



7 December 2017

By email: phia.a.kang@justice.vic.gov.au

Phia Kang
Consumer Affairs Victoria
GPO Box 123
Melbourne Victoria 3001

Dear Ms Kang

Amendments to retirement village factsheets

Thank you for the opportunity to provide feedback on the proposed amendments to retirement village fact sheets.

We do not oppose the proposed amendments to the fact sheets. However, we reiterate our concerns, which we have raised in previous submissions, that disclosure alone will not solve the problems in this sector.

In addition to reading highly complex legal documents that often exceed 100 pages in length, residents are expected to read fact sheets, disclosure statements, the CAV website and the CAV guide in order to properly 'inform' themselves. Not only is this unrealistic, but it ignores significant academic research that indicates that disclosure is an ineffective consumer protection tool. Instead, we need to address the underlying unfairness and complexity of this market.

We particularly need an external dispute resolution body that can make binding, independent decisions to resolve disputes between residents and operators. This would significantly improve access to justice for residents and their families. We also need to reduce complexity of contracts,

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eliminate unfair terms and improve management standards. Importantly, fees should be clear and quantifiable at the time of entry, so that residents can compare retirement housing options.

If disclosure is to be mandated, it should be consumer tested on residents to ensure that key messages are being understood. We also commend the work of Professor Lauren Willis on 'performance-based regulation'. Professor Willis suggests that instead of concerning ourselves with lengthy mandated disclosure that people generally do not read or understand, we should instead focus on consumer understanding and outcomes.¹

We also encourage CAV to consider the use of technology in improving the fact sheet disclosure to facilitate comparison, rather than merely paper-based disclosure. Such an approach is being used in other sectors that regulate fact sheets to improve price disclosure, for example retail energy.²

As part of this, CAV should consider mandating the use of retirement village calculators such as the one produced by Dr Tim Kyng of Macquarie University.³ This calculator converts retirement village fees into comparison rents so prospective residents can compare different options. However, the use of a calculator will be no substitute for effective regulation that reduces unnecessary fee complexity, and encourages transparency and consistency.

We note that credit licensees that receive applications for a reverse mortgage are required to use a calculator to make equity projections to show a consumer before assessing the loan application.⁴ The Explanatory Memorandum to this requirement stated that “the requirement to show the projections in person is intended to assist the consumer by enabling them to seek explanations directly from the licensee, or ask them questions prompted by the projections”.⁵ While we are not aware of any evaluation of this regulatory approach, we note that the incidence of complaints in this sector has declined since this requirement was mandated.

We have **attached** our previous submissions on the topic of disclosure in retirement housing for your consideration as part of this consultation process. We also support the separate submission made by Residents of Retirement Villages Victoria on this topic.

¹ See Lauren E Willis, 'The Consumer Financial Protection Bureau and the Quest for Consumer Comprehension', 3 *Russell Sage Foundation Journal of the Social Sciences* 74 (2017), available at:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2952485; Lauren E Willis, 'Performance-Based Remedies Ordering Firms to Eradicate Their Own Fraud', 80 *Law and Contemporary Problems* 7-41 (2017), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3018168.

² See, Australian Energy Regulator, *Customer Price Information Issues Paper*, September 2017, available at: <https://www.aer.gov.au/system/files/AER%20final%20issues%20paper%20-%20customer%20price%20information%2026%20September%202017.pdf>

³ See <http://www.rvcalculator.org/#/>

⁴ Section 133DB, National Consumer Credit Protection Act 2009 (Cth) and ASIC Information Sheet 185.

⁵ Explanatory Memorandum to Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011, page 38.

Yours sincerely
CONSUMER ACTION LAW CENTRE



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Chief Executive Officer

On behalf of:

Lawrie Roberston
President
RESIDENTS OF RETIREMENT VILLAGES VICTORIA

Ronda Held
Chief Executive Officer
COTA VICTORIA

Fiona York
Co-Manager
HOUSING FOR THE AGED ACTION GROUP

Attached:

- Consumer Action Law Centre and Housing for the Aged Action Group, *Submission to Residential Tenancies Act Review – Alternate Forms of Tenure*, 28 September 2017, see pp. 3-4.
- Consumer Action Law Centre, *Submission to Parliamentary Inquiry into the Retirement Housing Sector*, 30 June 2016, see pp. 23-24.