housing.
- This paper focuses on Government reviews of retirement village and residential park laws undertaken in other states in recent years.
- Victoria is yet to commit to undertaking similar reviews of its retirement housing sector, meaning that reform is lagging behind other states.

Introduction

'Retirement housing' covers a myriad of housing types, far beyond the traditional retirement village model that most people are familiar with. It includes residential parks, rental villages, Independent Living Units and semi-supported housing, in addition to not-for-profit and for-profit retirement villages. Unfortunately many of these types of retirement housing receive little attention from Government, which has caused legislative and policy gaps.

A number of other states have undertaken reviews of their retirement housing laws in recent years, with Victoria now noticeably the 'odd one out'. This paper focuses on recent reviews of retirement village and residential park laws in other states, and highlights the need for Victoria to conduct a review of its retirement housing legislation. To avoid a piecemeal approach to legislative review and reform, we recommend that a review be preceded by a thorough market study of the sector to ensure that the Victorian Government has a full understanding of the complexity of the sector and can more efficiently identify the priority areas for reform.

Older Victorians need stronger legal protections to ensure their retirement housing is safe, affordable and fair.

What are 'retirement villages' and 'residential parks'?

Retirement villages are a type of housing for retirees and their spouses. They may be either privately owned or owned and run by not-for-profit organisations. A retiree is generally defined as being aged over 55 years and no longer in full time employment. Retirement villages require an upfront payment for entry, also known as an 'ongoing contribution'.

Residential parks originated from caravan parks that allowed for permanent residency in low numbers. Over time the industry has evolved to provide larger numbers of sites (or entire villages) for retirees. Residents own their relocatable home but lease or rent the land on which it stands.

Victoria

Retirement Villages

The *Retirement Villages Act 1986* was enacted nearly 30 years ago to 'clarify and protect the rights of persons who live in, or wish to live in, retirement villages.'ⁱ This important legislation was last reviewed in 2004, and led to significant reforms enabled by the *Retirement Villages (Amendment) Act 2005*. Some of the most significant reforms related to the sale of units, the operation and management of villages and the retirement villages register.

In 2013, the Government introduced amendments to the *Retirement Villages (Records and Notices) Regulations 2005* and *Retirement Villages (Contractual Arrangements) Regulations 2006* relating to contract and disclosure obligations. These amendments were intended to help consumers better understand their rights and obligations when choosing and living in a retirement village. However, the amendments were narrow in scope, and did not consider broader issues that were emerging in the retirement housing sector.

Residential Parks

Residential parks are regulated under Parts 4 and 4A of the *Residential Tenancies Act 1997*. In its 2014 Platform, Labor announced that it would review and strengthen the residential tenancies legislation to ensure effective consumer protection and improve housing standards. Specifically, Labor committed to reviewing and strengthening the tenure for relocatable housing and caravan parks. We welcome the inclusion of residential parks and issues facing older renters in the recently announced Residential Tenancies Review.

Western Australia

Retirement Villages

Western Australia completed a comprehensive review of its retirement village laws in November 2010. The Final Report made over 100 recommended reforms for change.ⁱⁱ

The first stage of reforms commenced on 1 April 2014, with a second tranche of reforms to take effect later in 2015. Some of the most significant reforms included:ⁱⁱⁱ

- limiting the amount of time ongoing fees can be charged after a resident leaves a village to 6 months for pre-1 April 2014 contracts, or 3 months for post-1 April 2014 contracts
- prohibiting certain persons from being involved in the management of a village
- requiring additional disclosure to residents
- mandating matters that must and must not be included in contracts
- increasing the consistency and transparency of financial reporting
- including a more thorough refurbishment process

The Department of Commerce are continuing to work on introducing more legislation in response to recommendations made in the Final Report and some recent judicial decisions.

Residential Parks

Western Australia launched a review of its residential parks laws in 2012 with the release of a discussion paper.^{iv} The Consultation Regulator Impact Statement was released in 2014, which set out options for reform based on responses to the discussion paper.^v Consultation continued throughout 2014. The Department of Commerce is now finalising a Decision Regulator Impact Statement to be approved by Department executives and the Minister.

The review was launched due to concerns raised in the community about whether the current legislation is adequately addressing issues such as security of tenure, rent increases, and difficulties faced by residents when residential parks are closed or sold.^{vi}

South Australia

Retirement Villages

In April 2013 a Parliamentary Select Committee was established to review South Australia's retirement village laws. The purpose of this review was to assess and evaluate the rights and responsibilities of residents and operators of registered retirement villages in South Australia.

On the 20 May 2014, the Minister for Ageing tabled the Government's response to the Select Committee's recommendations, acknowledging the need for reforms to the Act based on a range of submissions made by peak bodies, operators and retirement village residents.

The recommendations included:

- clarifying the rights and responsibilities of both operators and residents
- enhancing information disclosure requirements
- providing tighter definitions
- implementing improved consumer protections.

The *Retirement Villages Bill 2015* was developed in response to these recommendations. The Minister opened a consultation on this Bill on 25 February 2015. Consultations are now closed. The Minister's office is currently reviewing submissions.^{vii}

Residential Parks

Residential parks in South Australia are governed by the *Residential Parks Act 2007*. COTA SA requested a review into the Act in its submissions during the 2012 review of South Australia's residential tenancies legislation, but this does not appear to have occurred yet.^{viii}

New South Wales

Retirement Villages

The *Retirement Villages Act 1999* was introduced following a review of the legislation relating to retirement village regulation in New South Wales, involving the preparation of an issues paper and wide-ranging consultation between government, retirement village residents, and the retirement village industry.^{ix}

Although the Government has not undertaken a comprehensive review of retirement village laws in recent years, a number of important changes to the *Retirement Villages Act 1999* and associated regulations have come into effect since March 2010. The changes include:

- annual management meetings between operators and residents
- annual safety inspections
- a cooling off period for new residents
- reducing the recurrent charges payable by a former occupant after vacating
- encouraging operators to keep recurrent charge increases at or below the rate of inflation
- increasing operators' accountability for budget deficits
- ensuring urgent repairs are carried out quickly
- cutting red tape for smaller village operators
- improving the way residents committees operate and making it easier for more residents to be involved
- giving residents the right to make reasonable alterations to their dwelling
- better protection of refund entitlements for residents who do not have a registered interest in their dwelling.^x

Residential Parks

The New South Wales Government commenced a review of its residential parks laws in November 2011 with the release of a discussion paper that outlined a range of issues and possible options for reform. A draft Bill was released for public consultation in April 2013, along with research profiling the industry.^{xi} The Bill was passed by Parliament in November 2013.

Some of the main reforms in the *Residential (Land Lease) Communities Act 2013* include:

- new rules of conduct for operators and sanctions for non-compliance
- mandatory education for all new operators
- a community-based approach to dealing with increases in site fees
- improved processes for making, amending and enforcing community rules
- new arrangements for disclosure of information to prospective home owners
- new rules to clarify and streamline the process for owners who wish to sell their home on site.

The new Act will replace the *Residential Parks Act 1998* but it cannot commence until supporting Regulations have been finalised. NSW Fair Trading is currently developing Regulations to support the new laws. A Regulatory Impact Statement and a draft Regulation were released for comment in

October 2014. A report is currently being prepared for the Minister for Fair Trading on any necessary changes to the draft Regulation. The new regulation is expected to be enacted in mid-2015.^{xii}

Queensland

Retirement Villages

Queensland launched a review of its retirement village laws in late 2012. The Transport, Housing and Local Government Committee published a report following the review, which recommended 37 reforms. In 2013, a Ministerial working party proposed a series of reforms to address the Committee's recommendations. A Consultation Regulatory Impact Statement was released for consultation between August and September in 2014.

The Consultation Regulatory Impact Statement examined a variety of issues including:

- village closure
- best practice standards for managing behaviour between persons at a village
- scheme operators offering alternative financial models
- early payout of a resident's exit entitlement
- other issues considered by the Parliamentary Committee and the Ministerial working party during the review of the *Retirement Villages Act 1999*.

The feedback received in response to the Consultation Regulatory Impact Statement is currently being considered.^{xiii}

Residential Parks

In Queensland, homes in residential parks are legislated by the *Manufactured Homes (Residential Parks) Act 2003*. In 2013, the Queensland Government conducted a survey of 991 households in residential parks to understand the characteristics of home owners, their homes and their key concerns. The survey also accepted submissions from interested stakeholders.

The Government released a report on the survey in 2015. The information contained in the report was intended to assist the Government to make proposals to improve fair trading practices in the operation of residential parks. Home owners, park owners and other interested stakeholders were later provided with the opportunity to provide feedback on the Consultation Regulatory Impact Statement.^{xiv} The review of the Act is continuing.^{xv}

Australian Capital Territory

Retirement Villages

The ACT announced a review of the *Retirement Villages Act 2012* (ACT) in August 2015 "to ensure that it meets the best possible regulation of retirement villages, for current and future residents, their families and village operators."^{xvi} The ACT Government has extended the public consultation period to 10 weeks instead of the usual six to ensure the community has sufficient time to share their thoughts on the effectiveness of the current laws.

A Review Advisory Group has been formed to conduct the review, and consists of owners and operators of retirement villages, residents of retirement villages, advocacy groups, and the property industry. The Review Advisory Group is currently developing an information paper to assist people wanting to be involved in the consultation. Minister for Justice Shane Rattenbury said, "The original Act was a genuine example of grass roots reform with the laws developed after extensive community consultation so it is important this level of engagement continues in the review."

For more information contact:

Katherine Temple, Senior Policy Officer e katherine@consumeraction.org.au p 03 9670 5088

References

- ⁱ[http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt5.nsf/DDE300B846EED9C7CA257616000A3571/ADC4EEDF9A9F8867CA25781000141D2A/\\$FILE/86-126aa064%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt5.nsf/DDE300B846EED9C7CA257616000A3571/ADC4EEDF9A9F8867CA25781000141D2A/$FILE/86-126aa064%20authorised.pdf)
- ⁱⁱ<http://www.commerce.wa.gov.au/sites/default/files/atoms/files/statutoryreviewofretirementvillageslegislationfinalrep.pdf>
- ⁱⁱⁱ <http://www.commerce.wa.gov.au/consumer-protection/retirement-villages-legislation-review>
- ^{iv} <http://www.commerce.wa.gov.au/consumer-protection/residential-parks-review-2012>
- ^v <https://www.commerce.wa.gov.au/sites/default/files/atoms/files/resparkscrisreview.pdf>
- ^{vi} <http://www.commerce.wa.gov.au/sites/default/files/atoms/files/dp0962residentialparksreviewaugust2012faqweb.pdf>
- ^{vii} <http://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/about+us/reviews+and+consultation/retirement+villages+act+review>
- ^{viii} https://www.cotasa.org.au/lib/pdf/residential_tenancies_act_june_2012.pdf
- ^{ix} <http://www.mcpeekelshaw.com.au/articles/Retirement%20Villages%20Paper%20for%20Armidale%20Conference%20%20February%202007.pdf>
- ^x http://www.fairtrading.nsw.gov.au/ftw/Tenants_and_home_owners/Retirement_villages/Reforms_to_retirement_village_laws.page?
- ^{xi} http://www.fairtrading.nsw.gov.au/biz_res/ftweb/pdfs/Tenants_and_home_owners/ResidentialL_parks_industry_profile.pdf
- ^{xii} http://www.fairtrading.nsw.gov.au/ftw/About_us/Have_your_say/Residential_land_lease_communities_bill.page;
http://www.fairtrading.nsw.gov.au/ftw/About_us/Have_your_say/Residential_land_lease_communities_regulation_2014.page
- ^{xiii} <http://www.hpw.qld.gov.au/Housing/IndustryRegulation/RetirementVillages/Pages/ReviewOfTheRetirementVillagesAct1999.aspx>; <https://www.getinvolved.qld.gov.au/gi/consultation/2010/view.html>
- ^{xiv} <http://www.hpw.qld.gov.au/Housing/IndustryRegulation/ManufacturedHomes/Pages/What%27sNew.aspx>
- ^{xv} <https://www.qld.gov.au/housing/buying-owning-home/what-are-manufactured-homes/>
- ^{xvi} http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/rattenbury/2015/share-your-thoughts-on-the-retirement-villages-act