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4 December 2024

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

Dear Byron,

RE: Retirement Village Regulations – Consultation Paper #3

Thank you for the invitation to provide a submission on the Retirement Village (RV) Regulations Consultation Paper #3 covering:

- Capital maintenance and capital replacement;
- Modifications of retirement village schemes; and
- Termination of retirement village schemes.

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 proposed plans appear to draw heavily from recent legislative changes in New South Wales, where both operators and residents have raised significant issues with the complexity and volume of information required. These plans have proven to be overly complicated, creating substantial administrative burdens for operators. Implementing them would necessitate the development of detailed asset management plans, often requiring specialised software and external support, all of which come at a significant cost. Ultimately, these costs are likely to be passed on to residents, further increasing financial pressures on both operators and the communities they serve.

Below, we outline our responses to the consultation questions, focusing on practical, equitable solutions for operators while ensuring compliance.

Capital maintenance and capital replacement

Question 1: Are there changes you would make to the information included in the draft plan for capital maintenance and capital replacement at Attachment A?

Yes, we recommend several changes to ensure the draft plan is clear, feasible and fair to both operators and residents.

Clarity of definitions

We note the guidance of capital items from Appendix 1, Attachment A with respect to examples of Capital Items. We believe that this list should be specific and provide dollar thresholds that align with the Australian Taxation Office with respect to Capital Items. This will also assist operators to distinguish between minor and significant repairs or replacements. Differentiating between items owned by the operator and those paid for by village funds is crucial for transparency. Without this clarity, disputes may arise over whether certain expenditures qualify under these categories.

Alignment with existing budgets

Operators typically plan annual maintenance as part of their operating budgets. The proposed separation into two funds (capital replacement and maintenance) could increase administrative complexity. A simplified approach, such as consolidating these funds with clear guidelines on allocation would be more effective.

For operators who integrate maintenance costs into their annual operating budgets, creating separate funds for capital and maintenance could create unnecessary complexity. Allowing for a consolidated approach, with clear rules for fund allocation, would be more efficient.

Simplification of reporting requirements & resident understanding

Whilst our discussions with you identified that the plans for capital maintenance and capital replacement are aligned to various Strata Title legislation, we note that the current draft mirrors the overly detailed plans used in New South Wales. These have proven costly and cumbersome for both operators and residents to implement. Simplifying the format and focusing on essential elements would reduce administrative burdens while maintaining transparency. Overly detailed plans are difficult for residents to understand and often leads to disputes and significant confusion. Simplification of reporting formats, combined with explanatory notes would improve accessibility. The purpose of providing the plan to residents should be clearly stated. Whether it is for information or discussion - transparency is key.

To enhance accessibility, plans could be made available electronically and in hard copy, with physical copies posted in common areas. This ensures all residents have easy access to the information in a format that suits their needs.

Cost implications for both operators and residents

Developing and maintaining detailed asset management plans requires investment in software and staff training. Operators should not be forced to absorb these costs without appropriate financial mechanisms. Guidelines should permit proportional compliance based on the size and resources of the village. Implementing asset management software or meeting extensive reporting requirements will increase costs. Guidelines should allow for proportional compliance based on the size of the village and its financial capacity, ensuring smaller operators are not disproportionately burdened.

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Balancing planned vs unplanned maintenance

While a five-year plan provides a useful framework for continuous improvement, annual reviews are necessary to accommodate unplanned events or shifts in priorities. These reviews should be aligned with AGMs to streamline processes. Villages have AGMs on different dates which may not coincide with year-end. Coordinating AGMs with the year-end may help streamline processes and ensure all residents are informed and involved.

Transparency in responsibilities

It is essential to clarify the scope of maintenance within units (resident vs operator responsibilities) and common areas to avoid confusion. Clarifying who is responsible for administration will help ensure accountability, it may be beneficial to specify whether it's the operator, a designated administrator or a third party. This should include examples of costs that will be passed on to residents and those absorbed by operators.

Question 2: Are there any unintended consequences you can identify from the proposed transitional arrangements?

We have identified several unintended consequences that could arise.

Insufficient transition time

The three-month timeline is overly ambitious for operators, particularly larger villages and multi site operators, to create and implement compliant plans. A phased transition period, such as twelve months, would allow operators to adapt processes, train staff and communicate changes to residents effectively. This time frame would also allow operators time to undertake a condition review of the assets and have them noted in the plans.

Impact on financial viability

Operators who have historically underwritten maintenance costs may find themselves unable to comply without passing additional costs to residents. This could lead to disputes or financial stress for lower-income residents.

Complexity in budgeting

For operators with integrated budgets (e.g., maintenance covered by monthly fees), separating these costs into standalone funds could create significant operational challenges. Clear guidelines are needed on how to manage transitional costs and communicate changes to residents. We also note our discussions that indicated that the maintenance and replacement plans should have a three (3) year time limit as opposed to five (5) years as it currently stands.

We also note that dedicated maintenance staff that are employed by the operator are not / should not be considered as a part of the preparation of these plans.

Bank account for fund

Decisions about the bank account and interest allocation need to be made clear. If an operator has multiple villages, a consolidated account may be practical, however, clear rules on interest and bank fee distribution are required.

Combined reserve fund & ensure maintenance fund has sufficient funds

Transferring funds from the reserve to the maintenance fund should be done with clear guidelines to ensure sustainability. If funds are exhausted in the maintenance fund, including a clear process for additional funding (including potential loans from operator) is required. Interest rates and terms should also be fair and transparent.

Potential for inconsistent application of rules

For villages operating under different financial models (e.g., rental and lease-for-life), transitional arrangements should explicitly address how the rules will apply to each model to ensure fairness.

Grandfathering existing arrangements

For residents under existing agreements covered by previous consultation or council approval, transitioning to the new framework without grandfathering provisions could cause financial hardship and confusion.

Modification of retirement village schemes

Question 3: Do you agree with the proposal to exempt modifications where they are part of a staged development and resident consent, or SAT approval, has previously been provided for the development? If not, explain why.

The proposal is broadly reasonable.

Scope of exemption

The exemption should explicitly clarify what constitutes “staged development” to avoid misuse. In addition, it should include modifications for recreating or converting existing units and amenities.

Integration with co-located facilities

For villages co-located with aged care facilities or other services, a blanket approval for conversions in co-located villages could simplify the process.

Question 4: Are there any changes you would make to the draft modification plan at Attachment B?

Yes, the draft modification plan can be refined to improve usability. At 31 pages, the blank plan is overly lengthy and complex. Simplifying the format and focusing on essential details would make it more user-friendly for operators.

Providing Asset ID will be a very arduous and costly exercise for operators and maintaining a schedule of actual costs could be costly. Perhaps incentives or support for operators to invest in the necessary software could be considered.

We are concerned with section 6.8 – Impact on the value of accommodation units once modification is completed. As it stands this section is subjective and we believe will cause disputes between operators and residents despite any disclaimers. We also note that some operators may engage a Valuer to determine the impact of any changes. This is an unnecessary cost.

Question 5: Do you think a period of 1-3 months provides residents with enough time to consider and approve a modification plan? If not, what changes would you suggest?

A three-month period generally allows sufficient time for residents to consider and approve a modification plan. This aligns with the timeline for a special resolution vote and provides a balanced approach that respects residents' need for deliberation while ensuring timely decision-making. Clear communication and provision of relevant information at the beginning of this period will further facilitate informed decision-making.

Termination of retirement village schemes

Question 6: Are there any changes you would make to the draft termination plan at Attachment C?

Several refinements are recommended to address potential gaps.

“Reasonable steps” definition

The term “reasonable steps” to assist residents should be explicitly defined to consider affordability and availability of alternative housing. For instance, if a resident purchased their unit for approximately $200,000 but the only available alternatives are priced at around $600,000, fulfilling the standard of “reasonable steps” could impose undue financial strain and become practically unachievable. The plan must address how residents and operators are protected if market conditions change significantly between entry and termination. This is particularly important for residents who have purchased units at significantly lower prices than current values.

In regional areas with limited housing options, operators may face challenges in identifying comparable housing for residents. The plan should include provisions for such situations – acknowledging that some flexibility may be required.

Impact of village sales on termination plans

In cases where a village is being sold rather than closed, it is unclear how the new operator’s obligations to the termination plan are handled. Clear guidelines should outline how continuity commitments will be maintained during ownership transitions to prevent disputes between residents and new operators.

Additionally, the draft example termination plan raises concerns regarding the definition of the "maintenance reserve fund," which is not clearly outlined in the consultation paper. We question whether the item referenced in section 8.2.1 should correctly read "maintenance reserve fund." Clarification on this point is critical to avoid ambiguity and ensure consistent interpretation.

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,

Mark Prosser
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Aged & Community Care Providers Association