



COTA Victoria & Seniors Rights Victoria

Submission to the review of the Retirement Villages Act 1986 – Exposure Draft Bill

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About Us

Council on the Ageing (COTA) Victoria is the leading not-for-profit organisation representing the interests and rights of people aged over 50 in Victoria. For over 70 years, we have led government, corporate and community thinking about the positive aspects of ageing in the state.

Today, our focus is on promoting opportunities for and protecting the legal rights of people 50+. We value ageing and embrace its opportunities for personal growth, contribution, and self-expression. This belief drives benefits to the nation and its states alongside communities, families, and individuals.

Seniors Rights Victoria (SRV) is a key service of COTA Victoria and the primary state-wide service dedicated to advancing the rights of older people, and the early intervention into, or prevention of, elder abuse in our community.

SRV has a team of experienced advocates, lawyers, and social workers who provide free information, advice, referral, legal advice, legal casework, and support to older people who are either at risk of or are experiencing elder abuse. SRV supports and empowers older people through the provision of legal advice directly to the older person.

Executive Summary

COTA Victoria and SRV welcome the opportunity to contribute to the next stage of the review of the *Retirement Villages Act 1986* (the Act). We are particularly pleased that the Victorian Government is continuing with this long overdue reform and providing further opportunity for feedback on the Exposure Draft Bill (the Bill) following the curtailed consultation before the last state election.

COTA Victoria and SRV have provided feedback on the Act on several occasions since the initial review of the Act in 2019. This submission is in line with our previous work in this area.

With this, we welcome that the Bill reflects multiple areas of previous feedback, including standardised contracts and greater clarity around capital maintenance obligations. The Bill in its current state would deliver significant benefits for current and future residents of retirement villages in Victoria. However, there are elements that are still missing from the Bill – which would deliver much needed reform to the sector. We urge the Victorian Government to deliver on the promise of the Bill and make these changes. We recommend:

- the inclusion of an additional principle that emphasises the need to support older Victorians to understand information around retirement villages.
- the creation of a free, independent and expert retirement housing ombudsman service.
- adjusting the latest timeline for exit entitlements to 6 months, in line with NSW.
- removing persistent breaches as a reason for a contract termination for a substantial breach.
- that the Victorian Government commit to a future public consultation on the prescribed information for the RV Register.
- that the Victorian Government commit to funding education services regarding contractual information for both residents and prospective residents of retirement villages.

Submission

1. Are the proposed guiding principles clear and easily understood? Are any refinements needed to the proposed principles?

The proposed principles are indeed clear and easily understood – but they do not cover a key element that will ensure older Victorians understand the process. While principle 3 ensures ‘the value and importance of autonomy and independent living by promoting resident agency in making key decisions’, this does not mean that older Victorians are being supported to understand the decisions they are making. For instance, one of the current key issues is that older Victorians are making the decision to live in a retirement village – but they are not aware of what exactly they have agreed to. There are elements of the Bill which reflect this need, including the proposals for simplified contracts, but this needs to be incorporated into the principles governing the Bill. It is a simple but vital change, which can help to guide and inform the development of future regulations stemming from the Bill.

- **Recommendation 1: We recommend the inclusion of an additional principle that emphasises the need to support older Victorians to understand information around retirement villages.**

2. Are the pathways and processes for dispute resolution appropriate and clear? Are any changes needed to what is proposed?

The proposed pathways and processes for dispute resolution are indeed appropriate and clear. We support the creation of the proposed Chief Dispute Resolution Officer (CDRO) to deliver an independent external dispute resolution service, while we also welcome the Bill’s requirements around the provision of information by operators to residents. These are important pillars for dispute resolution.

However, while the consultation guide describes the CDRO as having a broad remit to ‘support residents’, this is not reflected in the proposed Bill. While the CDRO aims to ensure both sides to a dispute have an opportunity to contribute, there are no legislative requirements around supporting residents through the process. Without this support, some residents may struggle to have effective representations or arguments on their behalf. This should not be the role of the CDRO, but highlights that there is a missing component to the proposed dispute pathways and processes.

We have previously called for the establishment of a free, independent and expert retirement housing ombudsman service, and we still believe this is necessary to deliver on the promise of these reforms. We need to make sure older people are supported, especially when they are undergoing a dispute process. An ombudsman service would only support the role of the CDRO. At the very least, the Bill should include reference to regulations, to be co-designed with residents and the sector, that will provide greater detail on how the CDRO will support residents through the dispute process.

- **Recommendation 2: We recommend the creation of a free, independent and expert retirement housing ombudsman service.**

3. The changes to exit entitlement payments are intended to support residents and their families when finalising their exit from a village by reducing delays and improving certainty. a. Is the process proposed in the Bill clear and appropriate? b. Can you foresee any unintended consequences or implementation issues?

We support the intent, idea and process behind the changes to exit entitlement payments – however we do have concerns about its implementation. While the proposed changes are clear and appropriate, there is a risk they will lead to unintended consequences. For instance, with the way the Bill currently details the payment timeline, it is quite clear that there is an incentive to providers to only make the exit payments after 12 months and to adjust future contracts to reflect that. We would urge consideration for the Bill to ensure exit payments are made, at the latest, 6 months after a resident vacates a property. This is in line with New South Wales (NSW), who lead Australia in this regard – older

Victorians deserve the same high standard. If this is possible for NSW, it should be practical in Victoria. Regardless, the proposed legislation in the Bill should at the very least drive operators to pay residents their exit entitlements earlier than 12 months – this could include a requirement to pay residents within one month of selling a property as part of the highlighted earliest periods for payment.

While we support enabling residents to go to VCAT if necessary, the existing backlog, and extended delays for VCAT hearings would exacerbate undue stress and burdens on an already vulnerable cohort of Victorians. This highlights the need for a free, independent and expert retirement housing ombudsman service to support them through that process.

- **Recommendation 3: We recommend adjusting the latest timeline for exit entitlements to 6 months, in line with NSW.**

4. Will the use of standard form contracts assist prospective residents to make more informed choices about retirement living? For example, will the proposed changes help residents to understand their legal obligations and costs?

We strongly support the use of standard form contracts to assist prospective residents – this is something that we have advocated for in previous submissions throughout this process. We particularly welcome the need to set out prospective financial information, and that the Bill includes offences for contracts that are not in the prescribed form, for failing to give a copy of a contract to a resident, and contracts that contain prohibited terms. We look forward to engaging in the public consultation process to develop what the prescribed form for resident contracts and management contracts will be, which is proposed to be set out in regulations accompanying the Bill. While the Bill sets out information in contracts, this needs to be set out ‘clearly and concisely’, it is imperative that any future regulations confirm the need for simple English language in contracts to support resident understanding. This highlights the need for a principle in this Bill in relation to better supporting older Victorians to understand information around retirement villages, and to help guide the development of these regulations.

5. Are the proposed processes for contract terminations fair and will they make dispute resolution more accessible for residents and their families?

While we largely support the fair and proportionate changes, we believe the conditions for termination for a substantial breach should be more tightly defined to protect the residents. For instance, residents can still be removed for small but persistent breaches, which still leaves the sector open to the current misuse of legislation as set out in the consultation guide. This needs to be removed, as it otherwise leaves the same loopholes in place.

We are pleased to see the Bill ensures residents are entitled to the immediate payment of their exit entitlement. While we welcome the independent role of the CDRO, we are concerned that, as with the dispute resolution processes and pathways, that a lack of support for residents could impact the fairness of this process. This highlights the need for a free, independent and expert retirement housing ombudsman service.

- **Recommendation 4: We recommend removing persistent breaches as a reason for a termination for substantial breach.**

6. Are the changes relating to capital maintenance obligations for operators and residents helpful in clarifying roles and responsibilities in villages? If not, what refinements could be made?

The Bill’s greater clarity around this issue, in line with our previous recommendations, is welcome, including the defining of terms and reporting requirements. This should support greater living standards and alleviate disputes surrounding maintenance, enabling operators to be held accountable – especially with the new limitations on how a deficit must be made good by the operator. Enabling residents to carry out urgent capital maintenance or replacement is a positive step. We particularly welcome the

legislative requirement that operators will need to establish and report on a capital maintenance plan, which we have previously advocated for. In terms of refinements, while beyond the scope of the Bill, we would be interested in capital maintenance plans being publicly accessible as part of village registration to support greater accountability.

7. Will the proposed reforms to alterations and renovations support residents and operators by making it clear who is responsible for undertaking and for paying for repairs, alterations, reinstatement and renovations?

We support the proposed changes in the Bill – this should support greater clarity around this issue. We welcome the protection for residents once they have vacated properties and their non-liability for costs unless there is a prior agreement.

8. Will the changes to residents committees, residents meetings, and annual meetings make it easier for residents to participate in, and contribute to, their retirement village?

We welcome a number of elements of these reforms, including the strengthening of resident committees, prohibiting operators and proprietors from attending a residents' committee meeting unless they are invited, and the clarity of rules surrounding resident committees. We believe these steps should support greater resident participation in, and contribution to, their retirement village.

9. Are there any further improvements that could be made to the proposed reforms to the RV register requirements and exemption processes?

We support the proposed strengthening of the RV register. We have previously advocated for empowering residents to undertake their own research by ensuring a more comprehensive public register for retirement villages. While outside the remit of the Bill, it is vital that the Bill's mechanism to prescribe additional information that must be included in the RV Register should be informed by public consultation with residents and prospective residents. Enhancing the RV Register with further information about villages, including demographic data, would help prospective residents to do more thorough investigation and would allow monitoring of trends in the profile of villages, residents and length of stay.

While we welcome the need for an annual fee to ensure that providers support the cost of reform, these costs should not fall back to residents.

- **Recommendation 5: We recommend that the Victorian Government commit to a future public consultation on the prescribed information for the RV Register.**

10. Do the proposed emergency and evacuation planning requirements appropriately address risks to resident and staff safety?

We believe that the proposed emergency and evacuation planning requirements appropriately address risks to resident safety. This is vital, especially with over half of all retirement villages being high-rise buildings.

11. Will the proposed pre-contractual disclosure reforms give prospective residents the information they need to make an informed decision about living in a retirement village?

We support all of the proposed changes to pre-contractual disclosure, and they will undoubtedly enable prospective residents to make an informed decision about living in a retirement village. We particularly welcome the definition of deferred management fees including reference to entry price, as we previously recommended, and the need to give a yearly contract check to residents.

But this is not enough if we are to protect residents. While the proposed pre-contractual disclosure reforms certainly give more information, we need ensure that residents and prospective residents are

supported to understand what this information means. This is why the additional principle is needed, and why we recommend that the Victorian Government should use this reform process to commit to funding education services, including peer education, for retirement villages residents and prospective residents to understand the increased information that will be provided to them. While beyond the scope of the Bill, this is a crucial to step to supporting successful implementation of these reforms.

- **Recommendation 6: We recommend that the Victorian Government commit to funding education services regarding contractual information for both residents and prospective residents of retirement villages as part of the implementation of this Bill.**

12. Do the proposed reforms provide for a fair apportionment of capital gains and losses between residents and operators?

The proposed reforms do provide for a fair apportionment of capital gains and losses between residents and operators – but they also highlight the need to ensure that residents are supported to understand their contracts. While we support equalization of gains and losses, without adequate regulation of the contracts and their language there is still a risk of residents facing costs or issues they hadn't anticipated when signing the contract. We reconfirm our recommendation for an additional principle around supporting older Victorians to understand information around retirement villages, which would support the intent of these particular reforms.

13. Are the proposed reforms sufficiently robust to address serious forms of financial harm and misconduct in the retirement village sector?

We strongly support the proposed strengthening of the legislation surrounding the Director of Consumer Affairs Victoria (CAV) to address serious forms of financial harm and misconduct, including financial penalties. This is a really important step to ensure there are legislative requirements around operators and their reporting, while publicly sharing information will inform prospective residents and support sector compliance. One of the issues identified in previous submissions is that CAV has struggled, at times, to effectively respond to complaints and disputes affecting the retirement village sector – strengthening powers around compliance and investigation should help to address that. However, these new powers would be augmented by a retirement housing ombudsman service that can support residents to flag issues to CAV – we reiterate our earlier recommendation around such a service being included in this legislation.

While beyond the scope of the Bill, we would urge greater consideration of elder abuse education services, so that residents are aware of their rights and can support CAV in their compliance activities. The current pressures around the cost of living are leading to increasing incidences of financial elder abuse, with a rise in demand for services by SRV. Preventing elder abuse is a key focus for SRV, and we have well-established education services to support older Victorians and raise awareness of elder abuse. We are happy to provide our expertise in this area as part of the future rollout of the Bill to ensure that residents of retirement villages are skilled to recognise financial elder abuse in the sector.

Next steps

COTA Victoria and SRV support the reform of the Act, and are happy to offer our time and perspective to ensure that this Bill delivers on its promise for older Victorians. We are available for further consultation if necessary.