

*“
Review of the
Retirement Villages
Act 1986
Proposed Legislative
Changes – 2004
”*



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“ Foreword ”

The Victorian Retirement Villages Act was introduced in 1986 and has not since been reviewed. The retirement village industry and the aged accommodation sector more broadly have experienced significant change since 1986. There are currently approximately 60,000 retirement village units in Australia, and expectations are that the number will increase to 90,000 in the next 20 years¹, indicating significant future growth in Victoria. The accommodation needs of Victoria's ageing population are of growing significance. It is therefore considered essential that Victoria has an adequate consumer protection and regulatory regime in place to manage the retirement village industry into the future.

The review of the Retirement Villages Act was established in 2002 to determine the effectiveness of the Act in clarifying and protecting the rights of retirement village residents, while encouraging and supporting the development of an ethical and viable industry. The scope of the review was limited to factors concerned with the economic interests of consumers, such as contractual arrangements, and also reviewed dispute resolution mechanisms, resident rights, definitions and the relationship with other Victorian Acts. The review did not examine issues relating to health care, which are subject to separate regulation. (Terms of Reference are located at Appendix 1)

Consultation with stakeholders who have an interest in aged accommodation has been an essential part of the review process and Consumer Affairs Victoria has worked diligently to ensure their views have been considered.

Analysis of the retirement village market has revealed evidence of potential for substantial consumer detriment arising from information asymmetry – the position where village owners/operators have superior knowledge of the services provided than do prospective residents.

A considerable number of submissions to the review raised concerns about the potential for financial loss when residents exit a retirement village. Contracts that respond to the range of legal structures, services, facilities and fee arrangements are complex and residents find them difficult to understand. The problem is compounded by the large proportion of residents who are making a one-off decision, of a significant financial nature, to enter a retirement village. Many of the legal and fee arrangements they must consider are unfamiliar to them and information and advice to help them make an informed decision appears to be limited.

Possible negative consequences for residents and prospective residents are also increased because of the effects of age-related characteristics on their ability to make informed and knowledgeable decisions about retirement village services. Secondary markets that respond to the complex information requirements of the retirement village market (solicitors, financial planners, accountants and the like) have not developed to a level which adequately responds to market need. Consequently, the potential for consumer detriment is enhanced.

The review has revealed that the key provisions of the existing Retirement Villages Act are operating as intended to protect residents against loss of their residence rights. However, a number of issues were raised that need a response and require amendments to the Act. The information asymmetry problem and a general lack of consumer awareness of the existing laws require particular attention. In its current format, the *Retirement Villages Act 1986* does not satisfactorily deal with the information asymmetry problem. Legislative intervention to set minimum standards for residence contracts is considered an appropriate response.

¹ ANZ Industry Brief, Retirement Villages, 17 July 2003

A comprehensive community education campaign by Consumer Affairs Victoria is considered necessary to raise awareness of consumer rights and responsibilities concerning retirement villages and relevant complaint handling and dispute resolution services. Consumer Affairs Victoria also proposes the introduction of more comprehensive dispute resolution services which includes a retirement village based procedure and an external remedy through Consumer Affairs Victoria and an independent adjudicator. In addition Consumer Affairs Victoria will assist in the establishment of a residents association. This will allow a collective voice for retirement village residents and will enable individual assistance to be provided to residents.

The proposed changes to the Retirement Village Act are outlined in this paper. I now welcome comments on the proposed reforms and will undertake a consultation period on behalf of the Minister for Consumer Affairs John Lenders, to finalise proposed changes to the Retirement Villages Act.



Maxine Morand MP
Member for Mount Waverley

Proposals

Proposal 1

Residential Aged Care Facilities, which are certified and accredited by the Commonwealth under the provisions of the *Aged Care Act 1997* (Cwlth) be exempted from the Retirement Villages Act.

Proposal 2

Reference to 'residential hostel and hospital accommodation' be removed from the definition of 'residence right' in section 3 of the Act, in the event that Commonwealth Aged Care Facilities are exempted from the Retirement Villages Act.

Proposal 3

Reference to 'hospital, nursing or medical services including accommodation' and 'hostel accommodation' be removed from the definition of 'services' in section 3 of the Act, in the event that Commonwealth Aged Care Facilities are exempted from the Retirement Villages Act.

Proposal 4

The Retirement Villages Act be amended to distinguish between obligations on the village operator and obligations on the landowner.

Proposal 5

The Act be amended to give the Director of Consumer Affairs Victoria discretion to consider applications for the cancellation of a retirement village notice and extinguishment of a charge concerning a subdivided part of retirement village land that is not used as a retirement village.

Proposal 6

The Act be amended to:

- Prevent an operator from requiring a resident to vest rights of sale of the resident's interest in the village in the operator
- Prohibit an operator charging a fee or receiving a commission in relation to the sale of the resident's interest where an external agent has managed the sale on behalf of a resident, former resident or their beneficiary
- Ensure, where an external agent is engaged by a resident, former resident or a former resident's beneficiary, that the operator's involvement in the process of selling the resident's interest is sufficient to allow discharge of the operator's obligations under the Act and protection of the operator's interest in maintaining a compatible resident population.

Proposal 7

The retirement village operator have no right to impose recurrent charges on the resident beyond 28 days after the resident vacates the retirement village.

Proposal 8

The Act require that a departing resident's refund entitlements be paid within 14 days of the right to reside in the unit passing to another person and, where the resident was occupying the unit under a periodic tenancy, no later than 6 months after the resident's vacation of the unit.

Proposal 9

The Act be amended to prohibit a retirement village operator from seeking or accepting the assignment of a power of attorney from a resident (except where the resident is a relative of the operator).

Proposal 10

The Act be amended to prohibit a retirement village operator from seeking or accepting an irrevocable proxy from a resident (except where the resident is a relative of the operator).

Proposal 11

The Act be amended to require that retirement village residence contracts be in writing and either set out their terms in accordance with the appropriate prescribed model form or include an introductory statement explaining how the form of the contract differs from the appropriate prescribed model.

The prescribed model format/s would include a sequence of generic headings and provide that details of at least the following *must* be included:

- Basic particulars such as the name of the village, its address, the names of the parties and the date on which the contract is made
- The resident's rights under the statutory cooling-off period (currently required under section 24)
- A list and description of services, facilities and amenities, together with any fixture, fittings and furnishings that may be provided
- Any restrictions on the use of the residence
- Terms that deal with such matters as the operator's access to premises and village rules
- Details of the minimum of advance notice to be given to the resident in the case of termination of contract by management
- Details of any capital replacement fund or other fund held by the retirement village
- The process by which residents can ask the operator to carry out repairs and maintenance

- All retirement village fees payable:
 - Details of all costs payable to gain entry, reside in and leave the village (ingoing contribution, maintenance charges and any deferred management fee)
 - How the maintenance charge is to be adjusted and how special levies can be imposed
 - The method of calculating any refund due to the resident on termination of the contract and any applicable financial penalties
 - A summary of all fees payable (in dollar figures) if a resident were to exit a village after two years and six years of entering village
- Details of how the contract may be terminated and a resident's right to remove any fixtures added by the resident during their occupancy
- Details of the how the right to reside in the unit may be sold or re-leased
- Details of how the resale or re-lease value will be decided
- What refurbishment of the unit will be required and who pays for it
- The process for, and effect of, accepting offers, including when offers may be refused
- The provision of monthly sales information
- How the expenses of sale are to be shared, including any commission payable to the operator
- Dispute resolution arrangements:
 - How disputes are to be dealt with through an internal process and an external body
 - The fees payable for dispute resolution.

Proposal 12

The provisions of the Act be extended to specify that a residence contract must not include the following:

- Any term which is unfair
- Any term requiring irrevocable proxies or powers of attorney as a condition of entry to a retirement village
- Requirements for residents to take out any form of insurance, including home contents insurance, ambulance cover or other forms of health insurance
- Restrictions on the period of time (eg. holidays, visiting relatives, hospitalisation) residents may be absent from the village
- Requirements upon residents to have a will or to disclose its location to the operator/owner of the retirement village.

Proposal 13

The Checklist for prospective residents in Schedule 3 of the Act be updated in consultation with resident and operator stakeholder groups.

Proposal 14

A scheme be established whereby Consumer Affairs Victoria is notified of all retirement villages subject to the Retirement Villages Act at any given time, of proprietors' details and of any changes in those details.

Proposal 15

Each retirement village be required to establish a dispute resolution mechanism and ensure that:

- A written Policy and Procedure for dispute resolution is in place
- Residents are fully informed of the dispute resolution mechanism and the Policy and Procedure document is readily available to all residents within the village
- Records are maintained of 'material' comments and complaints with details of actions and resolutions.

Proposal 16

The current arbitration provisions in the Retirement Villages Act be replaced with a dispute resolution process involving Consumer Affairs Victoria for information and conciliation and an independent adjudicator for complex disputes.

Proposal 17

Consumer Affairs Victoria develops and implements a comprehensive consumer education strategy concerning retirement villages. The strategy should be sensitive to the specific needs of senior Victorians and present any resident documentation in plain language and large print.

Proposal 18

Consumer Affairs Victoria supports the development of a residents' association.

“ Section 1 Introduction ”

1

1.1 Why review the Retirement Villages Act?

The *Retirement Villages Act 1986* (the Act) and the *Retirement Villages Regulations 1999* regulate the retirement village industry in Victoria. The Act was introduced in 1986 to clarify and protect the rights of persons who live in, or who wish to live in, retirement villages.²

The Act has not been reviewed since its introduction in 1986. During this period, the retirement village industry and the broader aged accommodation sector has experienced significant change. As people age, their housing arrangements will be influenced by factors associated with ageing, such as security, lifestyle and health issues. In line with Australian population projections predicting a doubling of the current aged population over the next 40 to 50 years, the continued growth of the retirement village industry seems assured.³ There are currently about 60,000 retirement village units in Australia, and expectations are that the number will increase to 90,000 in the next 20 years⁴, indicating significant growth in Victoria. Therefore, it is considered essential that Victoria has an adequate

consumer protection and regulatory regime in place to manage the expansion of the retirement village industry into the future.

1.2 Terms of Reference

The review was established in April 2002 to determine the effectiveness of the Retirement Villages Act in clarifying and protecting the rights of retirement village residents while encouraging and supporting the development of an ethical and viable industry.

The scope of the review is limited to the protection of the economic interests of consumers. The Terms of Reference for the review do not extend to consideration of matters involving the provision of care. In particular, the review aims to:

- Consider whether the current objectives of the Act and the definition of retirement village remain appropriate
- Explore the relationship between the Act and other Victorian and Commonwealth legislation and, in particular, whether some classes of

² *Retirement Villages Act 1986* s1

³ 1998, Australian Bureau of Statistics (www.abs.gov.au/austats)

⁴ ANZ Industry Brief, *Retirement Village*, 17 July 2003

retirement villages should be entitled to exemptions

- Consider whether the Act should establish standards for accommodation, services and amenities. (This covers services – cleaning, maintenance and meals etc, and building standards – emergency access and lighting etc, but does not cover issues of care.)

The Terms of Reference are included at Appendix 1.

1.3 Consultation process

Consultation with stakeholders who have an interest in aged accommodation has been an essential part of the review process and Consumer Affairs Victoria has worked constructively to ensure that their views have been represented.

On 27 May 2002 a letter was sent to stakeholder groups and all Members of Parliament informing them of the review and inviting them to identify issues. A media release was issued at the same time. Following this, officers from Consumer Affairs Victoria attended informal meetings with key industry, consumer, community and resident stakeholder groups to identify and analyse issues.

Major concerns arising from these meetings and the 35 letters and/or contracts received by Consumer Affairs were presented in a Discussion Paper. In order to maximise accessibility to senior Victorians, the paper was produced in large print. The Discussion Paper was direct mailed to approximately 700 stakeholder groups on 25 July 2002. All self-funded and community-auspiced retirement village residents' committees (listed in the Council on the Ageing directories) were forwarded a copy of the paper. The paper was also available on the Consumer Affairs Victoria and Senior Victorians web sites.

The community responded positively to the release of the Discussion Paper, with Consumer Affairs

Victoria receiving a large number of enquiries concerning the review. Subsequently, a total of 1200 copies of the paper and numerous copies of the Act were disseminated by mail to interested parties.

Submissions were accepted until 19 September 2002. This provided the community with eight weeks in which to respond. A total of 101 written submissions were received within the response period. However, a large number of letters were also received over the broader period of the review. Roundtable discussions concerning resident participation and dispute resolution were held with key stakeholders early in 2003. Other meetings were also held to flesh out options concerning retirement village contracts, deferred management fees, capital maintenance issues and residential parks (caravan type parks).

A list of submissions received is presented in Appendix 2. Residents who made submissions have not been individually identified for reasons of confidentiality. A list of roundtable sessions and meetings is also presented in Appendix 3.

Mr John Lenders, Minister for Consumer Affairs has appointed Ms Maxine Morand MP, Member for Mount Waverley, to oversee the final stage of the review.

1.4 Regulatory environment

The *Retirement Villages Act 1986* and Retirement Villages Regulations 1999 provide the regulatory framework for retirement villages in Victoria. The primary objective of the legislation 'is to clarify and protect the rights of persons who live in, or wish to live in, retirement villages' ⁵ .

The Act largely operates to protect a resident's financial investment in a retirement village, principally through mechanisms such as a residence right, a retirement village notice (recording with the Registrar of Titles that the land is used for a retirement village) and a charge (security) on retirement village land to protect the resident's ingoing contribution. The Act also deals with: information which must be given to consumers 21 days prior to signing a contract, including the residence and management contracts, prescribed documents, the disclosure statement, the checklist and the by-laws, processes for resident participation, and adjustments to the maintenance charge.

Other State and Commonwealth laws also play a role in regulating retirement villages. The existence of general competition and consumer protection laws, such as the *Fair Trading Act 1999* and the *Trade Practices Act 1974* (Cwlth), provide a broad regulatory framework for transactions between buyers and sellers. The *Subdivision Act 1988*, the Subdivision (Body Corporate) Regulations 1989, the *Sale of Land Act 1962* and the *Retirement Villages Act 1986* also interact to regulate retirement villages where units are sold by freehold title (fee simple).

The *Aged Care Act 1997* regulates Commonwealth Residential Aged Care Facilities and the *Health Services Act 1988* regulates Supported Residential Services, which may be co-located with independent living units on a retirement village site. Details of the range of legislation that applies to older persons' accommodation can be found at Appendix 4.

It should be noted that Consumer Affairs Victoria is also conducting a review of bodies corporate legislation. This provides opportunities to consider the relationship between bodies corporate and retirement villages and possible synergies concerning consumer protection into the future.

⁵ *Retirement Villages Act 1986* s1

“ Section 2 Approach to the review ”

2

Because regulation can impose cost on consumers and suppliers, a clear assessment of all costs and benefits is needed to ensure that it serves the public interest.

Private and non-profit retirement village operators offer a wide range of residential options. Continued private sector involvement and competition to attract and retain residents serves the interests of consumers and needs to be encouraged.

In the economy generally, competitive markets promote community welfare through greater efficiency, the development of higher economic growth and increasing employment opportunities. However, markets may fail to operate competitively or provide efficient outcomes for a range of reasons, and a public interest test may show that the costs imposed by regulation are lower than the costs of the original market failure. For example, there is likely to be a case for government intervention where consumers are not reasonably able to inform themselves adequately when entering into significant commitments⁶.

Benefits in terms of broader social goals, such as equity, are also part of an overall public interest assessment of existing or proposed regulatory action.

The Government’s vision for Growing Victoria Together emphasises building cohesive communities and planning for the needs of our population at all stages of life. Consistent with these goals, the review has paid particular attention to how best to ensure that consumers understand their contractual rights and obligations and have good access to appropriate dispute resolution services where required, without unnecessarily constraining retirement village investors and operators.

⁶ The form of market failure where there is a difference in the knowledge or information about product or service quality held by buyers and sellers is known as ‘information asymmetry’.

“ Section 3 Analysis of the marketplace ”

3

3.1 What is the retirement village market?

The retirement village market supplies people with independent accommodation, shared facilities (common meeting rooms, library, pool, etc), lifestyle services and social amenity (the opportunity to interact and socialise with people in a shared environment). Although staff in some villages have health care backgrounds, services specified in residence contracts are generally related to maintaining a household.

The distinction between retirement villages and care facilities may not be as easily discernible as it once was. It has become more common for village residents to receive health and personal care under separate contracts with specialist third party providers.

The issue of personal care provision is discussed at sections 4.1.1, 4.1.2 and 4.1.6, but the report generally focuses on market provision of independent living accommodation in a community setting.

3.2 Characteristics of the retirement village industry (supply)

A diversity of suppliers operates in the Victorian retirement village market and includes small community based organisations, substantial welfare and church based agencies, and large companies who operate several retirement villages. Two operators are known to be publicly listed on the Australian Stock Exchange. While there is very little specific information about the market in Victoria, it is estimated that there are around 400 retirement villages; 115 resident-funded retirement villages run by private operators on a commercial basis and 280 community-aided villages (commonly referred to as independent living units) run by organisations on a not-for-profit basis.⁷ The Retirement Villages Association accredits sixty-two Victorian retirement villages.⁸

⁷ Council on the Ageing

⁸ Information provided by the Retirement Villages Association at the time of writing.

Retirement villages offer self-care accommodation and a range of services and facilities to meet residents' differing social and economic needs. For example, some villages provide inexpensive units with a limited range of services and facilities, whereas other villages cater to the luxury end of the market. Ingoing contributions range from below \$100,000 to well above \$600,000. Importantly, retirement villages predominantly offer services for property maintenance, including such things as emergency assistance, security, help with home maintenance and access to recreational facilities. According to the Australian Housing and Urban Research Institute, approximately 27 percent of social housing for older persons is provided by independent living units (or community-auspiced villages), with 6,200 individual units being offered throughout Victoria. These figures demonstrate the vital role played by these types of villages in the provision of accommodation and services for people on low income.⁹

The market offers a broad range of arrangements and legal structures to facilitate entry to a retirement village. The most common structure is a long term lease arrangement, however, a residence right can be purchased by title (fee simple), units in a unit trust, shares in a company or periodic tenancy. New arrangements are continuing to emerge. Deferred fees, which are designed to keep the refundable ingoing contribution (ingoing fee) low, are an arrangement, which allows residents to defer some of the costs of entering a village until they exit the village. Market flexibility has allowed many residents to enter a village who, in a restricted market, may have been prevented from doing so.

Retirement village operators may offer health or personal care, in particular where a Commonwealth Residential Aged Care Facility or a Supported Residential Service is operated on a retirement village site. Residential Aged Care Facilities receive funds from the

Commonwealth government and, thus, must be registered and meet specified standards of equity and quality. Access to subsidised residential care is available only to those who have been assessed as needing one of the various levels of care. Supported Residential Services are health service establishments which provide both accommodation and special or personal care services and must be registered with the State government (Department of Human Services) under the *Health Services Act 1988*.

Retirement villages also offer a range of intangible features that could be described as lifestyle factors or social amenity, offering residents opportunities to interact, socialise and build friendships with people of a similar age. While these aspects of retirement village living are often not referred to in retirement village residence contracts, anecdotal evidence suggests that they are nevertheless important to residents and act as a significant drawcard for prospective residents.

The retirement village market is experiencing significant growth in response to demand from an increasingly ageing population.

3.3 Characteristics of residents and consumers (demand)

The Retirement Villages Association suggests that the average age of a retirement village resident is 85 years; the majority of these people are women. Old age often brings with it frailty, ill health, bereavement, reduced cognitive abilities, and social isolation. In some cases this may result in a low or declining ability to make critical assessments and cope with the complexities associated with personal finances. Many women of this generation have been excluded from various financial and legal decision-making during their lifetime and may be ill equipped to enter into a complex retirement village transaction.

⁹ Australian Housing and Urban Research Institute, *Independent Living Units: The forgotten Social Housing Sector*, November 2003

Further, buyers may enter the market under stressful or traumatic circumstances. Often a decision to move into a retirement village occurs shortly after a spouse has died or because a person is suffering increasing frailty or ill health. Such difficult personal circumstances inevitably reduce a person's capacity for rational decision-making.

A significant proportion of retirement village residents live on age pensions or incomes that are not fully indexed for inflation.

These residents have a very limited capacity to purchase advice from secondary markets, such as solicitors, accountants and financial planners, or to cope with any negative consequences arising from a significant financial transaction.

These characteristics and/or the fact that prospective residents are entering into a complex transaction for an arrangement potentially lasting many years indicates that retirement village buyers have an increased likelihood of being vulnerable and disadvantaged.

3.4 Characteristics of transactions

Retirement village transactions are contract based, complex in nature and respond to a growing variety of retirement village legal arrangements. A range of fees are usually payable involving substantial sums of money, including an ingoing contribution (some of which may be refundable on exiting the village), a maintenance charge and a deferred management fee which is payable on exiting the village. Depending on the type of village and the services offered, ingoing contributions can range from under \$100,000 to well over \$600,000.

Buyers are usually making a one-off decision to enter into a long term transaction, as residents commonly plan to spend the rest of their life in the village. Consequently, the consumption of the accommodation and associated services is spread over a significant number of years. This inherently involves uncertainty, because the quality of the accommodation and associated services can only be assessed after purchase and consumption.

3.5 Information asymmetry

Perfect competition assumes that buyers and sellers have the same knowledge about the quality of the goods or services for sale. In some cases, however, information asymmetry exists where sellers have more information than buyers. This can arise where a large amount of technical knowledge is required in the decision-making process; the cost to buyers of acquiring equivalent information to the seller prior to purchase is prohibitive; or the quality of the purchase can only be assessed after purchase and consumption (this is particularly the case for the sale of services and advice).

These characteristics are evident in the retirement village marketplace; however, there is little authoritative data to indicate levels of consumer detriment. For example, very few retirement village complaints have been lodged with Consumer Affairs Victoria. This is not unexpected given the characteristics of retirement village residents. As residents age they suffer from a range of difficult personal circumstances which may deter them from complaining. In some cases, the detriment only becomes evident when the contract has ended due to the death of a resident, leaving the beneficiaries of the estate to pursue any redress.

However, there were a considerable number of submissions to the review that raised concerns about the potential for financial loss when residents exit a retirement village. There is evidence¹⁰ that contracts which respond to the range of legal structures, services, facilities and fee arrangements are complex and residents find them difficult to understand. This is compounded by the fact that a large proportion of residents considering entering a retirement village are making a one-off decision of a significant financial nature.

¹⁰ From submissions from residents and findings from consultancy on the analysis of the fairness and reasonableness of retirement village contracts.

Many of the legal and fee arrangements that they must consider are unfamiliar to them and information and advice to help them make an informed decision appears to be limited. Evidence indicates that secondary markets that respond to the complex information requirements of the retirement village market (solicitors, financial planners, accountants and the like) have not developed to a level that adequately responds to market need. While self-regulation through the Retirement Villages Association Accreditation Scheme appears to be making some inroads into raising standards in the market, it has had little success in addressing these specific problems.

This evidence points towards a potential for consumer detriment arising from information asymmetry. Possible negative consequences for residents are increased because of their age-related characteristics, their reduced capacity for critical assessments and because they may be living on a low income. Consequently, their capacity to recover from consumer detriment is reduced. Information asymmetry also impacts on community welfare more broadly, because the quality of retirement village accommodation and services may be reduced and prices may be higher than would occur were there no market failure.

Legislative intervention is considered an appropriate response to the information asymmetry problem. In its current format, the *Retirement Villages Act 1986* does not adequately respond to the cause of the problem. Proposed amendments concerning standards for residence contracts, disclosure and public information are discussed in the next section of this report.

“ Section 4 Identified Issues ”

4

4.1 Definitional issues

The Retirement Villages Act defines “retirement village” as: *a community:*

- *The majority of which is retired persons who are provided with accommodation and services; and*
- *At least one of whom, before or upon becoming a member of the community, pays or is required to pay an ingoing contribution.¹¹*

An ingoing contribution is a payment (that is not rent) entitling a person to become a resident of a retirement village, regardless of who makes that payment or whether it is in a lump sum or by instalments.

4.1.1 Commonwealth funded facilities

The review identified substantial support for the exemption of Commonwealth funded facilities from the definition of retirement village in the Act.

Where Commonwealth Aged Care Facilities are co-located with independent units, operators must comply with two sets of laws: the Retirement Villages Act and the Aged Care Act (Cwlth) (in addition to other applicable laws).

This is considered problematic for retirement village owners/operators who face substantial compliance challenges including costly, time consuming and confusing administrative requirements. There is anecdotal evidence that the application of the two Acts also serves to confuse residents rather than provide any added benefits.

A submission from an industry group presented seven instances where either operational differences or overlaps exist in relation to the two Acts. For example, section 16 of the Retirement Villages Act sets out the procedures for the termination of a resident’s contract, however, these procedures are quite different from those contained in the Aged Care Act.

A resident group indicated that excluding Residential Aged Care Facilities from the Retirement Villages Act would deprive residents of the protection of the charge¹² over the land. They suggested that the security of tenure provisions, the disclosure of information provisions and the provisions requiring ingoing contributions to be held in trust prior to a resident’s entry should be redrafted so that Commonwealth funded facilities are treated in a different way to other facilities meeting the definition of “retirement village”.

¹¹ *Retirement Villages Act 1986 s3*

¹² There is a legal term that creates a protection (right) over the title of land. Used in this context, the term ‘charge’ does not relate to monetary payment.

In other words, their suggestion was to amend the Retirement Villages Act in areas where current overlap or contradictions exist, in order for the Aged Care Act and the Retirement Villages Act to operate in harmony.

The Aged Care Act and the Retirement Villages Act are designed to serve different purposes. The Aged Care Act responds to the complex and sometimes substantial care needs of residents in low and high level care, whereas the Retirement Villages Act is concerned with accommodation and non-care-based services. There is no evidence that adopting the approach suggested by this resident group would result in any discernible benefit for residents or operators. Further, as the Aged Care Act and the Retirement Villages Act deal with different matters, they can be easily separated. Other jurisdictions, such as Queensland and New South Wales, have exempted Commonwealth funded facilities from the operation of the Retirement Villages Act (in its recent review Western Australia has also recommended similar exemptions) and it is proposed that Victoria adopt a consistent approach with these states.

Proposal 1

Residential Aged Care Facilities, which are certified and accredited by the Commonwealth under the provisions of the Aged Care Act 1997 (Cwlth), be exempted from the Retirement Villages Act.

4.1.2 Application of the *Health Services Act 1988*

A number of industry submissions revealed confusion regarding the application of the *Health Services Act 1988* to some retirement villages. In particular, the confusion seems to stem from the definition of a “Supported Residential Service” in the Health Services Act, which operators have interpreted to cover matters such as the provision of meals and some other personal-type services.

In exploring this issue Consumer Affairs Victoria has consulted the Supported Residential Service Unit of the Department of Human Services, being the authority responsible for the registration of Supported Residential Services.

A Supported Residential Service is a health service establishment and is registered with the Department of Human Services in accordance with the requirements of the *Health Services Act 1988*. A Supported Residential Service is defined in that Act as any premises where both accommodation and special or personal care is offered or provided to residents in return for a fee or reward.

Special or personal care is further defined as any one or more of a list of services that includes assistance with dressing, bathing, toileting, personal hygiene and mobility. Assistance with meals is also one of the services included in the definition of special or personal care, though this has been interpreted to mean assistance with the consumption of meals (i.e. feeding) rather than the simple provision of food.

Despite State and Commonwealth funded residential care services being specifically exempted from the definition of a Supported Residential Service, the definition is still very broad in scope.

A building in a retirement village is likely to fall within the definition of a Supported Residential Service if:

- The right to occupy rooms/units in a building at the retirement village is not based in fee simple
- The retirement village offers any of the types of special or personal care services listed above in those rooms/units.

A number of traditional retirement villages already have specific buildings registered as a Supported Residential Service; much as others have Residential Aged Care Services co-located on site.

Conversely, a Supported Residential Service where an ingoing contribution is paid by residents, or on behalf of residents, as a necessary condition of becoming a resident, is covered by the requirements of the Retirement Villages Act as well as the Health Services Act.

4.1.3 Residence right

A residence right is created when a resident signs an agreement to move into a village. This is a right to occupy the unit and to use the services offered within the village. A residence right means that the resident has a right to “use residential hostel or hospital accommodation or other services provided for a retirement village which is created or arises by or under a contract whether the right is expressed as an interest in land or a licence or arises because the resident becomes the holder of shares in a company which provides accommodation or services for a retirement village.”¹³

Residents who purchase their unit by freehold title are also affected by the *Subdivision Act 1988*, the Subdivision (Body Corporate) Regulations 1989 and the *Sale of Land Act 1962*.

Minor amendments to the definition of a residence right will be required in the case of Commonwealth Aged Care Facilities being exempted from the Act, as reference to “residential hostel or hospital accommodation” would become obsolete. Accordingly, Consumer Affairs Victoria proposes the removal of the reference to “hospital accommodation” in the definition of “residence right”. As a matter of consistency, it is also necessary to amend the definition of “services”¹⁴ and remove reference to “hospital, nursing or medical services” and “hostel accommodation”.

Proposal 2

Reference to “residential hostel and hospital accommodation” be removed from the definition of “residence right” in section 3 of the Act, in the event that Commonwealth aged care facilities are exempted from the Retirement Villages Act (see Proposal 1).

Proposal 3

Reference to “hospital, nursing or medical services including accommodation” and “hostel accommodation” be removed from the definition of “services” in section 3 of the Act, in the event that Commonwealth aged care facilities are exempted from the Retirement Villages Act (see Proposal 1)

¹³ *Retirement Villages Act 1986* s3

¹⁴ Section 3

4.1.4 Residential parks

Residential parks marketed to retirees appear to be somewhat similar to retirement villages as residents live in clusters of self-contained homes. However, closer examination of this type of accommodation reveals significant differences in the nature of the transaction, as residents purchase their own prefabricated dwelling (which may be constructed on-site) and pay rent for the site on which the dwelling sits.

The *Residential Tenancies Act 1997* deals with residential tenancy matters and “caravan park” accommodation. The Act lays out a detailed set of rights and responsibilities in connection with rented dwellings and establishes jurisdiction in the Victorian Civil and Administrative Tribunal to resolve the full gamut of tenancy disputes. Security of tenure under the Residential Tenancies Act is limited and the test for coverage of the caravan park provisions may not be easy to apply in some circumstances. Accordingly revision of relevant parts of the Act may be warranted to ensure that people residing in residential parks and other owner-occupiers of substantial dwellings on rented sites are appropriately protected. This issue will be considered separately in any future review of the Residential Tenancies Act.

4.1.5 Rental villages

There are other examples of accommodation marketed specifically to retired people, which do not necessarily fall within the definition of retirement village in the Retirement Villages Act. One developer is marketing units in a village environment to purchasers for investment purposes, which are in turn offered to residents under a tenancy agreement. The fortnightly rental is linked to a resident's age pension and rent assistance – usually 85 percent of the age pension and 100 percent of rent assistance. Three meals a day are offered in a common dining room and a heavy laundering service is also provided.

The Department of Human Services has advised Consumer Affairs that the provision of services such as meals and laundering do not constitute “special or personal care” for the purposes of the *Health Services Act 1988*. Therefore, these types of establishments are not required to register as a Supported Residential Service with the Department of Human Services.

The nature of the transaction for establishments where all residents make residential tenancy agreements is different from that of entry into a retirement village. Residents are not required to make a substantial upfront financial investment (or pay deferred management fees) for a right to reside in the village and, therefore, the range of investment protections which exist in the Retirement Villages Act are not required. The Residential Tenancies Act lays out a detailed set of rights and responsibilities in connection with rented dwellings where no ingoing contribution or deferred management fee is payable. This Act also establishes jurisdiction in the Residential Tenancies List of the Victorian Civil and Administrative Tribunal to resolve the full gamut of tenancy disputes.

Security of tenure is a central issue for older people residing in these types of establishments. The Residential Tenancies Act requires landlords to provide particular notice periods (depending on the circumstances) should a tenant be required to vacate the premises. For example, 120 days notice must be given if no specified reason is provided. Importantly, the Residential Tenancies List has the power to cancel notices or vary notice periods should, for example, the tenant dispute the reasons for the notice to vacate or find it difficult to move within the notice period. In contrast, the Retirement Villages Act provides retirement village residents with a longer period (six months or at the end of the contract period if later than six months), which reflects the different contractual and financial relationship between retirement village residents

and retirement village operators. For example, residents have usually entered into long-term freehold or leasehold contracts and are obliged to pay substantial ingoing and deferred fees. (A comparison between the Retirement Villages Act and the Residential Tenancies Act is presented in Appendix 6.)

Accordingly, Consumer Affairs Victoria holds the view that the Residential Tenancies Act is the appropriate vehicle to govern rental villages as it provides substantial protection for tenants and a consistent approach to the landlord/tenant relationship within the rental marketplace.

It is arguable that coverage by the Retirement Villages Act might encourage the formation of a residents' committee, and it should be noted that residential tenancies without an ingoing contribution are not excluded from coverage of the retirement villages legislation in New South Wales. However, there is no compelling argument that lack of coverage in Victoria creates any material disadvantage to tenants in complexes where no ingoing contribution is required.

4.1.6 Reference to owner

The Act currently assumes that the landowner and the village operator are one and the same entity. This is not always the case. Some retirement villages (particularly those run by community based organisations) are built on land that is owned by, for example, local councils or charitable trusts, or by passive investors who are paid a rental by the operator.

A number of industry submissions raised concerns that the Act requires the landowner to be a party to any resident agreement and for the landowner to also be responsible for refunding ingoing contributions. In some cases, landowners are reluctant to comply with the provisions of the Act. Queensland imposes obligations on the "retirement village scheme operator" who is a person, alone or with someone else, who controls the scheme's operation and purports to control the scheme's operation.¹⁵ New South Wales imposes obligations on the "operator" who, amongst other people, includes owners of land in the village.¹⁶ Accordingly, Consumer Affairs Victoria proposes that the Act be amended to impose obligations on the village operator and the landowner.

Proposal 4

The Retirement Villages Act be amended to distinguish between obligations on the village operator and obligations on the landowner.

¹⁵ *Retirement Villages Act 1999* (Qld) s8

¹⁶ *Retirement Villages Act 1999* (NSW) s4 (1)

4.2 Protection of Investment

A retirement village resident's financial investment is protected by a range of mechanisms including:

- A retirement village contract
- A retirement village notice on the retirement village title
- A charge on the retirement village land (in cases where a refundable ingoing contribution exceeds \$10,000).

A retirement village contract generally contains (amongst other things) details of the accommodation, facilities and services offered by the village and is the primary form of information by which a consumer chooses a retirement village. The retirement village notice and charge act to ensure that a retirement village resident's funds are sheltered and recoverable as follows.

Retirement village contract		Retirement village notice	Charge on land
<p>Residence right</p> <ul style="list-style-type: none"> • Leasehold • Licence • Shares in company • Units in a unit trust • Periodic tenancy • Other arrangements. 	<p>Freehold right</p> <ul style="list-style-type: none"> • RV Act residence right doesn't apply to freehold title • The <i>Subdivision Act 1988</i>, the <i>Subdivision (Body Corporate) Regulations 1989</i> and the <i>Sale of Land Act 1962</i> also apply to this arrangement 	<p>Applies to all retirement villages.</p>	<p>Does not apply to freehold title. (because protection is provided by own title)</p>
<p>Right to occupy the unit and use services and facilities in the village.</p>		<p>Must be registered on the title (S9, Part 2)</p>	<p>Applied to refundable ingoing contributions in excess of \$10,000.</p>
<p>Section 14 binds owner's successors in title to honour the terms of the residence contract. This protects the resident if the village is sold or the owner bankrupts.</p>		<p>Requires the discharge of all encumbrances that may take priority over a resident's refundable ingoing contribution. (Except for encumbrances in S42 (2) of the <i>Transfer of Land Act 1958</i>. For example unpaid taxes.)</p>	<p>Charge provides security over the retirement village land. Charge is similar to a mortgage – acts as a sign that the land is being used as security for money owed by owner.</p>
<p>The Act prohibits contracting out, therefore, a provision in a retirement village contract or document is voided if it tries to exclude, modify or restrict the operation of the Retirement Villages Act (s7)</p>		<p>Protects a resident's refundable ingoing contribution by ensuring enough equity in the retirement village land/property.</p>	<p>Exists whether or not the charge is registered on the title. Enforceable through Supreme Court.</p>

4.2.1 Retirement village notice

Section 9 of the *Retirement Villages Act 1986* requires the owner of the retirement village land to lodge a retirement village notice with the Registrar of Titles before entering into a contract that creates a residence right in the land; section 11 requires the Registrar of Titles to make a recording of the notice on the Register. The notice has the effect of flagging that the land is used as a retirement village and therefore plays a vital role in protecting residents' investments.

Submissions to the review were very supportive of the notice provisions. Problems focused on the removal of the notice from the land title, and where the village was located on Crown land and where no title exists. These issues are addressed separately in this report.

4.2.2 Charge on retirement village land

Apart from legal estates in fee simple¹⁷, the charge applies where a refundable ingoing contribution of \$10,000 or more has been paid for a residence right in a retirement village. Thus, the charge is created over the retirement village land and is enforceable against any owner, whether or not the owner has notice of the charge. Additionally, the charge acts as a sign that the land is being used as security for money owed by the owner and prevents the owner selling the retirement village or encumbering the land. The interests and rights listed in section 42 (2) of the *Transfer of Land Act 1958*, which includes such things as unpaid taxes, however, have priority over the charge.¹⁸

Interestingly, the review of the regulation of the Western Australian retirement village industry¹⁹ recommended that the charge on land provisions in the WA Act (section 20) be repealed. *The Final Report*²⁰ argued that a resident's right to security of tenure and a premium (ingoing contribution) refund were provided by:

- The memorial (notice on title) which has the effect of giving notice that the land is used as a retirement village
- The provisions of the Act which make the residence contracts binding on successors in title to the village (including mortgagees and other interest holders) and limits the circumstances under which the residence contracts can be terminated
- Provisions in the Act that prevent the termination of any retirement village scheme while a person remains in occupation unless the Supreme Court approves.

The report argued that these provisions ensure that any successor in title to the village is bound to recognise and perform the obligations of the previous owner, thereby ensuring the enforceability of the premium refund rights (refundable ingoing contribution) under the residence contracts. The report also argues that the statutory charge causes some confusion for financiers who may not be willing to lend monies on land already subject to a charge, consequently discouraging investment in the retirement village sector.

¹⁷ *Retirement Villages Act 1986* s27

¹⁸ *Retirement Villages Act 1986* s29

¹⁹ Department of Consumer and Employment Protection Government of Western Australia, February 2002

²⁰ Page 27 (Recommendation 12)

Whilst the Victorian legislation has similar provisions to those of Western Australia, Consumer Affairs Victoria does not see any need to remove the statutory charge on retirement village land in Victoria. The statutory charge gives a resident a priority interest over the retirement village land and provides an incentive for operators to avoid legal action by residents.

Only a few submissions to the Victorian review specifically referred to the charge. Those that did generally argued that the use of the charge to secure a refundable ingoing contribution had been an effective tool in protecting residents' investments. A resident group offered a dissenting view that the charge affords most protection to residents in the event of a complete collapse of a retirement village scheme, necessitating the selling up of all the land. They argued that the charge does not provide adequate protection in relation to individual refunds of residents' ingoing contributions where the selling up of land is not a realistic option. This may be so, as the charge exists primarily to ensure that residents have first entitlement to the funds in the case of a village collapsing. Interestingly, in cases where a village has experienced financial difficulty, the bank or other financial institution that holds the mortgage over the retirement village property (this mortgage is subordinate to the statutory charge) usually sells the village as mortgagee. The new owner then assumes the liability for the refundable ingoing contribution pursuant of section 29 (5) of the Act and responsibility to pay any resident who is owed a refund.

The same resident group recommended that (in addition to the charge) a central investment fund, managed by an independent and experienced funds manager and appointed by the State government be set up, into which residents' ingoing contributions could be paid.

However, proposals that require ingoing contributions to be paid into a central fund may restrict operators' cash flow and impede further development in the marketplace. Additionally, it is likely that proposals of this nature would particularly affect villages at the lower end of the market, in which residents have fewer options for alternative accommodation.

For example, community-auspiced villages currently play an invaluable role in the retirement village marketplace by providing accommodation to residents who have limited assets and income. Historically cash poor, these organisations rely heavily on ingoing contributions (amounts which are often low in comparison to those of resident-funded villages) for the day-to-day operation of their villages. Consumer Affairs Victoria is concerned to avoid arrangements under which some retirement villages may struggle to remain viable, because this will invariably lead to the suffering of both residents and operators and would not be in the interests of the community as a whole.

Further, there is no evidence to suggest that retirement village operators have been failing in their duty to refund ingoing contributions. It is probable that the existence of the charge provides a strong incentive for operators to refund ingoing contributions, as legal action taken against them would be highly damaging to the individual business concerned and have a detrimental effect on the reputation of the industry as a whole.

Due to the lack of any evidence of problems in this area, Consumer Affairs Victoria cannot find justification for an alternative system for securing residents' refundable ingoing contributions.

4.2.3 Arrangements for extinguishment of charge and removal of notice

A number of submissions sought more flexible arrangements for the removal of a retirement village charge and a retirement village notice in certain circumstances.

Where a site is no longer used as a retirement village

Sections 32 and 39 respectively regulate the extinguishment of the charge and removal of the retirement village notice. Currently the Act provides for the extinguishment of a charge where:

- An agreement in writing has been signed by all the residents whose refundable in-going contributions are secured by the charge

or

- By order of the Supreme Court under section 31

or

- Upon the publication of a declaration in the Government Gazette.²¹

A retirement village notice can be cancelled:

- By an agreement in writing signed by all the residents of the village to which the notice relates

or

- Upon the publication of a declaration in the Government Gazette.²²

Sections 32 (6) and 39 (6) respectively empower the Director to declare that a charge is extinguished and a notice cancelled. The application must include, among other things, a statutory declaration by the owner, stating that the retirement village land is no longer used as a retirement village and that the residents, former residents or (if a resident has died) legal personal representatives have been notified of the application. Residents must be given 60 days within which to make a submission to the Director. In cases where an owner is unable to contact former residents of the retirement village, Consumer Affairs Victoria requires that a public notice be placed in daily newspapers (usually the Herald Sun and The Age) of the owner's intention to make an application for a declaration from the Director and the consequences of that declaration.

It is evident from the submissions that some village owners have found this process time consuming and onerous. However, a review of applications indicates that operators may not be suitably aware of the process and, in particular, that time (60 days) must be allocated to allow residents to lodge an objection with the Director. This situation indicates the need for Consumer Affairs Victoria to publicise the application process within the retirement village industry and for operators to avail themselves of independent legal advice and support in order to adequately understand their responsibilities under the *Retirement Villages Act 1986*.

²¹ *Retirement Villages Act 1986* s32 (1)

²² *Retirement Villages Act 1986* s39 (1)

Where part of the retirement village land is no longer used as a retirement village and operators wish to subdivide

The current legislation does not prevent owners from subdividing a portion of retirement village land and removing the retirement village notice and the charge where all residents in the village agree. However, the extinguishment of the charge and the removal of the retirement village notice may have financial and amenity implications for residents. Therefore, stringent requirements are needed to ensure that residents' rights are protected in cases where owners are unable to obtain agreement.

It appears reasonable to allow a retirement village owner/operator to apply to the Director for a declaration that the notice be cancelled on the proposed portion of land that has been subdivided and is no longer to be used as a retirement village. It should be noted that the Director under section 29 has granted an application for the removal of a retirement village notice. Accordingly, such applications should provide details of the impact of the subdivision for residents. In cases where it is demonstrated that residents do not face substantial adverse affects from the proposal, the Director should have the discretion to cancel the retirement village notice from the subdivided land.

Proposal 5

The Act be amended to give the Director of Consumer Affairs Victoria discretion to consider applications for the cancellation of a retirement village notice and extinguishment of a charge concerning a subdivided part of retirement village land that is not used as a retirement village.

4.2.4 Crown land

Sections 9 and 29 of the *Retirement Villages Act* 1986 require a retirement village notice and charge (respectively) to be placed on retirement village land as a form of security for a residence right and the payment of a refundable ingoing contribution. However, an anomaly exists for a minority of retirement villages located on Crown land and specifically those where no title exists. Such villages seem to be operated by not-for-profit organisations or municipal councils on a non-commercial basis. It is difficult to gauge the extent of this problem due to the lack of data concerning the villages located on Crown land where no title exists; however, it is believed that the numbers are very low.

It may be thought that residents living in retirement villages on Crown land where no title exists are more vulnerable than residents in villages on private land; however, it is difficult to imagine that a State or Commonwealth government would not uphold a resident's rights as though there were a notice and a charge. Therefore, it is thought that residents in these types of villages do not face substantially higher levels of vulnerability.

A number of options to respond to this issue have been considered. For example, operators of villages located on Crown land where no title exists could be required to pay any refundable ingoing contribution amount into an independent investment fund. Another option would be for operators to pay a bond based on the refundable ingoing contribution amount. However, these options lack flexibility, may cause cash flow difficulties for some retirement villages and, in some cases, would serve to force operators catering for low income and more vulnerable older people out of the marketplace.

The community-auspiced villages, which are located on Crown land, play a vital role in providing accommodation for less well-off senior citizens. It is likely that any legislative intervention would have the effect of dislocating poorer residents and would not be in the public interest.

4.3 Retirement village resident contracts

Before entering into a residence contract that gives rise to a residence right, the retirement village owner must lodge a retirement village notice, in the form on Schedule 1, with the Registrar of Titles.²³ The Registrar must record the notice in the Register.²⁴ Before lodging the notice the owner must have all encumbrances on the title released to ensure that the residence right will have first priority.²⁵ If the retirement village owner fails to lodge a notice, they are guilty of an offence²⁶ and the resident may rescind or cancel the contract.²⁷ Section 14 of the Act binds the owner's successors in title to honour the terms of the residence contract, thus protecting residents in cases where a village is sold or where an owner goes bankrupt. The Act also prohibits contracting out, therefore, a provision in a retirement village contract or document is voided if it tries to exclude, modify or restrict the operation of the Retirement Villages Act.²⁸ All other provisions within the contract or document, however, remain valid and enforceable.²⁹

Contracts that respond to the range of legal structures, services, facilities and fee arrangements are complex and some residents find them difficult to understand.

Arrangements and legal structures to facilitate entry to a retirement village include a long term lease arrangement, purchase by title (fee simple), units in a unit trust, shares in a company or periodic tenancy, and new arrangements continue to emerge. A typical residence contract ranges from 50 to 100 pages and can contain hundreds of clauses.

Deferred fees, which are designed to keep the refundable ingoing contribution (ingoing fee) low, is an arrangement which permits residents to defer some of the costs of entering a village until they exit the village. A typical example of a deferred management fee is a fee that is calculated at the rate of three percent per annum for up to a maximum of 10 years (depending on how long the resident has lived in the village) on the gross price receivable by the resident at the time of the sale of the unit. Thus, if the gross price receivable for a modest unit is \$150,000 and the resident has been living in the unit for 10 years, they would pay \$45,000 in deferred management fees. Adding in the fees to cover the sale of the unit, plus any maintenance fees owing until the unit is sold, the resident may pay over \$50,000 in exit fees.

The complexity of retirement village contracts and arrangements is compounded by the fact that a large proportion of residents considering entering a retirement village are making a one-off decision of a significant financial nature. Secondary markets in information and advice – from such providers as financial planners, solicitors, and accountants with expertise in retirement village matters – are emerging but are underdeveloped. Some residents report that much of the pre-contractual advice received from their family solicitor was unhelpful in assisting them to make an informed choice about whether or not to enter a retirement village.

²³ *Retirement Villages Act 1986* s9

²⁴ *Retirement Villages Act 1986* s11

²⁵ *Retirement Villages Act 1986* s9 (4)

²⁶ *Retirement Villages Act 1986* s8 (1)

²⁷ *Retirement Villages Act 1986* s8 (2)

²⁸ *Retirement Villages Act 1986* s7 (1)

²⁹ *Retirement Villages Act 1986* s7 (2)

Due to the evidence of information asymmetry in relation to residence contracts, Consumer Affairs Victoria engaged an independent consultant to undertake an analysis of retirement village contracts and the various financial arrangements associated with deferred management fees. (Beverly Kliger and Associates in partnership with the Institute for Social Research, Swinburne University of Technology were engaged in October 2002.) The project consisted of two elements: an analysis and report on the fairness and reasonableness of current financial arrangements within the retirement village industry; and the development of a financial modelling device and financial assessment tool for prospective residents.

The consultant confirmed that retirement village documentation was complex, technical and legally based and concluded that there was an information imbalance between retirement village operators and consumers which leads to some operators gaining an unfair advantage in the marketplace. In particular, they found little plain language explanation in retirement village contracts and noted that the documentation failed to take account of the experiences, conditions and vulnerabilities that are more common among older people. To overcome this imbalance, increased transparency of retirement village contracts and fees arrangements was recommended to assist residents to:

- **Understand** the type and level of services and facilities provided by a retirement village operator as part of the ingoing contribution (purchase price) and on-going costs associated with living in a retirement village
- **Assess** the costs and services on offer from the retirement village operator
- **Compare** the costs of living in a retirement village with the purchase or rental of similar sized non-retirement village accommodation in a similar location

- **Choose** between retirement villages by comparing the costs charged and services offered by one retirement village operator with the costs and services of other retirement village operators.

Given the evidence of information asymmetry and the potential for consumer detriment, a range of approaches to address the problem and to assist prospective residents to *understand, assess, compare and choose* require consideration.

4.3.1 Contractual matters raised in the review

A range of contract related matters were raised in submissions from stakeholders in the review.

These included:

- Exit arrangements:
 - The assignment of exclusive selling or re-leasing rights to the operator
 - Liability for fees after a resident has vacated their unit
 - Responsibility for the cost of repairs or refurbishment of a retirement village unit
 - Refund entitlements
- Sinking funds or capital maintenance and replacement funds
- Retirement village fees
- Proxies and powers of attorney
- Unfair terms in contracts.

These matters are discussed below and proposals for change concerning these issues are included in **Proposals 6 and 7**.

4.3.2 Exit arrangements

Exit arrangements comprise an important part of a retirement village contract and are subject to explicit regulation in New South Wales and Queensland. Issues raised in the review are outlined in the discussion below.

The assignment of exclusive selling or re-leasing rights to the operator

It is not unusual for the residence contract to grant village operators exclusive selling or leasing rights and the ability to determine the asking price of each unit. In many cases former residents or their beneficiaries (where the resident has died) remain liable for ongoing maintenance charges until the unit has been sold or re-leased. Liabilities vary widely, but seem to range between \$250 and \$1000 per month.

Residents who have found themselves powerless to seek their own agent in cases where the sale or re-leasing of the unit has been delayed (sometimes for months) have led calls for the prohibition of exclusive selling rights. The situation appears to be more problematic where the resident has moved out of the unit, sometimes into a care facility. However, discussion with residents and residents groups has revealed a general acceptance of an operator's right to play a major role in the sale of retirement village units in order to maintain the integrity of the existing culture of the village.

Operators submit that they are best placed to carry out this role because of their intimate understanding of the facilities, services and contractual arrangements offered at the village, that they can assess a prospective resident's suitability for residency in a particular village and that they often have a representative on site who can handle enquiries.

While there are some valid reasons for an operator playing a major role in the selling or re-leasing of a unit, it is not appropriate that an operator has an automatic right to charge a fee or receive a commission when the unit is sold or a long term lease is re-assigned. Details of such matters should be clearly outlined to new residents prior to entering into a contract and it should be open to them not to assign the selling or re-letting rights to the operator (as it is in New South Wales).

However, it needs to be recognised that the village operator must be involved in the process where an external agent is used to sell or re-lease the premises as the operator carries responsibility for disclosure of information and the content of the retirement village contract. In essence, a sale or long-term lease would need to be conditional on the operator agreeing, with a mechanism to ensure that agreement is not withheld unreasonably.

Under the New South Wales legislation, the operator has 14 days from notification of the proposed contract to either enter into a retirement village agreement with the purchaser or seek an order that it is reasonable not to do so. The system for transfer of residency rights in caravan parks under the Victorian Residential Tenancies Act deems consent to have been given if the park owner does not formally object within a set time.

Proposal 6

The Act be amended to:

- Prevent an operator from requiring a resident to vest rights of sale of the resident's interest in the village in the operator
- Prohibit an operator charging a fee or receiving a commission in relation to the sale of the resident's interest where an external agent has managed the sale on behalf of a resident, former resident or their beneficiary
- Ensure, where an external agent is engaged by a resident, former resident or a former resident's beneficiary, that the operator's involvement in the process of selling the resident's interest is sufficient to allow discharge of the operator's obligations under the Act and protection of the operator's interest in maintaining a compatible resident population.

Liability for fees after a resident has vacated their unit

For residents who have already moved out of their unit (or their beneficiaries), liability for ongoing maintenance fees until the unit is sold – for which they receive no benefit – can add up over time. Operators, however, argue that they remain liable for a range of fixed costs, which are payable whether or not all the units are occupied. For example, rates and insurance costs remain static and there may only be minimal savings on variable costs such as management, staff and cleaning where a unit has been vacated.

Queensland currently seeks to balance the interests of operators and past residents by limiting liability for recurrent charges relating to “personal services” (such as meals, laundry and cleaning) to 28 days after the resident vacates. Consumer Affairs Victoria suggests this may be an appropriate provision for Victoria also, although it is noted that New South Wales is now moving from a 28 day limit to disallowing all personal service fees after a resident has left. Prospective residents should also be provided with details prior to signing a contract of any and all liability for fees on vacating a unit (see *Proposal 6*).

Proposal 7

The retirement village operator have no right to impose recurrent charges on the resident beyond 28 days after the resident vacates the retirement village.

Responsibility for the cost of repairs or refurbishment of a retirement village unit

Responsibility for the cost of repairs or refurbishment of a retirement village unit varies according to the type of legal and tenure arrangements of the village. A number of residents submitted that their residence contract contained a lump sum figure for the refurbishment of their unit, which did not reflect the true cost of such work. In particular, they argued that operators could unfairly profit from such arrangements where units had been subjected to minimal wear and tear. Some residents believed that they should be entitled to use selected tradespeople in order to minimise cost. Operators felt responsible for ensuring that units within their village are presented in a suitable condition to secure a sale or re-lease of the premises and to maintain a proper level of maintenance and capital replacement in the village. This has benefits for existing and departing residents. It is essential, however, that a resident can consider the repair and refurbishment costs prior to signing the residence contract.

Refund entitlements

Some residents and resident groups called for the introduction of a statutory refund period to prevent overly long delays in refund entitlements. In particular, residents felt that uncertainty concerning when they would receive their money after they had terminated their contract hindered their ability to exit a village.

However, to prescribe a narrow period of time in which a resident's entitlements must be refunded may cause financial hardship for the retirement village and such financial hardship would inevitably be passed on to existing residents.

As with the sale of other houses or units, variables in the economy and the real estate marketplace impact on the sale of a property. Issues such as price, location of the property, quality of the facilities and the level of services available influence the selling environment.

Consumer Affairs Victoria favours a balanced approach, broadly in line with New South Wales, where a refund must be made within 14 days of the right to reside in the unit changing hands and, where the resident was occupying under a periodic tenancy, no later than 6 months after the resident vacating. As far as possible, residents should be given details of refund entitlements prior to signing a contract to enter a village.

Proposal 8

The Act require that a departing resident's refund entitlements be paid within 14 days of the right to reside in the unit passing to another person and, where the resident was occupying the unit under a periodic tenancy, no later than 6 months after the resident's vacation of the unit.

4.3.3 Sinking funds or capital maintenance and replacement funds

Responsibility for the maintenance and replacement of capital items varies considerably from village to village. The Act does not require or regulate sinking funds or capital maintenance and replacement funds. Some villages provide for a separate sinking fund as part of their residence contracts. Other villages do not have a separate fund, but allocate money for capital maintenance and replacement through their retirement village budgets.

A number of submissions called for the introduction of mandatory capital maintenance funds for retirement villages, expressing their desire to live in a village that was appropriately maintained over the longer term, without the worry of any unreasonable or unexpected cost imposition in the future. Most operators opposed mandatory sinking funds, with one operator group stating that they were not aware of any instance where the lack of a sinking fund had substantially impacted on the amenity or operations of a village or had resulted in a contractual obligation not being met.

The Queensland *Retirement Villages Act 1999* requires operators to establish a Maintenance Reserve Fund and a Capital Replacement Fund to be used for the maintenance and replacement of capital items. The amount that must be held in each fund is guided by a report from a quantity surveyor that provides a ten-year projection of maintenance and capital replacement expenditure. The report must be updated every two years. Under the Act the owner is responsible for payments into the Capital Replacement Fund, which are usually payable from a portion of the ingoing contribution or the deferred management fee. The residents are responsible for the payments into the Maintenance Reserve Fund, which are usually derived from ongoing maintenance fees.

Consumer Affairs Victoria is not persuaded that such an approach would be appropriate for the Victorian environment. It is clear that there is a trade-off between provision for capital replacement and immediate affordability of village accommodation, since any capital replacement funding must ultimately be derived from residents.

Adequate details of capital maintenance and replacement arrangements in retirement village contracts should assist prospective residents to choose a retirement village that meets their needs.

4.3.4 Retirement village fees

Lack of clear information concerning retirement village fees has been the source of problems reported by respondents. A residence contract primarily presents fees and charges as a formula, which some residents find difficult to comprehend. A typical retirement village contract may include: an ingoing contribution sum; a maintenance charge sum and details about adjustments to the maintenance charge; and a deferred management fee formula. The formula for the deferred management fee can be substantially different from village to village. For example, some villages link the deferred fee to the Commonwealth Bond Rate (which is a variable figure), where other villages use a standard three percent for each year of residency in the village to a maximum of 10 years. Most formulas apportion part of the capital increase in the value of the unit to the operator. The complexity of fee arrangements, the substantial sums of money involved and the long term nature of the transaction all increase the possibility of consumer detriment. The possibility of consumer detriment is compounded by the vulnerable and disadvantaged nature of prospective buyers (who are aged and may be frail or recently bereaved).

There is a need for clear information on fees to be available to potential residents to assist decision-making. The *Consumer Credit (Victoria) Act 1995*, which applies the Uniform Consumer Credit Code in Victoria, requires credit contracts to include information such as: the amount of credit provided; the annual percentage rate or rates; how the interest is calculated and when it is charged; the total amount of interest if the contract is to be paid out within seven years; credit charges and fees to be paid; and how the consumer is to be informed about changes to the contract etc. This is considered a useful approach for the retirement village market.

4.3.5 Unfair terms in residence contracts

The new Part 2B of the *Fair Trading Act 1999* provides that “unfair terms” in consumer contracts – which includes retirement village residence contracts – are void.

Under section 32W of the Fair Trading Act, a term in a consumer contract is to be regarded as unfair if, contrary to the requirements of good faith and in all the circumstances, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.

Matters that can be taken into account in determining if a term is unfair include whether the term has the object or effect of:

- Permitting the supplier but not the consumer to avoid or limit performance of the contract
- Permitting the supplier but not the consumer to terminate the contract
- Penalising the consumer but not the supplier for a breach or termination of the contract
- Permitting the supplier but not the consumer to vary their terms of the contract

- Permitting the supplier but not the consumer to renew or not renew the contract
- Permitting the supplier to determine the price without the right of the consumer to terminate the contract
- Permitting the supplier unilaterally to vary the characteristics of the goods or services to be supplied under the contract
- Permitting the supplier unilaterally to determine whether the contract had been breached or to interpret its meaning
- Limiting the supplier's vicarious liability for its agents
- Permitting the supplier to assign the contract to the consumer's detriment without the consumer's consent
- Limiting the consumer's right to sue the supplier
- Limiting the evidence the consumer can lead in proceedings on the contract
- Imposing the evidential burden on the consumer in proceedings on the contract.³⁰

The new provisions also give power to prescribe certain terms in standard form consumer contracts as being unfair and make it an offence to use a prescribed unfair term. The Director of Consumer Affairs is able to apply to the Victorian Civil and Administrative Tribunal (VCAT) for a declaration that a term is unfair, and for injunctions to prevent the continued use of unfair terms.

³⁰ *Fair Trading Act 1999* s32 X

4.3.6 Proxies and powers of attorney

Part 6 of the Retirement Villages Act confers powers on meetings of residents in relation to by-laws and special maintenance levies. A number of submissions from residents focused on the practice of some operators requiring irrevocable proxies or powers of attorney as a condition of entry to the village. This practice seems most prevalent in commercial or resident-funded villages.

The practice of requiring irrevocable proxies or powers of attorney, in some circumstances, may be aimed at preventing such matters as residents voting to block further development on vacant land within the village. However, the practice denies residents an active say in the affairs of their village and could give unfair influence and advantage to operators. Where a resident is unable to attend retirement village meetings due to ill health or an absence from the village, the discontinuous use of proxies has been proven to be a legitimate tool. New South Wales³¹ has prohibited operators from requiring a resident to give them power of attorney or from appointing them as a proxy. Queensland has a similar provision with regard to power of attorney³² and also restricts the effect of proxies generally to one meeting.³³ Whether or not making an irrevocable proxy or power of attorney a condition of entry to a village constitutes an unfair contract term under the Fair Trading Act, Consumer Affairs Victoria opposes the practice.

Proposal 9

The Act be amended to prohibit a retirement village operator from seeking or accepting the assignment of a power of attorney from a resident (except where the resident is a relative of the operator).

Proposal 10

The Act be amended to prohibit a retirement village operator from seeking or accepting an irrevocable proxy from a resident (except where the resident is a relative of the operator).

4.3.7 Options for intervention

A continuum from low-level to high-level intervention includes:

- Information for prospective residents
- Self-regulation of contractual arrangements
- Prescribing minimum requirements for residence contracts (what must and must not be included in a residence contract)
- Prescribing standard forms of residence contract;
- Prescribing a standard form contract and financial arrangement for the industry
- Compulsory industry code that includes a model contract.

Information for prospective residents

The least restrictive intervention involves providing prospective residents with information concerning the retirement village market and retirement village contracts. This could include requiring operators to provide the explanatory information with other disclosure documentation. Section 20 of the Act requires village operators to give residents a range of documents before a resident enters into a residence contract, which is further discussed in section 4.4. Disclosure.

³¹ *Retirement Villages Act 1999* (NSW) s64 and 65

³² *Retirement Villages Act 1999* (QLD) s89

³³ *Retirement Villages Act 1999* (QLD) s133

Such explanatory information would be in addition to the current provisions. This approach on its own, however, is unlikely to be effective in addressing the information asymmetry problem, particularly given the age related characteristics of prospective residents, which can impact on their ability to make informed and knowledgeable decisions.

Self-regulation of contractual arrangements

Self-regulation of contractual arrangements would allow the retirement village industry to develop and enforce its own contract standards. Interestingly, the Retirement Villages Association Ltd Accreditation Scheme requires that accredited villages provide clear documentation of all financial systems and contractual arrangements (Standard 2.1). The Association is making inroads into raising standards within the market but its membership is relatively small (62 Victorian retirement villages are accredited by the Retirement Villages Association Ltd and a further 26 new villages are in the process of achieving accreditation) and it has had limited success on positively influencing contracts in the overall market.

Given the widespread nature of problems associated with confusion about contract terms, this approach is not considered an effective response.

Prescribing minimum requirements for residence contracts (what must and must not be included in a residence contract)

An alternative approach involves setting minimum requirements for residence contracts by regulating the terms and conditions which must and must not be in a residence contract. This option would ensure that important terms and conditions are in every retirement village contract (regardless of the legal or financial arrangements used by the village) resulting in greater consumer protection, transparency and better opportunities for residents to compare the accommodation and services offered in the marketplace. This model does not extend to regulating the form of the contract, so suppliers would retain flexibility over the presentation of contracts.

The Act currently requires village operators/ owners to give residents all residence documents relating to the retirement village concerned at least 21 days before a resident enters into a residence contract, but does not go so far as to set minimum requirements for the residence contract. Section 3 defines residence documents as any of the following:

- A residence contract
- A management contract
- A document under which a resident agrees to observe the by-laws, promises to pay an in-going contribution or a recurring charge for the provision of goods or services by a manager
- A document which is a prescribed document or contains prescribed information
- A disclosure statement completed and signed by the owner;
- A check list in the form in Schedule 3
- The by-laws.

Regulating minimum terms and conditions for residence contracts, therefore, would also have the effect of increasing pre-contractual disclosure.

It is recognised that residents stand to benefit from new contractual models developed to meet future needs. Prescribing minimum standards for residence contracts will address the information asymmetry problem by providing contractual details to help residents to understand, assess, compare and choose. Both Queensland³⁴ and New South Wales³⁵ have adopted this type of approach by prescribing minimum requirements for residence contracts.

For example, Queensland's residence contracts must contain: the right to rescind the contract during the cooling off period; the ingoing contribution and exit fees payable; the resident's exit entitlements; the service charges; amounts payable concerning the maintenance reserve fund; insurance for the retirement village; all conditions precedent to the resident's right to reside in the village; the resident's right to resell the right to reside in the unit; a resident's entitlement to village financial statements; the dispute resolution process; the statutory charge; rights to terminate the contract; and anything else prescribed under a regulation.

The NSW approach requires similar contractual provisions and also prescribes matters excluded from contracts including: obligations on residents to resolve disputes by processes other than that required by the Act; requiring residents to have a will or to advise the operator of the location of the will; provisions requiring residents to agree to take out an insurance policy (except where a resident uses a motorised wheelchair); provisions enabling the resident to be charged individually for legal, accounting or other services incurred by the operator; restricting the period of time a resident may be absent from the village;

penalty terms, in cases where a resident breaches the contract or village rules; exclusion from the benefit or advantage of any statute; where the contract makes provision for varying recurrent charges, it must not include a component relating to the actual or proposed expenditure of the village; disclaimers; and provisions indicating that the contract represents the entire agreement between the parties.

Most of these minimum requirements would be applicable in Victoria, however, in line with concerns identified in the review concerning exit arrangements, capital maintenance and replacement funds, retirement village fees and proxies and powers of attorney (as discussed above), additional detail concerning these matters would be necessary. Therefore, matters that are considered necessary in residence contracts include:

- Basic particulars such as the name of the village, its address, the names of the parties and the date on which the contract is made
- The resident's rights under the statutory cooling-off period (which is already required under section 24)
- A list and description of services, facilities and amenities, together with any fixture, fittings and furnishings that may be provided
- Restrictions on the use of the residence
- Terms that deal with such matters as the operator's access to premises and village rules
- Details of the minimum of advance notice to be given to the resident in the case of termination of contract by management;
- Details of any capital replacement fund or other fund held by the retirement village;

³⁴ *Retirement Villages Act 1999 (QLD)* s45

³⁵ *Retirement Villages Act 1999* s42

- The process by which residents can ask the operator to carry out repairs and maintenance
 - All retirement village fees payable:
 - Details of all costs payable to gain entry, reside in and leave the village (ingoing contribution, maintenance charges and any deferred management fee)
 - How the maintenance charge is to be adjusted and existence of the special levy;
 - The method of calculating any refund due to the resident on termination of the contract and any applicable financial penalties; and
 - A summary of all fees payable (in dollar figures) if a resident were to exit a village after two years and six years of entering a village
 - Exit arrangements:
 - Details of how the contract may be terminated and a resident's right to remove any fixtures added by the resident during their occupancy
 - Details of the how a residence right to reside in the unit is to be sold or re-leased
 - Details of how the resale or re-lease value will be decided
 - What refurbishment of the unit will be required and who pays for it
 - The process for, and effect of, accepting offers, including when offers may be refused
 - The provision of monthly sales information
 - How the expenses of sale are to be shared, including any commission payable to the operator
 - Dispute resolution arrangements:
 - How disputes are to be dealt with through an internal process and an external body
 - The fees payable for dispute resolution. (See 4.11 Dispute resolution and complaint handling)
- Terms that should not be in the residence contract include:
- Any term which is unfair (See above, 4.3.5)
 - Any term assigning an irrevocable proxy or power of attorney to the retirement village operator (See discussion at 4.3.6 and Proposals 9 and 10 above)
 - Requirements for residents to take out any form of insurance, including home contents insurance, ambulance cover or other forms of health insurance
 - Restrictions on the period of time (eg. holidays, visiting relatives, hospitalisation) residents may be absent from the village
 - Requirements upon residents to have a will or to disclose its location to the operator/owner of the retirement village.

Prescribing standard forms of residence contract

The introduction of standard forms of residence contract would extend intervention to regulate not only what **must** and **must not** be in a contract but also (at least to some extent) **the form of the contract**. At one end of the spectrum, a standard form could be a basic template, requiring details to be filled in under a sequence of headings, but with little or no more restriction on content than envisaged under the previous option (prescribing minimum requirements). At the other, there could be a highly developed standard form or forms, covering the fine detail of residence arrangements.

An intermediate approach would be the development of individual, standardised contract-components (for each legal arrangement used by the industry) that could be inserted into contracts as required. For example, there are some common components that could be included in all contracts (details of parties involved, cooling-off provisions etc) and other components that could be inserted according to the particular legal structure of a retirement village. However, the need to respond to the range of legal structures used by the market would necessitate substantial differences in actual contract formats. For this approach to be effective, care would need to be taken to ensure achievement of the objectives set out above of promoting understanding, comparability and choice.

Prescribing a single, standardised form contract and financial arrangement for the industry would simplify the transaction for consumers, but would almost certainly have a negative impact on innovation in the market, in turn limiting consumer choice. Contractual flexibility has allowed many people to enter a retirement village who would have otherwise been prevented. Consumer Affairs Victoria considers the information asymmetry problem insufficient to warrant this level of legislative intervention.

Introducing a separate contract for each contractual arrangement used in the market could also provide clarity for residents. However, this would require the development of at least five different contracts and great care would need to be taken to ensure that restrictions in their form did not limit new types of retirement village arrangements and stifle innovation.

There are precedents for standard contracts in other legislation. The *Estate Agents Act 1980* and *Estate Agents (Contract) Regulations 1997* prescribe standard forms of contract to be used by estate agents and agents' representatives. The forms include: the Contract Note (Form 1); the Contract of Sale of Real Estate (Form 2); and the

Contract of Sale of Business (Form 3). The Contract Note sets out basic particulars including: the estate agent, the vendor, the purchaser, the property, the chattels; the property price; the deposit paid and the balance due; any special conditions; and details of the financier. The Vendor's Statement required by section 32 (1) of the *Sale of Land Act 1962* must also be attached. The Vendor's Statement discloses matters affecting the property such as easements and covenants and would not be applicable to a non-fee simple retirement village transaction. The Contract of Sale of Real Estate sets out specific and detailed conditions including: Particulars of Sale; the Schedule; General Conditions and Special Conditions (if any). Both forms contain a cooling-off statement pursuant to section 31 of the *Sale of Land Act 1962*.

The estate agents example indicates that standard form contracts can be beneficial to both suppliers and consumers, and Forms 1 and 2 may be adaptable for the retirement village market, even though there is a significantly greater level of complexity in the retirement village context.

There are similarities between a retirement village and a conventional body corporate establishment as in both cases people reside in dwellings on a site where a range of common facilities and services are provided, such as a pool or tennis court etc. In fact, retirement villages which sell units by freehold title function as a body corporate and are regulated by the *Subdivision Act 1988*, the *Subdivision (Body Corporate) Regulations 1989* and the *Sale of Land Act 1962*, as well as the *Retirement Villages Act*. In these types of villages the body corporate has a range of powers to manage, administer and maintain common property and perform a range of financial functions. The practical difference between a retirement village and a conventional body corporate establishment is that a retirement village provides solely for a community the majority of whom are retired from full time

employment or are over 55 years of age and, therefore, is specifically focused on the experiences, conditions and vulnerabilities of older people. The village manager or operator carries out similar (and additional) functions to a body corporate or body corporate manager. As discussed earlier in this report, people are often drawn to a retirement village because of the social amenity – the ability to socialise with others of a similar age and build friendships.

The nature of a retirement village transaction (non-freehold arrangement) is similar to a conventional body corporate or sale of land transaction because they both involve a contractual arrangement for substantial sums of money and the rights created are intended to survive over a long period of time. They differ because the buyer is not purchasing an interest in the land but is, in fact, purchasing a right to reside in the village (through a long term lease, units in a unit trust, shares in a company or other type of arrangement). The range of legal and financial arrangements in the retirement village market is broader than for conventional sale of land transactions.

The *Residential Tenancies Act 1997* prescribes a standard form for residential tenancy agreements.³⁶ However, the nature of a retirement village leasehold arrangement is different from a residential tenancy agreement because it includes a range of lifestyle services and a share of common facilities. A residential tenancy agreement is generally for the provision of accommodation only. Also, the retirement village transaction will generally involve a range of fees (varying from one village to the next), including a deferred management fee.

Compulsory industry code

The highest level of intervention would involve a compulsory industry code. Such a code would mandate a standard contract and also focus on a range of other interventions such as management of market behaviour and how a resident is to be informed prior to entering into a residence contract.

This approach would only be appropriate in the case of high-level market failure and substantial evidence of consumer detriment, which does not exist in Victoria.

Consumer Affairs Victoria's preferred approach

Consumer Affairs Victoria wishes to ensure that retirement village operators are not unduly prevented from competing in the market. And, indeed, the maintenance of competition is the preferred mechanism to provide consumers with the broadest range of choice concerning costs, services, location and legal arrangements. It is recognised that residents stand to benefit from new contractual models developed to meet future needs, so it is important that the model of intervention chosen is commensurate with the levels of potential or existing consumer detriment.

At the same time, Consumer Affairs Victoria wishes to ensure that, when confronted with industry contracts of whatever variety, consumers (and the advisors who may be assisting them) are genuinely able to understand, assess, compare and choose.

Accordingly, the preferred approach is to:

- Prescribe one or more model residence contracts, providing for details to be filled in (where applicable) under a sequence of generic headings
- Require that any residence contract not following the relevant model contract form contain an introductory statement explaining how it differs from the model

³⁶ *Residential Tenancies Act 1997* s26

- Prescribe a number of particulars which **must** be included in any residence contract
- Prescribe terms that **must not** be included in any residence contract.

This approach will have the effect of widening the pre-contractual disclosure provisions, as a residence contract must be disclosed at least 21 days prior to a resident signing a contract. It will meet consumer information needs, but will not have an adverse impact on competition in the market.

Proposal 11

The Act be amended to require that retirement village residence contracts be in writing and either set out their terms in accordance with the appropriate prescribed model form or include an introductory statement explaining how the form of the contract differs from the appropriate prescribed model.

The prescribed model format/s would include a sequence of generic headings and provide that details of at least the following must be included:

- Basic particulars such as the name of the village, its address, the names of the parties and the date on which the contract is made
- The resident's rights under the statutory cooling-off period (currently required under section 24)
- A list and description of services, facilities and amenities, together with any fixture, fittings and furnishings that may be provided
- Any restrictions on the use of the residence
- Terms that deal with such matters as the operator's access to premises and village rules
- Details of the minimum of advance notice to be given to the resident in the case of termination of contract by management
- Details of any capital replacement fund or other fund held by the retirement village

- The process by which residents can ask the operator to carry out repairs and maintenance
- All retirement village fees payable:
 - Details of all costs payable to gain entry, reside in and leave the village (ingoing contribution, maintenance charges and any deferred management fee)
 - How the maintenance charge is to be adjusted and how special levies can be imposed
 - The method of calculating any refund due to the resident on termination of the contract and any applicable financial penalties
 - A summary of all fees payable (in dollar figures) if a resident were to exit a village after 2 years and 6 years of entering village
- Details of how the contract may be terminated and a resident's right to remove any fixtures added by the resident during their occupancy
- Details of the how the right to reside in the unit may be sold or re-leased
- Details on how the resale or re-lease value will be decided
- What refurbishment of the unit will be required and who pays for it
- The process for, and effect of, accepting offers, including when offers may be refused
- The provision of monthly sales information
- How the expenses of sale are to be shared, including any commission payable to the operator
- Dispute resolution arrangements
- How disputes are to be dealt with through an internal process and an external body
- The fees payable for dispute resolution.

Proposal 12

The provisions of the Act be extended to set minimum requirements for what must not be in a residence contract.

Residence contracts must be in writing and must not include the following:

- Any term which is unfair
- Any term assigning an irrevocable proxy or power of attorney to the retirement village operator
- Requirements for residents to take out any form of insurance, including home contents insurance, ambulance cover or other forms of health insurance
- Restrictions on the period of time (eg. holidays, visiting relatives, hospitalisation) residents may be absent from the village
- Requirements upon residents to have a will or to disclose its location to the operator/owner of the retirement village.

4.3.8 Assessment tool

In 2002 Consumer Affairs Victoria contracted the development of a Retirement Villages Consumer Assessment Tool (ReVCAT)³⁷ as a possible device to assist operators to present explanatory fee information to residents. The tool processes a range of variables including:

- Purchase price of the property bought by resident
- Years of residency
- Interest rate as determined by the ten year Commonwealth Bond Rate (CBR) and detailed daily. These can be accessed at www.rba.gov.au/Statistics/Bulletin/F02Dhist.xls
- Monthly body corporate fee or monthly service fee
- Regular costs paid by resident
- The extent to which deferred management fee (DMF) is applied
- Unit purchase price
- The CPI as applied to maintenance charges and as applied to annual living costs
- The cost of unit sale
- Financial penalties when and if applicable
- The comparative cost of remaining in a family home.

The Retirement Villages Association Ltd may wish to consider administering the tool as a complementary self-regulatory response to fee transparency. The tool would be particularly useful to provide a summary of all fees payable (in dollar figures) if a resident were to exit a village after two years and six years of entering a village, as included in **Proposal 11**. Accordingly, the tool would provide operators with a consistent and reliable method to summarise and document these costs.

³⁷ The contract was carried out by Beverly Kliger and Associates in conjunction with the Institute of Social Research at Swinburne University

4.4 Disclosure

Section 19 of the Act requires village operators/owners to give residents all residence documents relating to the retirement village concerned at least 21 days before they enter into a residence contract. Section 3 defines residence documents as any of the following:

- A residence contract
- A management contract
- A document under which a resident agrees to observe the by-laws, promises to pay an in-going contribution or a recurring charge for the provision of goods or services by a manager
- A document which is a prescribed document or contains prescribed information;
- A disclosure statement completed and signed by the owner;
- A check list in the form in Schedule 3
- The by-laws.

These provisions give prospective residents information and time to access suitable legal and financial advice in order to make an informed decision about whether or not to enter into a retirement village residence contract. Section 22 allows a resident to rescind their residence contract if the prescribed period is not provided and where certain information is not given or is false or misleading. The Act also provides penalties where false or misleading statements are made in the disclosure documents.³⁸

4.4.1 Checklist (Schedule 3)

Section 19 of the Act currently requires that the Checklist in the form in Schedule 3 be provided to prospective residents. The Checklist is presented in two parts and outlines a range of questions designed to draw residents' attention to important matters that should be considered before deciding to enter a retirement village. The Checklist also warns prospective residents to seek advice in circumstances where they are uncertain about any aspects of the village or documents received from retirement village operators.

Consumer Affairs Victoria supports the continuation of the Checklist to assist prospective residents to choose a retirement village, but a review of the Checklist has revealed the need for updating. For example, it is unlikely that seeking advice from a Citizens' Advice Bureau concerning complex retirement village documents is still appropriate. Also, reference to nursing care and nursing care facilities in the Checklist may confuse prospective residents and suggest to them that they will be able to automatically progress to a Commonwealth Aged Care Facility if one is located onsite. It is therefore proposed that the Checklist be revised, in consultation with stakeholders.

Proposal 13

The Checklist for prospective residents in Schedule 3 of the Act be updated in consultation with stakeholders.

³⁸ *Retirement Villages Act 1986 s20 (1)*

4.4.2 Mandatory disclosure period

Prospective residents must be given at least 21 days to consider all residence documents prior to signing the residence contracts.³⁹ This period is designed to allow residents adequate time to peruse all disclosure documents and seek advice from a secondary market provider, such as a solicitor, accountant or financial planner before making a decision to enter a residence and management/service contract with a village. Some submissions suggested an extension to 28 days, but it was also pointed out that too long a mandatory pre-contractual disclosure period could disadvantage people with an urgent need for accommodation. The 21 day disclosure period is considered best practice in Australia and will complement the proposal to increase the regulation of residence contracts as a response to market information asymmetry.

4.4.3 Professional development for secondary market providers

A relatively narrow secondary market exists to provide prospective residents with independent, specific and personalised financial and legal advice concerning retirement village matters. However, some residents have reported receiving information and advice of limited value, suggesting that while there are numerous advisers, many of them lack specialist retirement village knowledge. For example, a resident who signed a contract containing a complex deferred management fee claims their solicitor did not inform them of the deferred fee arrangement included in the contract.

Given the potential for growth in the retirement village market, there are opportunities for secondary market growth. However, it is evident that advisors need to strengthen their knowledge of retirement village contracts and fee arrangements to ensure advice is accurate, helpful and responsive to demand. This may involve better attention to education and training needs. It is thought that the provision of accessible, high-quality advice through secondary market providers will help to boost competition and benefit the retirement village market as a whole.

³⁹ *Retirement Villages Act 1986* s19

4.5 Cooling-off period

A cooling-off period should give residents time to reconsider their decision to sign a residence contract with the retirement village owner/operator. The Act currently provides three clear business days in which a resident can change their mind and cancel their contract.⁴⁰ This entitles the resident to the return of all money paid under the contract, except for the sum of \$100 or 0.2 per cent (whichever is the greater) of the ingoing contribution paid. A business day is a day that is not a holiday.⁴¹ Also, a resident may rescind their contract if it does not contain a conspicuous notice advising of their cooling-off right.

Many submissions recommended increasing the cooling-off period, however, the industry view was to maintain the current provisions. The Australian Competition and Consumer Commission (ACCC) submitted concern that the three-day cooling-off period is shorter than the practice in other states in Australia (14 days in Queensland and seven days in New South Wales) and recommended increasing the period to 7-10 days. However, Victoria currently provides a minimum 21-day disclosure period in which prospective residents can seek advice from a secondary market provider and consider the retirement village documents prior to signing their contract, which significantly exceeds similar provisions in other states.

The cooling-off provisions within the Retirement Villages Act do not apply to a residence contract to which section 31 of the *Sale of Land Act 1992* applies.⁴² In such circumstances residents receive similar protection under the Sale of Land Act, which provides a three-business day cooling-off period, if the land is residential. As a matter of consistency, it is considered appropriate that retirement village residents have similar cooling-off rights regardless of the type of legal structure adopted by their residence contract.⁴³

Consumer Affairs Victoria believes that it is appropriate to retain the current emphasis on the disclosure period, which gives residents time to consider their contract/documentation before signing. This should result in a reduced likelihood of residents needing to implement their cooling-off rights. It is therefore proposed that the three clear business day cooling-off period remain unchanged.

4.6 Resident participation

Part 6 of the Retirement Villages Act provides rules for resident participation.

Section 33 of the Act requires the village owner to convene an annual meeting of residents. At this meeting the owner must provide a written, audited and signed statement showing a range of financial details.

Further, village by-laws can only be created or changed if three-quarters of the residents vote in favour of the change⁴⁴, although this provision does not affect body corporate rules made under the Subdivision Act or Regulations, if applicable.

A three-quarters majority is also one of the prescribed ways in which a special levy can be imposed on residents.

Part 6 (section 36) also provides that, in the case of a retirement village where there is no body corporate, the residents may elect a residents' committee to represent the interests of the residents of the village.

A well functioning residents' committee adds value to a retirement village, as residents can offer significant assistance to the overall functioning of a village and can contribute to a stable village environment. Residents' committees are a common way for residents to have influence over their village, but a committee's role varies from village to village.

⁴⁰ *Retirement Villages Act 1986* s24 (2)

⁴¹ *Interpretation of Legislation Act 1984* s44 (3)

⁴² *Retirement Villages Act 1986* s24 (1)

⁴³ See Appendix 5 *Legal structures of residence contracts* for information about the range structures

⁴⁴ *Retirement Villages Act 1986* s37

For example, some residents' committees are involved with the management of services provided within the village, organising outings and recreational activities or helping to resolve minor disputes. At other villages residents are not keen to participate.

The review revealed that some residents are worried about their ability to have meaningful input into retirement village decision-making and confused about their legal right to do so. Some residents expressed concern that their village does not have a functioning residents' committee and that, without one, they do not have an ongoing mechanism to influence decisions.

Section 36 allows residents to elect a committee to represent their interests and gives the committee discretion to develop its own procedures. Where Part 5 of the *Subdivision Act 1988* and the *Subdivision (Body Corporate) Regulation 2001* apply (where residents have purchased the title to their unit), the body corporate has the powers of a residents' committee under the Retirement Villages Act.

Residents were concerned that management representatives can hold positions on residents' committees. One resident claimed that three positions within their committee were allocated to management. However, a provision in a contract or document concerning a retirement village that purports to exclude, modify or restrict the operation of the Retirement Villages Act is void.⁴⁵ Or, put another way, a term in a retirement village contract cannot limit or prevent a residents' committee from determining its own procedures.

To the extent that the conflation of the body corporate and the residents' committee is causing problems, it is anticipated that this will be remedied as a result of the current review of body corporate legislation. Where the body corporate does not apply, a member of a residents' committee may, at any time, be removed from office by special resolution at a meeting of residents.⁴⁵

Therefore, if residents do not wish to have a manager on their residents' committee, they are entitled to vote to have him or her removed. These provisions combine to provide residents with a high degree of autonomy to determine how the committee is run and by whom.

There is evidence that residents lack understanding of the laws regulating resident participation. This problem can be alleviated by an education campaign by Consumer Affairs Victoria to inform residents of their legal rights and responsibilities. Importantly, the campaign should incorporate a booklet outlining details of residents' rights to elect and operate a residents' committee. Additionally, residents may require support and guidance to either establish and/or maintain an effective residents' committee. The proposed Retirement Village Residents' Association could play a valuable support role in this regard. (Refer to 4.14. Retirement Village Residents' Association and **Proposal 13.**)

⁴⁵ *Retirement Villages Act 1986* s7

⁴⁶ *Retirement Villages Act 1986* s36 (3)

4.7 Adjustments to the maintenance charge

The Retirement Villages Regulations 1998 limit increases to the maintenance charge in accordance with the consumer price index number, unless approved by a resolution of a majority of the residents or the residents' committee.

Generally, residents support the current formula to adjust the maintenance charge, as it provides a level of predictability regarding future increases.

A number of not-for-profit operators expressed empathy for residents living on incomes that are not fully indexed for inflation, but admitted that there was a tension between providing affordable housing and the need to cover costs. According to the Australian Housing and Urban Research Institute, approximately 27 percent of social housing for older persons is provided by the not-for-profit sector, with 6,200 independent living units (or community-auspiced units) being offered throughout Victoria.⁴⁷ These figures demonstrate the vital role played by community-auspiced retirement villages in the provision of accommodation and services for people with low assets and incomes. However, with an increasingly ageing stock (the majority of units are more than 20 years old) and a limited capacity to recover costs from lower income residents, the sector is confronting a challenge to upgrade or refurbish 38 percent of its units.⁴⁸

Ingoing, ongoing and deferred fees at community-auspiced villages have generally been based on a prospective resident's assets and income. In an attempt to keep fees low, many of these operators have struggled to maintain village standards relative to the broader market. Some operators have chosen to fund initiatives to upgrade their villages by elevating the ingoing contribution and the maintenance charge for new residents to more realistically cover the costs of running a retirement village and providing the services promised. Other operators have introduced a new fee regime that allows residents to take advantage of Rent Assistance. The Commonwealth Rent Assistance is available for retirement village residents, however special rules apply. For example, residents who pay ingoing contributions of less than \$101,000 and fortnightly payments in excess of \$82.80 for singles and \$134.80 for couples are entitled to Rent Assistance.

Consumer Affairs Victoria is cautious of any intervention that results in increasing the maintenance charge, particularly given the large proportion of retirement village residents who live on age pensions or incomes that are not fully indexed for inflation. Even a small increase in fees could have a negative affect on a resident's quality of life and could even force some people to move from their current homes. However, operators must be able to collect fees that adequately cover the cost of operating the village, as the worst-case scenario could involve a village being forced out of the market, with devastating consequences for both village operator and residents.

⁴⁷ Australian Housing and Urban Research Institute, *Independent Living Units: The Forgotten Social Housing Sector*, November 2003

⁴⁸ Sean McNelis, Swinburne University of Technology, July 2003

In addition to maintenance fees, the Act also provides for a special levy to be charged, provided this has not been done in the preceding 12 months.⁴⁹ The operator is able to impose a special levy if the residence contract, the management contract or the by-laws provide that the residents are responsible for the expenditure or the class of expenditure that the special levy is intended to cover. Otherwise, the levy must be approved by special resolution at a residents' meeting.

Consumer Affairs believes this regime is reasonable, in that it allows operators who wish to make special provision for re-investment in the village infrastructure to write this into their contractual arrangements with residents. Provided prospective residents are properly informed, they are able to make a decision as to whether this additional cost is worthwhile for them or whether they should look elsewhere. If there is no contractual provision for levies over and above the maintenance fee, it is reasonable that a majority decision of residents should be required.

It is apparent that the market is responding to the maintenance charge tensions described above and, it appears likely that it will continue to do so. Varying fee structures for new residents to utilise Rent Assistance, improvements to financial management (for instance, setting ingoing contributions and maintenance fees for new residents commensurate with the cost of operating and maintaining a retirement village) and better information for residents concerning their obligations to pay a special levy in certain circumstances are evident in the market. Accordingly, it is proposed that the current formula to adjust retirement village maintenance fees be maintained.

4.8 Exemptions

A significant number of respondents to the review felt that the granting of exemptions from parts of the Act had been a useful and acceptable tool where operators faced considerable compliance difficulties. However, a resident group argued that exemptions from specific sections of the Act should only be granted in one-off situations. This statement may stem from concerns regarding section 6(1) and 6(2), which provides for religious or charitable organisations and owners and managers of retirement village land to apply for exemptions from all or any of the provisions of the Act. Additionally, section 6(5)(b) allows the Director to make recommendations to the Minister concerning exemptions which the Director considers should be granted, regardless of whether or not an application has been made.

Currently, exemptions are only granted subject to conditions that ensure residents are provided with a similar level of protection. Additionally, the granting of an exemption is conditional upon the operator advising all current and prospective residents of the exemption and from which parts of the Act the exemption has been granted. Given that there is no evidence of problems in relation to exemptions, Consumer Affairs Victoria believes that the existing provisions should be maintained.

⁴⁹ Section 38 (6)

4.9 Retirement village management

The review revealed that some residents were dissatisfied with retirement village management, a minority describing intimidation, dictatorial behaviour, autocratic rules, and disrespect for residents. Some residents thought that certain qualifications, particularly in relation to issues affecting aged persons, should be mandated. However, mandating specific management qualifications would not necessarily respond to the diverse range of needs within retirement villages and may simply serve to add to the cost of running a retirement village. Inevitably, additional costs would be passed on to residents, perhaps without any concrete benefits to them.

Determining what constitutes an appropriate range of skills to manage a retirement village is a complex and subjective matter and largely depends on the character and size of individual villages. For example, a manager of a smaller village may be required to carry out a broad range of functions, from financial management to village maintenance. However, larger villages may have the capacity to employ or contract staff to carry out certain functions, leaving the manager to concentrate on administration and financial management.

Currently, the Retirement Village Association Ltd offers members and non-members training on an ad hoc basis. However, the Retirement Village Association Ltd recently introduced, on a pilot basis, mandatory professional development and training as a requirement of their Accreditation Scheme. Consumer Affairs Victoria welcomes and supports this initiative and encourages the Association to offer this training to non-members on a fee for service basis.

It is the industry's responsibility to ensure that retirement village managers are appropriately trained. The provision of accessible and affordable education and training, which meets the broad diversity of needs within the retirement village marketplace, is imperative for the industry to be considered credible and professional. Accordingly, Consumer Affairs Victoria is supportive of a self-regulatory approach to the education and training of retirement village managers. It may be beneficial for the retirement village industry, under the auspices of the Retirement Village Association Ltd, to consider developing benchmarks and procedures for good management in retirement villages to guide the industry towards higher and more consistent standards of management.

4.10 Monitoring and compliance

Sections 40 and 41 of the *Retirement Villages Act* 1986 provide clear power to Consumer Affairs Victoria to take action against any offence under the Act.

Government accreditation or licensing of retirement villages per se is not warranted. Existing Commonwealth and State legislation generally applies where establishments provide health or personal care. It should be possible to address disputation with or complaints against retirement villages effectively through information and conciliation, with an alternative dispute resolution service for complex disputes (see section 4.11 below).

While it is noted that Queensland operates a registration system for retirement villages, there is no evidence that the special supervisory apparatus of a registration scheme is necessary in Victoria.

However, a simple notification scheme would address other issues, without imposing any restriction or burden on the industry. It would provide consumers with basic information about which establishments were subject to the Retirement Villages Act. While the lack of prosecution activity since the Act's inception indicates broad compliance with its basic provisions, operators are not necessarily aware of their full obligations, and these will be expanded if Proposals 6, 7 and 11 are adopted. A list of villages currently subject to the Act and the contact details of their proprietors would also facilitate proactive information and compliance work to ensure that operators from across the industry spectrum are aware of and meeting their specific obligations under the Act.

Proposal 14

A scheme be established whereby Consumer Affairs Victoria is notified of all retirement villages subject to the Retirement Villages Act at any given time, of proprietors' details and of any changes in those details.

4.11 Dispute resolution and complaints handling

4.11.1 Introduction

Retirement villages play an important role in providing shelter, security of tenure, safety and peace of mind for senior citizens. Consequently, disputes that threaten these fundamental needs place residents in a vulnerable position. Age, ill health and a lack of familiarity with legal processes used by retirement village operators are other factors that must be considered in assessing the vulnerability of retirement village residents. While strategies can be implemented to help ameliorate differences between residents and village operators, it is accepted that some groups of residents will not be adequately empowered to advocate for their consumer rights or resolve their own disputes. Therefore, it is necessary to develop a model of complaint handling and dispute resolution that caters for the specific needs of these vulnerable people.

The majority of submissions to the review raised concerns about accessibility to an affordable and effective dispute resolution regime. Clearly, many residents are unaware of the existence of the information, complaint handling and dispute resolution services offered free of charge by Consumer Affairs Victoria or that the Retirement Village Association can intervene in disputes involving members of their Association.

4.11.2 Levels of disputes in retirement villages

Disputes involving residents and operators of retirement villages seem to arise at three levels:

- Disputes involving goods and services provided under the contract
- Disputes between residents and retirement village owners/operators involving significant contractual matters
- Disputes between residents.

An effective dispute resolution regime must ensure that disputes at each of these levels can be adequately dealt with, although not necessarily within the one scheme or approach.

Currently, section 35 of the *Retirement Villages Act 1986* prescribes arbitration to resolve retirement village disputes. This involves employing a commercial arbitrator (an independent third party) to determine a dispute. The cost of the commercial arbitration is borne by the parties involved in the dispute. Disputes involving residents and village operators concerning the provision of goods and services can be dealt with under section 19 of the *Fair Trading Act 1999*. Unresolved matters can be referred to the Civil Claims List of the Victorian Civil and Administrative Tribunal (VCAT), at which a Member can make a legally enforceable order after hearing the case or in cases where the parties reach a voluntary agreement. Parties also have the option to resolve a dispute through the free, mediation service provided by the Dispute Settlement Centre of Victoria (Department of Justice).

4.11.3 Approach to dealing with disputes

A broad approach combining proactive and reactive strategies to deal with disputes is preferred. Importantly, community consciousness raising strategies such as resident and village operator education should be encouraged as a proactive approach to dispute prevention. It is accepted, however, that efforts to educate the community about their rights and responsibilities may not always translate into behavioural change and, in these cases, a reactive complaints handling and dispute resolution scheme is required. A further matter that should not be overlooked in relation to disputes is the role of a regulator, in this case Consumer Affairs Victoria, in monitoring compliance with the law, identifying the development of new trends and communicating these issues to the community.

When considering the introduction of a complaint handling and dispute resolution regime it is essential to establish a set of principles to guide the development of the regime and against which the regime can be evaluated. Benchmarks have been published for industry-based customer dispute resolution schemes.⁵⁰ Six principles for dispute resolution schemes have been identified:

- Accessibility
- Independence
- Fairness
- Accountability
- Efficiency
- Effectiveness.

(Appendix 7 expands on these benchmarks.)

⁵⁰ Commonwealth Department of Industry, Science and Tourism 1997

4.11.4 Options for resolving retirement village disputes

Consumer Affairs Victoria has considered a number of models for dispute resolution. There is merit in a staged approach to dispute resolution. Minor disputes can often be adequately dealt with in-house through an internal retirement village dispute resolution process. This would be particularly relevant for minor disputes between residents and operators, as well as disputes between residents. Disputes that are not resolved within an internal process would proceed to external dispute resolution, which generally falls into four categories:

- Government dispute resolution
- Government and independent adjudicator combination
- Independent alternative dispute resolution
- Industry self-regulation dispute resolution.

4.11.5 Internal retirement village dispute resolution procedure

It is preferable that disputes between a resident and an operator and between residents be dealt with efficiently and effectively within the village, often without the need to seek advice or support from an external dispute resolution body. An internal approach to retirement village disputes offers a highly accessible option for residents and allows the retirement village community a level of autonomy concerning the manner of and processes for dispute resolution. This also allows for minor retirement village problems to be addressed early so they do not develop into a major dispute. Dispute resolution processes can be modified to meet the specific needs of the parties involved.

The Retirement Village Association Ltd Accreditation Scheme requires accredited villages to have a dispute resolution or comments-and-complaints mechanism in place. The criterion for a dispute resolution mechanism requires that:

- Residents are fully informed of the Dispute Resolution or Comments and Complaints Mechanism, and this procedure is readily available to all residents within the village
- A Policy and Procedure is in place, which complies with State legislation or Industry Body where applicable
- Records are maintained of material comments and complaints with details of action and resolutions.

The Association is to be commended for its effort to set a national industry standard for village based dispute resolution. Consumer Affairs Victoria supports this standard and proposes that all retirement villages be required to put into place a dispute resolution mechanism commensurate with Standard 1.10 of the Retirement Village Association Ltd Accreditation Scheme. In cases where a dispute is not resolved by an internal dispute resolution process, parties can seek assistance through external options.

Proposal 15

Each retirement village be required to establish a dispute resolution mechanism which provides that:

- **A written Policy and Procedure for dispute resolution is in place**
- **Residents are fully informed of the dispute resolution mechanism and the Policy and Procedure document is readily available to all residents within the village**
- **Records are maintained of material comments and complaints with details of actions and resolutions.**

4.11.6 Government dispute resolution

Consumer Affairs Victoria currently provides a range of information, complaint handling and dispute resolution services, including a free-call service. This service offers information and advice by phone and over the counter (at the Consumer Affairs Victoria Melbourne Office) and a conciliation service.

Consumers can apply to the Victorian Civil and Administrative Tribunal (VCAT) for a decision where Consumer Affairs Victoria cannot resolve a dispute. An order from VCAT is enforceable through the courts. Some consumer groups, however, have cautioned that some people are unable to adequately represent themselves at the Tribunal, that the procedures are legalistic and there are delays.

Mediation is also available through the Dispute Settlement Centre of Victoria, Department of Justice. This service is free and confidentiality is protected under the *Evidence Act 1958*.

Mediation is offered (to consenting parties) as a way of settling a civil dispute without legal action and provides another option for dealing with more complex matters and disputes.

4.11.7 Government and an independent adjudicator

This model involves combining the existing information and conciliation services offered by Consumer Affairs Victoria and an independent adjudicator to address unresolved disputes and make determinations. If this model was adopted, consumers could seek information, complaint handling and conciliation services from Consumer Affairs Victoria in the first instance. However, if a dispute was not resolved through these processes the matter could be referred to an independent adjudicator specifically set up to decide on complex retirement village disputes. The independent adjudicator could be located at the offices of Consumer Affairs Victoria.

The introduction of an independent adjudicator to deal with complex retirement village disputes would maximise efficiency and offer a more flexible approach to dispute resolution than VCAT. In particular, a service model could be designed to specifically meet the needs of retirement village residents, taking into account their age-related characteristics. Further, an independent adjudicator could be less costly to operate than other government dispute resolution models such as VCAT. Economies of scale could also be achieved if the adjudicator's scope were also to include body corporate disputes.

4.11.8 Independent alternative dispute resolution

Adopting an independent alternative dispute resolution model would involve the development and operation of a scheme that is independent of both government and the retirement village industry. The scheme would provide the full suite of dispute resolution functions. Consumer Affairs Victoria and other relevant agencies would refer all retirement village complaints to the independent scheme.

For this model to be successfully adopted, all stakeholders would need to be consulted in the developmental stage to ensure that the model meets the needs of prospective users of the scheme. Locating funds and resources to develop and operate the scheme would also need to be considered for this model. For example, one option may be to charge retirement village operators a fee for each dispute that is lodged with the scheme, with the fee increasing as the dispute progresses to the next level of disputation. This is the funding model adopted by the Australian Banking Industry Ombudsman. Economies of scale could be achieved if the scheme also dealt with disputes concerning bodies corporate. A disadvantage of this model is its failure to provide a direct link to an enforcement function, reducing its efficiency.

4.11.9 Industry self-regulation dispute resolution scheme

An industry self-regulated scheme would be completely funded and operated by the retirement village industry. If this model were preferred, it would need to be developed in consultation with stakeholder groups to ensure that the scheme met the needs of service users.

To be effective, an industry dispute resolution scheme would need to have widespread industry support and industry leadership. The retirement villages industry in Victoria, however, is relatively fragmented. As discussed previously in this report, the industry is divided into two distinct categories: resident-funded retirement villages run on a profit making basis; and community-aided retirement villages operated by community based organisations (welfare agencies, churches and the like) on a not-for-profit basis. A relatively small proportion of retirement villages in Victoria are accredited members of the Retirement Village Association Ltd Accreditation Scheme, with the majority operating outside the current self-regulatory scheme. This dynamic leads to distinct differences within the industry. Therefore, it is questionable whether the industry is cohesive enough to support a self-regulatory model of dispute resolution.

4.11.10 Preferred model

The best dispute resolution model will be one that, firstly, has high potential to meet all the benchmarks of accessibility, independence, fairness, accountability, efficiency, and effectiveness. Another important consideration is specific suitability for the needs of older people. A “one-stop shop” where the dispute resolution process can move from a lower to a higher level of formality if necessary is also desirable, while the use of existing infrastructure will reduce cost. Further, it is important that government dispute resolution resources only be called upon where a matter is genuinely too difficult to resolve between the parties at the village level.

On this basis, Consumer Affairs Victoria's preferred model is the Government and independent adjudicator combination. This model utilises Consumer Affairs Victoria's existing information and conciliation services and provides for an independent adjudicator to deal with complex disputes. There may also be opportunities through this approach to achieve economies of scale to deal with body corporate disputes.

Proposal 16

The current arbitration provisions in the Retirement Villages Act be replaced with a dispute resolution process involving Consumer Affairs Victoria for information and conciliation and an independent adjudicator for complex disputes.

4.12 Accommodation standards and standards for services and amenities

The *Building Act 1993*, the *Food Act 1984* and the *Planning and Environment Act 1997* play a role in setting certain basic minimum standards for retirement villages. In addition to this, the *Fair Trading Act 1999* applies to goods or services provided in a retirement village. Therefore, some minimum standards are set by existing legislation.

Further, retirement villages accredited by the Retirement Village Association Ltd's Accreditation Scheme are required to meet specific management, service and amenity standards. Sixty-two retirement villages in Victoria are currently accredited by the scheme. The scheme has had a positive effect on setting a benchmark for service and amenities (above the legislative requirements) within the retirement village industry.

A minority of submissions to the review commented on accommodation standards and standards for services and amenities. A substantial number of these respondents felt that it would be difficult to set further minimum standards or minimum levels of service and amenities, due to the breadth of village types and the differing range of services provided by the industry. For example, one operator commented that they provided accommodation to residents from a variety of socio-economic groups and offer a variety of lifestyle and accommodation options, with ingoing contributions ranging from \$100,000 to over \$600,000. They argued that there is no such thing as a minimum standard that suits all markets or all socio-economic groups of residents.

Consumer Affairs Victoria is cautious about intervening to arbitrarily set standards for retirement village services and amenities in the marketplace, particularly when basic protection already exists pursuant to the *Building Act 1993*, the *Food Act 1984* and the *Planning and Environment Act 1997*.

Unavoidably, residents' views concerning the level of services and amenities that should be provided in retirement villages will differ and be influenced by a range of factors, including socio-economic background. Further, the imposition of standards may have the effect of placing some smaller or older villages (in which residents are satisfied with the level of services and amenities provided) under extreme financial pressure and potentially expose residents to additional costs.

Currently the market appears to be adequately responding to the differing needs of residents. There is a wide selection of villages, offering a range of services and amenities, from which residents can choose. In order to ensure the success of this approach it is necessary that residence contracts and marketing information and materials accurately reflect the level of services and amenities offered at individual villages so that prospective residents can make informed choices.

Overall, Consumer Affairs Victoria believes that consumer demand will continue to positively influence retirement village standards of services and amenities into the future. However, it is proposed that village operators be required to disclose to prospective residents specific details of the services and amenities provided at each village. (See section 4.3 on Retirement Village Residence Contracts.)

4.13 Consumer education

The Terms of Reference specifically sought views from stakeholders regarding the need for consumer information for retirement village residents. Most submissions expressed the need for industry specific consumer information focusing on:

- Consumer and operator rights and responsibilities
- Complaint handling and dispute resolution mechanisms.

The review has revealed that consumers are unclear about their rights and responsibilities as retirement village residents and lack an understanding of where to obtain assistance and advice about a problem or dispute involving a retirement village. A free, plain language booklet or brochure setting out residents' rights and responsibilities concerning retirement villages may help educate the marketplace. It is proposed that a booklet, similar to *Retirement Village Living* published by the NSW Office of Fair Trading, be produced.

A broader community education campaign about retirement villages designed to meet the needs of senior Victorians is also considered desirable, including advertisements in older person's publications and public presentations to senior citizens groups.

Proposal 17

Consumer Affairs Victoria develops and implements a comprehensive consumer education strategy concerning retirement villages. The strategy should be sensitive to the specific needs of senior Victorians and present any resident documentation in plain language and large print.

4.14 A retirement villages residents' association

Statewide residents' associations are found in all other states in Australia. They provide a collective voice for retirement village residents and offer information and help to individual residents, educational presentations to residents' groups and advocacy. Some associations also assist with the resolution of minor retirement village disputes and support the development and operation of residents' committees.

Generally, residents' associations do not receive ongoing financial support from government, but fund their operation through a small membership levy. For example, the South Australian Retirement Villages Residents' Association has 1600 members, who each pay a \$6.00 annual membership fee. In some states the Council on the Ageing either auspices the residents' association or provides minor administration support and free access to a meeting room.

A number of years ago the Retirement Village Association Ltd attempted to set up a residents' association or residents' council in Victoria, however, residents abandoned plans due to lack of interest. Ongoing change and expansion within the retirement village industry over the past few years has seemingly created an environment in which residents are now highly receptive to the establishment of a Victorian residents' association. Similar interest in other states is evidenced by residents' associations maintaining significant membership rates.

Consumer Affairs Victoria supports the concept of a state based residents' association, as a useful vehicle to support residents of Victorian retirement villages. Assistance in establishing a residents' association could be sought from an existing community organisation working with seniors. For example, the Council on the Ageing has an established infrastructure, expertise in developing and operating community-based groups and broad networks with senior Victorians and retirement village residents.

A grant for the establishment of a residents' association would be necessary, however, it is envisaged that, once established, the association would be self-funding.

Proposal 18

Consumer Affairs Victoria support the development of a residents' association.

4.15 Retirement Villages Association Ltd Accreditation Scheme

The Retirement Villages Association Ltd introduced its national Accreditation Scheme in 1996. A new Retirement Villages Association Ltd Accreditation Scheme was launched in October 2002. The industry-based Scheme is voluntary in nature and is available to members of the Retirement Villages Association Ltd, its affiliate organisations and other participating organisations. The broad objective of the Scheme is to ensure that residents live in a safe, pleasant and positive environment that will support them in all reasonable circumstances.⁵¹ It is understood that 62 retirement village are accredited members of the Scheme. (A further 26 establishing Victorian retirement villages are in the process of achieving accreditation.) The standards set by the Scheme are in addition to those required under the Retirement Villages Act.

Submissions on the Retirement Village Association Accreditation Scheme were generally supportive of the Scheme. However, there was some concern that the Scheme only covered a relatively small number of villages.

Consumer Affairs Victoria supports the Retirement Village Association Ltd Accreditation Scheme as a self-regulatory approach to promoting continuous improvement to retirement village service delivery. The Scheme has had the positive effect of setting higher standards for management practices, services and amenities in the retirement village industry and has also provided an additional dispute resolution option for residents who live in accredited villages.

4.16 Emerging Issue: Care Provision

The provision of personal or specialist care services to village residents is not regulated. This is contrasted with the provision of care and accommodation in Supported Residential Services that are regulated under Victoria's *Health Services Act 1988*, and Commonwealth Residential Aged Care Service that are regulated under the Commonwealth's *Aged Care Act 1997*.

A growing number of retirement villages are directly providing or contracting external provision of personal care or other specialist care services in addition to accommodation. Historically the provision of care and accommodation would typically have resulted in increased regulation, however, the emerging trend of retirement village operators selling or leasing accommodation is resulting in an unclear situation with regard to State and Commonwealth legislation.

Prior to determining whether any action is required a number of questions should be considered:

- What are the various resident needs in retirement villages where personal care is provided?
- What type of personal care is provided?
- Have concerns arisen in relation to the provision of personal care in retirement villages?

⁵¹ Retirement Village Association Ltd Accreditation Scheme 2002

- What monitoring systems do retirement villages themselves or the relevant industry body have in relation to the provision of personal care?
- Where would a complaint about the provision of personal care be directed?
- If regulation were to occur, what regulatory model should be adopted? How would it relate to that currently undertaken by the Commonwealth and State in relation to the respective residential care options?
- What is the capacity for self-regulation?

It is suggested that the Department of Human Services and Consumer Affairs Victoria jointly examine the issues and determine what action may be required.

Appendix 1 Terms of Reference

REVIEW OF RETIREMENT VILLAGES ACT 1986

This review is established to:

Determine the effectiveness of the Act in clarifying and protecting the rights of retirement village residents while encouraging and supporting the development of an ethical, viable industry.

This review should consider:

Scope of the Act:

- Whether the objectives of the Act remain appropriate
- Whether the current definition of retirement village remains appropriate
- The relationship between the Act and other Victorian legislation
- The relationship between the Act and other Commonwealth legislation
- Whether particular facilities or classes of retirement villages should be exempt from the Act and, if so, what should be the relevant exemption
- Whether the Act should establish building standards or minimum standards for services and amenities.

Effectiveness of the Act:

- Whether the \$10,000 contribution threshold is an appropriate way to determine which retirement villages are regulated by the Act
- Whether current provisions for securing residents' financial investment are adequate, particularly in relation to ongoing maintenance and refurbishment, instances of conflict of interest and failure of the management company

- Whether current provisions relating to ownership arrangements are adequate
- Whether current provisions relating to contractual arrangements are adequate, particularly in relation to billing for water and other services, repayment of refundable contributions and application of maintenance fees
- Whether current provisions facilitating resident input to village management are adequate, particularly in relation to delegation of residents' proxy voting rights
- Whether current provisions relating to the distribution of information to residents and prospective residents are adequate, particularly in relation to financial disclosure
- Whether current provisions relating to complaints handling and dispute resolution procedures are adequate
- Whether it would be appropriate to prescribe a mandatory code of practice for retirement village operators or a retirement village accreditation scheme.

Administration of the Act:

- What arrangements should be put in place for the effective administration of the Act
- Whether there is a need for ongoing monitoring of compliance with the Act, and if so, who should be responsible for this
- Whether there is a need for Government to prepare a general information booklet for distribution to all prospective retirement village residents.

Appendix 2

Submissions received in the review

- 1 Australian Competition & Consumer Commission
 - 2 Australian Retirement Homes Limited
 - 3 Brotherhood of St Laurence
 - 4 Catholic Homes for the Elderly Inc
 - 5 Council on the Ageing Victoria
 - 6 Department of Natural Resources and Environment
 - 7 Health & Extended Care
 - 8 Hong Lim MLA (Member for Clayton)
 - 9 Housing for the Aged Action Group
 - 10 Kasaligan Pty Ltd
 - 11 Kelvin Thomson MP (Member for Wills)
 - 12 Law Institute Victoria
 - 13 Long Island Retirement Village (Manager)
 - 14 Mahons with Yuncken & Yuncken
 - 15 Michael Anstis – Lawyer
 - 16 Michael W Flynn – Retirement Village Consultant
 - 17 Ministerial Advisory Council of Senior Victorians
 - 18 The Hon. Neil Lucas PSM MLC (Member for Eumemmerring Province)
 - 19 Russell Kennedy Solicitors
 - 20 National Council of Women of Victoria
 - 21 Residential Care Rights
 - 22 Residents Rights
 - 23 Retirement Village Association Australia
 - 24 Tenants Union of Victoria Ltd
 - 25 Southern Cross Care
 - 26 Supportive Residents & Carers Action Group Inc
 - 27 Susan Davies MP (Member for Gippsland West)
 - 28 Vasey Housing Limited
- Plus 73 Submissions from residents and residents' committees

Appendix 3 Stakeholder liaison

Jill Thompson	Council on the Ageing	16 April 2002
Chris Spark	Seniors Information	17 April 2002
Sandra McCollough	Residential Care Rights	09 April 2002
Peter Govan	Retirement Villages Association	23 April 2002
John Corchran	Russell Kennedy Solicitors	23 April 2002
Peter Inge	Zig Inge Group	24 April 2002
Chris Daly	Australian Retirement Communities	24 April 2002
Jeff Fiedler	Housing for the Aged Action Group	30 April 2002
Workshop with 20 residents	Council on the Ageing	01 May 2002
Residents group	Port Phillip Retirement Village	07 May 2002
John Krimmer & Tony Roberts	Village Life	09 May 2002
Terry Porter	Brotherhood of St Laurence (GK Tucker Settlement)	15 May 2002
Di McKellar	Southern Cross Care	21 May 2002
Interdepartmental group	DHS – Aged Care and Office of Housing	27 May 2002
Anthony Mutton & Mary Barry	Victorian Association of Health & Extended Care	29 May 2002
Workshop with 12 residents from community-auspiced villages	Housing for the Aged Action Group	04 June 2002
Interdepartmental group	DHS – Aged Care and Office of Housing)	01 July 2002
Peter Govan	Retirement Villages Association	02 July 2002
Jill Thompson	Council on the Ageing	02 July 2002
Beverly Kliger	Beverly Kliger and Associates	03 July 2002
Presentation to approx 50 municipal council representatives	Municipal Association of Victoria	31 July 2002
Residents group	The Village, Williamstown 10 September 2002	
Peter Govan, Peter Inge & Chris Daly	Retirement Villages Association	07 November 2002
Jill Thompson	Council on the Ageing	12 November 2002
Jeff Fiedler	Housing for the Aged Action Group	20 November 2002
Jill Coyne	Department of Human Services	29 November 2002
Jill Thompson	Council on the Ageing	09 January 2003
Jill Thompson	Council on the Ageing	10 March 2003
Jill Coyne & Dennis Gaylard	Department of Human Services	19 March 2003
Jill Thompson	Council on the Ageing	20 May 2003
Matthew Evans & Heath Downie	Municipal Association of Victoria	22 May 2003
Tony Roberts	Village Life	04 June 2003
Don Reddin	Resident	02 July 2003
Sean McNelis	Swinburne Institute of Social Research	10 July 2003
Jill Thompson	Council on the Ageing	10 September 2003

Round table workshops on key issues arising in submissions to the review

Retirement village dispute resolution	23 January 2003
Resident participation	30 January 2003
Analysis of the relationship between ingoing contributions and deferred management fees (undertaken by Beverly Kliger)	19 December 2002 & 07 March 2003
Residential parks	01 May 2003
Issues for not for profit operators	19 May 2003

Analysis of relationship between ingoing contributions and deferred management fees project (undertaken by Beverly Kliger and Associates)

David Cousins	Consumer Affairs Victoria, Director	07 February 2003
Sharon Barker	Consumer Affairs Victoria, Policy Officer, Policy Branch	19 December 2002 07 February 2003 07 March 2003
Lois Goodes	Consumer Affairs Victoria, Manager of Policy Branch	19 December 2002 07 February 2003 07 March 2003
Denis Fitzgerald	Consumer Affairs Victoria, Assistant Director, Corporate Operations	07 February 2003 07 March 2003
Damian MacDonald	Consumer Affairs Victoria, Assistant Director, Policy & Dispute Reduction	07 February 2003
Anne Cousins	Consumer Affairs Victoria, Manager of Operational Policy	07 February 2003
Alessandra Daly	Consumer Affairs Victoria, Legal Officer	07 February 2003
Jill Thompson	Council for the Ageing, Policy Officer	19 December 2002
Chris Daly	Retirement Communities Australia	17 December 2002 07 March 2003 27 March 2003
Peter Nilsson	Retirement Village Association Victoria, President The Village Glen	17 December 2002 07 March 2003 27 March 2003
Peter Govan	Retirement Village Association Victoria, Secretary	07 March 2003
Peter Inge	Retirement Village Association Australia, President Zig Inge Group	17 December 2002 07 March 2003 27 March 2003

Appendix 4 Accommodation types and consumer protection

Accommodation Options	Specific Legislation	Other Relevant Legislation
HOME/UNIT OWNERSHIP	<i>Sale of Land Act 1962</i> <i>Subdivision Act 1988</i>	<i>Fair Trading Act 1999</i> <i>Trade Practices Act 1974</i>
HOME/UNIT PRIVATE RENTAL	<i>Residential Tenancies Act 1997</i>	<i>Fair Trading Act 1999</i> <i>Trade Practices Act 1974</i>
HOME/UNIT PUBLIC RENTAL	<i>Residential Tenancies Act 1997</i>	<i>Fair Trading Act 1999</i> <i>Trade Practices Act 1974</i>
RETIREMENT VILLAGE RESIDENT FUNDED	<i>Retirement Villages Act 1986</i> <i>Subdivision Act 1988</i> (freehold title) <i>Sale of Land Act 1962</i> (freehold title)	<i>Fair Trading Act 1999</i> <i>Trade Practices Act 1974</i> <i>Fair Trading Act 1999</i> <i>Trade Practices Act 1974</i>
RETIREMENT VILLAGE COMMUNITY AUSPICED	<i>Retirement Villages Act 1986</i>	<i>Fair Trading Act 1999</i> <i>Trade Practices Act 1974</i>
SUPPORTED RESIDENTIAL SERVICES (SRS)	<i>Health Services Act 1988</i>	<i>Retirement Villages Act 1986</i> <i>Trade Practices Act 1974</i>
ROOMING HOUSE BOARDING HOUSE PRIVATE HOTELS ETC (Prescribed Accommodation)	<i>Residential Tenancies Act 1997</i>	<i>Health Act 1958</i> <i>Trade Practices Act 1974</i>
RESIDENTIAL AGED CARE SERVICES (low-level or high-level)	<i>Aged Care Act 1997</i> (Commonwealth)	<i>Fair Trading Act 1999</i> <i>Trade Practices Act 1974</i>
CARAVAN PARK Own caravan Rented caravan	<i>Residential Tenancies Act 1997</i>	<i>Fair Trading Act 1999</i> <i>Trade Practices Act 1974</i>
RESIDENTIAL PARK Own prefabricated dwelling on rented site	<i>Residential Tenancies Act 1997</i>	<i>Fair Trading Act 1999</i> <i>Trade Practices Act 1974</i>

Appendix 5

Legal structures of residence contracts

Strata Title Ownership

Residents who enter into a strata title arrangement own the freehold title to their unit. The common property of the village is co-owned by the residents as tenants-in-common. Residents are responsible for maintenance of their own unit. Pursuant to the Subdivision Act 1988, a Body Corporate Committee (elected by unit owners) is responsible for the management and maintenance of the common property. Often a manager will be contracted to carry out these tasks.

Long-term Lease or License

According to the Retirement Villages Association this is the most common arrangement. In paying an ingoing contribution, a person is given a lease or a license to live in a particular retirement village unit for anything ranging from 49 to 199 years. When a resident eventually leaves the village or dies, the lifetime lease or license may be transferable and can be resold to another person. Some leases/licenses are not transferable. In such instances, the residence contract will include a formula outlining the deductions that are to be made from the original ingoing contribution. When units under this arrangement become available, another non-assignable long-term lease/license is granted to a new resident.

Shares in a Company

In this arrangement a prospective resident buys a share or a number of shares in a company whose Articles of Association permit that person to live in a prescribed unit in a village for the rest of their life or as long as they wish.

Units in a Unit Trust

This arrangement is very similar to a company share scheme in that prospective residents buy a unit or units in a unit trust. It is different from a company in that a unit trust cannot own property in its own right. The trustee on behalf of the trust confers on that person the right to occupy a residential unit in a retirement village for the rest of their life or as long as they wish (much like that of the Articles of Association in a company structure).

Periodic tenancy

Periodic tenancy arrangements are sometimes used by not-for-profit organisations running community-auspiced villages. This is a lease (written or verbal) between the resident and the owner in which there is no fixed date for the end of the lease. In other words, the agreement operates from rental period to rental period. In some cases a resident will pay an ingoing contribution, some or all of which may be refundable at the end of the tenancy period. The rental paid by the resident gives them the right to live in the unit and use any common facilities.

Appendix 6 Comparison between Retirement Villages Act and Residential Tenancies Act

	<i>Retirement Villages Act Tenancy</i>		<i>Retirement Tenancies Act Tenancy</i>		<i>Caravan Park Residency</i>
	Fixed	Periodic	Fixed	Periodic	
Remedy the breach	28 days	28 days	Usually 14 days	Usually 14 days	Usually 7 days
<i>Notice to vacate:</i>					
Failure to remedy breach	60 days (substantial breach only)	60 days (substantial breach only)	14 days on 3rd breach or breach of VCAT compliance order	14 days on 3rd breach or breach of VCAT compliance order	7 days on 3rd breach or breach of VCAT compliance order
No reason	N/A [Assumes tenancy ends at end of fixed term]	6 months or end of rent period (if later than 6 months)	120 days or end of fixed term (if later)	120 days	120 days or end of any fixed term (if later)
Change of use	Cancellation of RV notice required. Owner can apply to Director after giving residents 60 days' notice to make submissions		60 days or end of fixed term (if later)	60 days	6 months or end of any fixed term (if later)
Special care needed	14 days (only of contract provides for this ground)	14 days (only of contract provides for this ground)	Tenant gives notice: 14 days or end of fixed term (if later)	Tenant gives notice: 14 days	Standard NITV: 7 days

Appendix 7

Benchmarks for Industry-Based Consumer Dispute Resolution Schemes

1 Accessibility – The scheme makes itself readily available to consumers by promoting knowledge of its existence, being easy to use and having no cost barriers.

2 Independence – The decision-making process and administration of the scheme are independent from scheme members.

3 Fairness – The scheme produces decisions that are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.

4 Accountability – The scheme publicly accounts for its operations by publishing its determinations and information about complaints and by highlighting any systemic industry problems.

5 Efficiency – The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.

6 Effectiveness – The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.

Consumer Affairs Victoria

Consumer Helpline

1300 55 81 81 (local call charge)

Website www.consumer.vic.gov.au