

30 September 2024

To: Christine Mullins
Department of Energy, Mines, Industry Regulation and Safety
Consumer Protection Division
140 William Street, Perth WA 6000

Dear Christine,

RE: Retirement Village Regulations – Consultation Paper #1

Thank you for the invitation to provide a submission on the Retirement Village (RV) Regulations Information and Disclosure documents.

The Aged & Community Care Providers Association (ACCPA) is the national Industry Association for over 1,000 aged care providers offering retirement living, seniors housing, residential care, home care, community care and related services.

We are concerned that the documents present a negative connotation of living in a retirement village. It must be recognised that operators of retirement villages are not a homogenous group, and the documents seem to assume a static environment. In reality, operators need to be adaptable and responsive to market conditions in order to remain viable. While we welcome community arrangement and disclosure documents, they should be kept simple and straightforward.

Below, we outline our responses to the provided questions:

Community Arrangement Statement (CAS)

Question 1:

- a) Is there additional information that you believe should be included in the draft CAS (Attachment A)?**

Link to operator's website

The CAS should include a hyperlink to the operator's website. This would streamline access to up-to-date and relevant information such as amenities and service offerings. It would reduce the need for excessive detail in the document itself making it easier for prospective residents to access.

Clarification on operator's registration date

Further guidance is needed to clarify whether the operator's registration date refers specifically to the village in question, or to their overall operational history.

Memorial date instead of construction dates

Rather than asking for construction dates, it would be more useful to include the date when the memorial was placed on the land. This provides clearer and more relevant information for prospective residents, as staged developments and continuous redevelopment can make construction dates less meaningful.

Flexibility in unit types and constructs

The current listing of unit types is too restrictive. There should be flexibility to account for variations such as units with 2.5 or 3.5 bedrooms (for example, when a study is included). This would better reflect the different types available in many villages.

b) Is there information currently in the draft CAS (Attachment A) that you believe should be excluded?

General length and specificity

The CAS is replacing the current disclosure documents by shifting from general information to more specific details. However, given the complexity and variability within villages, where there may be up to 5 different contracts in place with residents, the CAS should remain more general. The document assumes that everyone starts with a single contract from day one, but in reality, there are both existing contracts and new ones, with too many variations to standardise in this way.

The current 14-page document is already lengthy, and it expands further when filled in. While it aims to simplify village comparisons for consumers, comparing one 14-page document with another is cumbersome, especially considering the many variations within a village. ACCPA is also concerned that this document may treat consumers as if they are unable to navigate the process of choosing a village on their own.

Concerns regarding frequent updates

After every sale, changes in the village - such as pricing or structural changes - will occur, leading to frequent updates to the commissioner, the document and website. This could become unmanageable, especially for villages with short-term leases or in other instances where the market dictates these changes.

Keeping up with these updates would require additional resources, such as hiring an Information Officer, which would impose significant costs, especially for operators managing multiple sites. Operators are not permitted to charge additional administrative fees in their operational budget, raising the question of how the costs associated with maintaining these documents will be covered. Ongoing maintenance, especially for operators with multiple sites, can be costly and burdensome. We suggest updates only be required when changes are 'material'.

Negative connotation

The statement "these deferred costs when you leave your unit may be significant" places an unnecessarily negative connotation on retirement villages. It does not acknowledge the significant benefits of joining a retirement village, such as enhanced community engagement, security and support. ACCPA strongly believes that this wording should be removed. We are concerned that people who could greatly benefit from joining a retirement village may be discouraged if the CAS is introduced in its current form.

Revising "seek independent legal advice"

The phrase "Seek independent legal advice" should be revised to "Seek independent advice" to align with other states. Joining a village may require financial or other professional advice, not

just legal guidance. This broader language ensures that individuals consider all relevant aspects of their decision and may even include their family members.

Part 1 - operator and management details

In Part 1, requesting information for the landowner, operator and village management results in unnecessary duplication. Additionally, the document only asks for an ACN, but incorporated associations typically do not have an ACN and instead use an Australian Business Number (ABN). Most operators will only have an ABN, so this needs to be adjusted to reflect the correct information requirements.

Part 2 - age limits

The minimum age is unnecessary as under legislation it is 55+.

Part 5 - planning and development

Part 5 asks for the construction start date and details on all aspects of development and redevelopment. We suggest simplifying this by asking, "What year was the memorial placed on the land?" Many operators undertake staged developments due to financial constraints, making it difficult to provide specific construction timelines. Additionally, the definition of "construction" needs clarification, as it often involves continuous redevelopment. This change would provide a clearer, more relevant point of reference for operators and prospective residents.

Part 6 and 7 - amenities onsite at the village & services

Rather than listing all amenities and services multiple times across sections, a reference to the operator's website would be more practical and prevent unnecessary redundancy. This would also ensure that prospective residents have access to the most current information.

For services, it would be more effective to ask whether optional services are available to the resident with a simple "Yes/No." This allows the consumer to further explore the details as needed.

Part 9 – ingoing contribution - entry costs to live in the village

Part 9.1 addresses the nature of entry costs, which can be influenced by market demand. For instance, if an operator is struggling to sell a unit, they may lower the price to attract a buyer. Alternatively, external sales agents may adjust the marketing strategy based on interest. However, prospective residents may assume that the price listed at the time of enquiry is fixed, when in reality, it can change throughout the process. Someone might offer more than expected, so it is important to convey that the initial price is just the starting point, not a guaranteed figure.

Part 9.2 is asking for specific details on flexibility of financial options, this should just be "Yes/No" with an enquiry to discuss further with the operator or sales representative.

Parts 9, 10 and 11

These Part's drill down too deeply into specific costs that are not relevant unless discussed in the context of a specific unit for sale. These details could overwhelm prospective residents at the

initial enquiry stage and are better suited for later in the process when a unit is being seriously considered.

Part 12 - reinstatement and renovation of the unit

It is often difficult to provide precise information when an enquiry is made, especially if a refurbishment is about to take place, as operators may not have all the details available at that time. Additionally, in a strata village, it is hard for the operator to provide this information, as they cannot act as both a strata management company and a retirement village operator on the same site. This responsibility falls to the strata management company, making it beyond the operator's control.

Part 15 - maximum insurance cap

Including a cap on maximum insurance is unnecessary since this value fluctuates annually. A simple "Yes/No" answer regarding whether the site is insured and providing the insurers details would be sufficient and less complicated. Overly detailed financial and insurance information should be excluded or simplified to allow prospective residents to gain a general understanding without being overwhelmed by unnecessary complexities.

Question 2:

- a) Do you foresee a reason why there may need to be an alternative method of publication for the CAS prescribed in the Regulations? Yes or no.**

Yes.

- b) If yes, provide further details of when this would apply and what the alternative method should be.**

An alternative method would be necessary for operators who do not have a website. the CAS could be made available in hard copy at the village office or provided upon request. Another option could be to allow the CAS to be displayed at a central community location, such as the village centre/communal area. It must also include version control with a date as they can often change.

Prospective resident information statement (PRIS)

Question 3

- a) Is there additional information that you believe should be included in the draft PRIS (Attachment B)?**

We recommend including a glossary at the end of the document to clearly define key terms, such as the "maintenance reserve fund." This would provide clarity for both consumers and operators, helping them understand the terms without needing to constantly refer back to the Regulations. A glossary would be a useful tool to ensure everyone to avoid potential confusion.

b) Is there information currently in the Draft PRIS (Attachment B) that you believe should be excluded?

Document structure & tone

The information in the Draft PRIS is similar to that in the CAS and carries the same negative connotation from the outset. This tone could be revised to be more neutral and balanced. This could steer people away from villages when there is already a housing shortage in WA.

Additionally, it should be clarified whether the PRIS is required to be provided at least 10 calendar days or 10 business days before the operator and the individual enter into the residence contract.

Similar to the CAS, we also suggest changing the phrase "seek independent legal advice" to "seek independent advice" to broaden the scope and reduce the emphasis on legal advice specifically.

Furthermore, the PRIS does not adequately reflect the variety of contract models available, focusing primarily on the DMF model. For instance, short-term leases do not contribute to a reserve fund, yet this distinction is not clearly represented. It would be helpful to ensure that the PRIS addresses the nuances of different contract types.

Both documents (PRIS and CAS) are nearly identical, with too much repetition between them. To improve clarity and efficiency, we suggest separating their focus: the CAS should cover service and accommodation information, while the PRIS should focus on financial details. This approach would streamline the documents, cutting them in half and reducing unnecessary duplication.

Notice for prospective residents

The notice advises prospective residents to "consider what questions to ask the village manager before signing a contract." However, this may not be the role of the village manager. While prospective residents may meet the village manager before purchasing, they may not be the appropriate person to answer these pre-contract questions, they can highlight these questions and seek further information from the relevant person. We believe that this question should be directed to the Operator.

Additionally, the notice states that "it involves buying into a village with communal facilities where some of these costs are often deferred until you leave the village." This wording implies that prospective residents will be paying specifically for communal living, which is misleading. It should instead state "buying into a community with shared communal facilities." This phrasing is clearer and avoids bias. Again, this document does not include any of the potential benefits one could gain from entering a village.

It should also mention that prospective residents are encouraged to consult with their families before making any decision, as families often raise concerns or issues after the contract has been signed. Involving family members early in the decision-making process can help prevent misunderstandings and address potential concerns upfront.

Part 4 – ongoing costs – to live in the unit

In Part 4.2, there is a lack of clarity regarding the term "maintenance reserve fund." It is unclear whether this refers to the old reserve fund or if it is a different entity altogether. If they are the same, our concern is that this could imply restrictions on using the fund for capital

replacements, as it would mean capital replacements cannot be funded from either the reserve or maintenance fund. Clarification on this point is needed to avoid potential issues in funding essential capital replacements.

Similar to the CAS, Part 4.6 asks for an excessive amount of detail regarding insurance. Operators typically insure based on the valuation of the property, and there is no need to provide further specifics in this document. We suggest simplifying this section to reflect standard practices.

Part 4.7 has the potential to be the most contentious area of the document, as it could lead to disagreements with residents. The level of detail, down to specifics such as rollers on screen doors, is excessive and could cause disputes. To avoid issues, we suggest offering to provide residents with an itemised list upon request, rather than including such detailed information in the document itself. This will help avoid unnecessary contention and maintain transparency without overcomplicating the agreement.

Part 5 & 6 – departure fees

We believe there is unnecessary repetition between Part 5 and Part 6, which could create confusion for prospective residents. The sections outlining the calculation of departure fees are overly repetitive and could be streamlined. Consolidating these parts into a more concise format would improve clarity and prevent potential misunderstandings.

Part 6 is particularly challenging for operators to complete, as the costs involved are almost impossible to estimate and fluctuate with market conditions. Operators are unable to accurately forecast these expenses, making this section impractical in its current form.

Proposed prescribed matters for inclusion in village contracts

Question 4:

a) Do you believe that the prescribed matters for inclusion in village contracts set out in Attachment C are appropriate?

Yes, the prescribed matters listed in Attachment C are generally appropriate. However, there are a few areas that may cause confusion, which are addressed in question b.

b) Do you believe that anything should be added or removed from the list of prescribed matters in Attachment C?

7. If a fixture or chattel is to be provided or made available after the resident has moved in, provide details when it is to be available.

- We agree with this but suggest it be included as an annexure or in a schedule for clarity.

8. If the contract provides for a period of residency of a fixed term, a provision stating that the resident's financial rights and obligations under the contract will not be affected if the residence contract is renewed or extended.

- This depends on the specific period (e.g., rentals) as circumstances may change over time. Operators could use this clause to justify changes such as demolition or rebuilds, which should be carefully monitored.

10. The resident's right to resell the right to reside in the accommodation unit

- This should apply only under a lease that allows resale in conjunction with the Village Owner.

14. Reference the rules of conduct and that they must be followed by both the operator and the resident.

- We agree, but it is important to specify where these rules will be found. A clear reference is required.

18 b) the basis for determination of the current and future amount of any payments.

- This should explicitly include provisions for handling surplus and/or deficits.

21. The amounts payable, and when the amounts are payable, by the resident for the capital maintenance fund for the retirement village.

- Further clarity is needed on what exactly the capital maintenance fund includes, and whether this replaces the operating budget's maintenance line item.

22. The amounts payable, and when the amounts are payable, by the resident for any reserve funds for the retirement village.

- Clarity is needed on whether these funds can be used for capital expenses.

23. Who is responsible for the cost of an independent audit and if the cost is to be shared, how the costs will be apportioned between then operator and the residents.

- It would be helpful to clarify whether this refers to a financial audit or another type of audit.

25. If the contract relates to residential premises in an existing retirement village, a warranty that the residential premises will be in a reasonable condition when the resident takes possession.

- Yes, this should be linked to an inspection report to verify the condition.

26. A provision setting out:

- We agree, but further clarification on what is included is needed.

Proposed prescribed matters not permitted in village contracts

Question 5:

Do you believe that any amendments should be made to Division 4 of the Regulations (i.e. matters to be excluded from residence contracts)?

Division 4 of the Regulations deals with matters that should be excluded from residence contracts, particularly in relation to powers of attorney. While it is not possible to mandate individuals to establish powers of attorney, it would be beneficial to include a disclosure requirement in this section. This could promote early consideration of advance care planning, encouraging residents to put such arrangements in place proactively. Including this as a standard disclosure item would help raise awareness and promote discussions on the importance of future planning.

Disclosure – advertising and marketing of retirement villages

Question 6:

a) Do you think regulations are required in relation to advertising and marketing? Yes or no.

Yes, regulations may be necessary for advertising and marketing retirement villages

b) If yes, what information do you think should be prescribed and what forms of advertising and marketing should it apply to?

Regulations should ensure that advertising is clear and consistent across all forms of marketing, including online and printed materials. The requirements could be as simple as providing a clear website link, where potential residents can access detailed information about the village. For example, if a retirement village is being advertised under a lease for life, this should be explicitly stated, and a link to the relevant website should be provided for further information.

Additionally, any regulations should apply uniformly across other housing developments. If retirement living developments are required to disclose certain information, it should be required across all such developments, not just retirement villages, to ensure fairness across sectors.

If you have any further questions or would like to discuss, please contact Mark Prosser, Director Retirement Living & Seniors Housing at mark.prosser@accpa.asn.au.

Yours sincerely,



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