

Retirement Villages Amendment Bill 2024

Residents of Retirement Villages Victoria (RRVV) has been lobbying the Victorian state government for a number of years in relation to the situation of residents of retirement villages. We have been actively involved in advocating for residents throughout the review of the *Retirement Villages Act 1986* which commenced in 2018.

RRVV regards the *Retirement Villages Amendment Bill 2024* as “something of a mixed bag” - there are provisions that we welcome and believe will greatly benefit the operation of retirement villages and the experience of prospective residents. There are also provisions with which we are bitterly disappointed. Somewhere in the middle are provisions which are unclear or require further definition.

Welcome inclusions

RRVV welcomes the following inclusions in the *Retirement villages Amendment Bill 2024* which will apply once the new legislation takes effect:

- The Deferred Management Fee (DMF) in new contracts will be based on the ingoing contribution or purchase price of the property and not the outgoing or sale price. This will provide financial certainty to residents and make a substantial difference to the funds available for residential care or other housing options on exiting a village.
- On exiting the village residents on new contracts will only be responsible for “reinstatement” i.e. making good any property condition that exceeds fair wear and tear. They will also not be required to replace renovations or alterations made with the approval of the operator. These provisions will be assisted by a requirement for condition reports both on entering and exiting a village.
- Operators/proprietors will be responsible for “making good” deficits in the operating budget. This is fair and appropriate as the operators/proprietors, (not residents), control village income and expenditure.
- Operators/proprietors will be required to carry over any surplus into the following year’s operating budget.
- Dispute Resolution will cover disputes between residents and management and those between one resident and another. In addition, each village will be required to have a Dispute Resolution Procedure which complies with requirements set out in the Act, and to name an alternative person to contact in the event that the main contact person is the subject of the complaint. There will be a strong focus on resolving complaints at the village level.
- A dedicated Conciliation Scheme for retirement villages will be established within the Department of Government Services. In the initial stages, this will be supported by the Commissioner for Residential Tenancies.
- Retirement village operators/proprietors will be required to have a capital maintenance plan which will have to include prescribed items and be presented to residents at the annual meeting. There will also be specified capital items for which the operator/proprietor is responsible

- The independence of Residents Committees as to process and operation will be enhanced and will be supported by model procedures and the statutory right to determine who chairs and attends the meetings it calls
- The updated provisions related to registration and audit of retirement villages are welcome as they will provide surety to residents that villages are compliant with relevant legislative and regulatory provisions

Disagreement/Concerns

Our disagreements and concerns are substantial and significant and are generally rooted in two issues i.e. an apparent failure by the legislators to understand the financial model on which retirement villages operate and to appreciate the impact of this on existing residents.

Given that this is consumer protection legislation, the failure to address the financial issues of existing residents is somewhat bewildering. RRVV believes it is essential that beneficial changes apply to all residents, both now and in the future.

Our main concerns are:

- It is disappointing that the vast majority of existing retirement village residents will not get the benefit the changes to the DMF and property reinstatement. This will leave them at significant financial disadvantage when compared to newer residents and make a substantial negative difference to the funds they will have available for residential care or other housing options on exiting a village.

It also begs the question – if there is a perceived need to alter the provisions relating to the DMF and “reinstatement”, why would you apply this to only one class of resident?

- Defining the Deferred Management Fee (DMF) as a “contribution for the cost of service provided in the village but does not include any amount payable for the maintenance charge”, is seriously misleading.

Residents to whom a DMF will apply, pay an “incoming contribution” which is generally the equivalent to the purchase price of the property. They pay a monthly Service Fee/Maintenance Charge which is basically calculated to cover the operating budget each year. Then residents pay separately for optional services provided by the village. In addition, residents are responsible for the “reinstatement” of their property and pay a contribution to a Long Term/Capital Maintenance. It is difficult to see what, if any service remains unpaid for.

RRVV considers the DMF should be seen as the operator’s/proprietor’s profit margin, and it should be referred to as such. Unlike any other property investment, retirement village owners have a statutorily endorsed level of ongoing profit which is additional to any profit that the operator/proprietor will make on eventual sale of the property.

- The provisions relating to ability of some classes of retirement village to be exempt from all or part of the legislative framework, is of concern. Prospective and current retirement village residents should be able to be safe in the knowledge that a

property that calls itself a retirement village complies with all relevant legislative provisions. To have a classes or classes of villages exempt means that adequate consumer protections are not extended to all

- There are provisions that allow the deferral of payment of exit entitlements beyond 12 months on application to the Victorian Civil and Administrative Appeals Tribunal (VCAT). This has the potential to cause hardship to exiting residents at what is often a difficult and vulnerable time of life.
- The quorum for Residents' Meetings called by either the operator/proprietor or the Residents' Committee is set at 50% of eligible residents. This sets a high bar and many of the larger villages would be required to hold meetings of 100 or even 200 residents. And apart from the difficulty of getting such a number to attend, most villages would not have a venue of sufficient size to hold such a meeting.
- The *Retirement Villages Amendment Bill 2024* provides for the resident body to be able to make by laws for the village. However, such by laws are not binding on the operator/proprietor. An example of this might be - a village vote to be a No Smoking village, but the operator/proprietor continues to sell properties to smokers.

RRVV is concerned that there is no mandatory requirement for specific relevant training of village management staff nor for operators to adopt and abide by the industry Code of Conduct.

It is also concerned that the legislation does not provide sufficient incentive for operators/proprietors to manage well. This is essential – the sector has seen increases in Service Fees/Maintenance charges over the last twelve months of up to 23%. This is a significant impost on a cohort of people on fixed incomes and creates a situation where what was once affordable is no longer so.

Unclear/Requiring Further Definition

There are also a range of provisions that require either clarification or further definition. These include provisions relating to “fair wear and tear”, exit entitlements, permission for people not on the contract to reside at the village, the ability of an operator/proprietor to raise a dispute in relation to Service Fees/Maintenance Charges after residents have voted against an increase, the process for applications for exemption to retirement village registration, ceilings on deferred management fee payments, use of technology at residents' meetings, powers of attorney, definition of infrastructure, safety inspections and dispute resolution confidentiality and records.

Going Forward

RRVV hopes to have its interests and concerns appropriately represented in the upcoming debate on the bill in the Victorian Parliament in February 2025.

RRVV will continue to work with the Department of Government Services and other key stakeholders to get the best possible deal for residents of retirement villages in Victoria.