

July | 2010



Aged & Community Services  
Association of NSW & ACT

## Retirement Villages Bill 2010 (ACT) - Submission to Mary Porter

# Contents

<b>1 EXECUTIVE SUMMARY .....</b>	<b>3</b>
1.1 DISCLAIMER .....	3
<b>2 INTRODUCTION.....</b>	<b>4</b>
2.1 REVIEW CONTEXT.....	4
<i>Overview</i> .....	4
<i>Necessity for Legislative Reform</i> .....	4
<b>3 THE IMPORTANCE OF THE RETIREMENT VILLAGE INDUSTRY .....</b>	<b>5</b>
3.1 RETIREMENT VILLAGES IN AUSTRALIA & ACT .....	5
3.2 THE IMPORTANCE OF RETIREMENT VILLAGES .....	5
3.3 THE RETIREMENT VILLAGE ASSOCIATION (RVA).....	6
<i>The Role of the RVA</i> .....	6
3.4 AGED & COMMUNITY SERVICES ASSOCIATION OF NSW & ACT.....	6
<i>The Role of ACS</i> .....	6
3.5 WORK UNDERTAKEN BY RVA & ACS .....	7
<b>4 OPPORTUNITIES AND RECOMMENDATIONS .....</b>	<b>8</b>
4.1 SUMMARY .....	8
4.2 CODE MEETING ITS OBJECTIVES .....	8
<i>Objectives of the Code</i> .....	8
<i>Code Administration Committee</i> .....	9
<i>Low Level of Complaints</i> .....	10
<i>Resident Satisfaction</i> .....	10
<i>Other Government Initiatives</i> .....	11

# 1 Executive Summary

The RVA and ACS would like to firstly thank you for the opportunity to submit an initial response to the Retirement Villages Bill 2010 (ACT). We are in agreement with your commitment for an outcome which will promote consumer protection and fair trading practices, and encourage continued growth and viability of the retirement village industry.

We particularly support your objectives of encouraging best practice standards, providing a clear regulatory framework to ensure certainty for the retirement village industry in planning for future expansion, facilitating participation by residents in the affairs of retirement villages, and providing processes for resolving disputes.

No doubt you will appreciate the importance of providing transparency and simplicity and particularly sound management practices as an appropriate framework for the delivery of your desired outcomes.

The Bill that is currently on display for public comment attempts to provide certainty for residents and operators in the industry, however we believe that moving from the current Code to Legislation may not necessarily meet the desired outcomes.

In many pieces of correspondence you have stipulated that the ACT is the only Australian jurisdiction which has not implemented legislation which specifically governs retirement villages.

It is our view that this does not require the ACT to have an Act and Regulations, when such certainty for residents and operators can be achieved through utilising and, where required, enhancing the existing Code.

Experience in other jurisdictions has shown that legislation can be over-prescriptive and confusing, in particular for residents, as well as lacking in the flexibility which the Code currently provides and which has promoted sound management practices in the operation of retirement villages in the ACT.

This submission deals primarily with the options available as an alternative to introducing prescriptive legislation. It takes into account the status of other government initiatives such as Harmonisation of Retirement Village Legislation and the Productivity Commission's Report into accommodation for the aged. It considers the functions currently available under the Code which can be used to meet your desired outcomes which we support.

## 1.1 Disclaimer

This submission has been prepared by the Retirement Village Association (RVA) Ltd and Aged and Community Services Association of NSW & ACT (ACS) and is intended for the purpose described in this report and not for any other purpose. The contents of this submission should not be reproduced without the express permission of RVA Ltd and ACS.

## 2 Introduction

### 2.1 Review context

#### Overview

In early May 2010 Mary Porter AM, Labor MLA, issued an exposure draft Retirement Villages Bill (the Bill). Consultation will continue until 22 September 2010 with a view to the Bill being considered by the Legislative Assembly in February 2011. This overview provides a brief outline of important parts of the Bill to raise awareness of the proposed changes and what they mean for retirement village operators.

The Bill has two main objectives, being to:

- promote consumer protection and fair trading practices, and
- encourage continued growth and viability of the retirement village industry.

There are 4 other (secondary) objectives being to:

- encourage adoption of best practice standards
- provide a clear regulatory framework to ensure certainty for the retirement village industry in planning for future expansion
- facilitate participation by residents in the affairs of retirement villages, and
- provide processes for resolving disputes.

#### Necessity for Legislative Reform

Currently, retirement villages operating in the ACT are subject to the *Fair Trading Act (ACT) 1992*. Under the Act, the *Retirement Villages Industry Code of Practice (1999)* (referred to from here on as the Code) governs the occupation and operation of retirement villages in the ACT.

Mary Porter has highlighted that the ACT is the only Australian jurisdiction which has not implemented legislation which specifically governs retirement villages. All other States and the Northern Territory have introduced legislation which governs retirement village living and management.

Ms Porter has stipulated further that during consultation many people attending the forums and who gave feedback prior to the tabling of the Discussion Paper on Retirement Villages in 2008, expressed a strong preference for increased protection for retirement village residents and operators which extends beyond the current Code.

Ms Porter has advised that implementation of a legal framework, based on legislation from other jurisdictions, which sets out the rights and obligations of retirement village residents and operators and reflects the needs of all parties, should be considered.

RVA and ACS have supported and will continue to support the need for consumer protection and fair trading practices, sound contracts and good disclosure of information that provides maximum transparency to potential and existing residents. Further to this, RVA and ACS encourage continued growth and viability of the retirement village industry in the ACT and believe that all avenues should be explored in order to meet these objectives.

### 3 The Importance of the Retirement Village Industry

#### 3.1 Retirement Villages in Australia & ACT

In the ACT there are 28 retirement villages containing 1429 units and accommodating approximately 2300 senior Australians.

Nationally, there are 1,870 retirement villages in Australia, accommodating between 145,000 and 150,000 people.

This means that on a national basis, about 5.25% of the population over the age of 65 years live in retirement villages. Some states already have significantly higher penetration rates than the national average, with Western Australia at around 7% and South Australia nearing 8%.

The combination of an ageing population and greater acceptance of living in a retirement village could result in a national penetration rate in excess of 7.5–8% in the next 15 years. This implies a significant rise in demand for new retirement communities.

	NSW	QLD	SA	WA	VIC	TAS	ACT	NT	Total
<b>Number of Retirement Villages</b>	600	262	393	192	356	38	28	1	1,870
<b>Number of Serviced Apartments</b>	2,910	1,495	1,071	282	1,672	53	22	0	7,505
<b>Number of Independent Living Units</b>	33,682	21,400	14,199	13,026	21,841	1,390	1407	64	107,009
<b>Total Number of Units</b>	36,592	22,895	15,270	13,308	23,513	1,443	1429	64	114,514

Source: Jones Lang LaSalle Retirement Village Database

The industry is valued in excess of \$50 billion and thought to generate greater than \$3 billion per annum.

Growth in the over 65 population in the next four decades highlights growth of some 5 million people.

#### 3.2 The Importance of Retirement Villages

With an ageing population, the growing role of retirement village accommodation is becoming increasingly recognised and it is widely accepted that the industry's importance will continue as a source of housing choice for those aged 65 years and over. With rapidly increasing expenditure by State, Territory and Commonwealth Governments on public housing, health and ageing, it is important that governments recognise the interaction between these expenditures with the retirement village industry.

Retirement villages provide valuable infrastructure to local communities. They enable ACT Seniors to have effective social support, improved lifestyle, enhanced health and care along with security of tenure at no cost to government.

With the large increases in the population of people aged over 65 to occur in the next 20 years, it is critical that operators can plan their business operations with some level of certainty.

### 3.3 The Retirement Village Association (RVA)

#### The Role of the RVA

The Retirement Village Association (RVA) is Australia's peak body for the retirement village industry.

The RVA represents over 750 village and associate members nationally and plays a critical role in the ongoing growth and sustainability of the retirement village industry.

With five regional offices located in Brisbane, Sydney, Melbourne, Adelaide and Perth, RVA membership consists of retirement village operators, managers, owners, developers, investors and industry specialists across Australia. As the leading industry voice, the principal objectives of the RVA are to:

- lead the building and growth of a sustainable and responsible industry;
- advocate and strengthen our relationships with local, state and federal governments to ensure the best legislative outcomes for the retirement village industry;
- encourage industry excellence and best practice through accreditation and facilitate quality improvement through an effective and relevant professional development program; and
- support and promote the benefits of retirement villages as “the preferred choice of lifestyle for senior Australians”.

### 3.4 Aged & Community Services Association of NSW & ACT

#### The Role of ACS

Aged & Community Services Association of NSW & ACT is the leading peak organisation for not-for-profit retirement living, community and residential aged care providers.

ACS represents 300 organisations in NSW and the ACT providing over 1,700 services to more than 100,000 people. The Association's member organisations range in size from large multi-site organisations to small rural and regional sole operators.

It forms part of a national federation of states association. ACS supports a regional network comprising 14 Regional Committees across the NSW and the ACT.

The role of ACS is to:

- provide industry leadership through advocating on behalf of its members to all levels of government and related industry bodies;
- provide member services including conferences, forums, education, policy and industrial information and advice to help members achieve their organisational and operational objectives; and
- build partnerships with related organisations working towards common goals.

### 3.5 Work Undertaken by RVA & ACS

The RVA and ACS have worked with its membership to be able to provide critical information relating to the proposed legislation and potential impacts on the industry in the ACT. During the public consultation period RVA & ACS have worked with its members to identify:

- the impact, both short term and long term, of the proposed legislation;
- the workability of the proposed changes; and
- recommended alternatives that can be used to meet the set objectives whilst maintaining a sustainable and viable industry and harmonious living for residents.

RVA & ACS have been able to achieve this through:

- Meetings with group operator members
- Meetings with single village operator members
- Meetings with Associate Members
- Formation of a Legislation Working Party

## 4 Opportunities and Recommendations

### 4.1 Summary

The purpose of the original discussion paper put forward by Ms Porter in 2008 was to identify areas which are not adequately addressed under the current Code. The paper further attempts to demonstrate how other jurisdictions govern retirement villages and suggests how protection currently offered to the residents and operators may be improved by implementing similar legislation in the ACT. The paper explored 3 main areas of interest:

- information provision and disclosure
- financial management
- dispute resolution.

The RVA and ACS support the need for consumer protection and fair trading practices, sound contracts and good disclosure of information that provides maximum transparency to potential and existing residents, along with a strong, timely and equitable dispute resolution process for any issues that may arise. Further to this RVA and ACS seek the opportunity for continued growth and viability of the retirement village industry in the ACT in order to meet the growing accommodation demand for Senior Australians Aged 65 plus.

It is the view of the RVA and ACS that the desired outcomes may be achieved by amending the current Code, which unlike prescriptive legislation, provides flexibility for residents and operators whilst maintaining strong consumer protection.

### 4.2 Code Meeting its Objectives

#### **Objectives of the Code**

The objectives of the Code are to:

- (a) promote fair trading practices in the provision of retirement villages and related services;
- (b) ensure that the well-being, rights and interests of residents, together with the rights and interests of management are given due consideration;
- (c) ensure appropriate standards of conduct are maintained in retirement villages;
- (d) promote confidence in the retirement village industry by ensuring that services are provided in an ethical and professional manner and recognising the value of residents actively participating in decision-making process which affect them;
- (e) ensure the disclosure of all relevant information, including contractual documentation, to persons who are considering entering retirement villages,

- (f) ensure the preservation of a resident's right of privacy and autonomy over his or her own personal and financial affairs, including his or her own property, and clarify the rights and obligations of residents and management;
- (g) enable resident input, where desired by residents, into the management of retirement villages; and
- (h) establish appropriate dispute resolution mechanisms.

***RVA and ACS are of the view that the Code in its current form, in the main, is meeting its objectives. Introducing prescriptive legislation would not guarantee any further certainty for operators and residents than could not be achieved by strengthening the Code through the functions currently available through reviews of the Code and the re-formation of the Code Administration Committee.***

### **Code Administration Committee**

Under Part 6 of the Code there is provision for a Code Administration Committee which shall consist of:

- (a) the Director;
- (b) a representative of the retirement village industry appointed by the Director;
- (c) a representative of residents of retirement villages appointed by the Director; and
- (d) such other people as the Director considers necessary for the Code Administration Committee to carry out its functions.

The purpose of the Code Administration Committee is to monitor compliance with the Code; monitor the operation and administration of the dispute resolution processes created under the Code; and advise the Director on policy and procedures to promote the Code within the industry and its recognition by residents.

Further to this the Code Administration Committee shall, within three months after the end of each financial year, submit a report to the Minister that shall:

- (a) identify any industry specific problems and recommend changes to inappropriate practices;
- (b) review the effectiveness of the Code and recommend amendments where appropriate;
- (c) provide details of the number of applications lodged under Divisions 3 and 4 of Part 5 of the Code and outline the outcomes of those applications; and
- (d) provide details of the number of principals found to be in breach of the Code and the nature of those breaches.

In recent times the Code Administration Committee has not been formed. Recent communications with the Office for Regulatory Services has provided information that the Committee is in the process of being reconvened.

***It is the position of RVA and ACS that this committee first be reconvened to review the Code and identify any industry specific problems, review the effectiveness of the Code and provide any necessary recommendations. It would not be beneficial to alter the entire structure of the operational aspects of retirement villages without first utilising the functions currently available to provide further clarity for operators and residents.***

***It would further be the recommendation of the RVA and ACS that all data and research obtained through the consultation period with Ms Porter should be an integral part of the review that the Committee undertakes.***

### **Low Level of Complaints**

The retirement village industry prides itself on the close, mutually beneficial relationship that it shares with its residents and their families.

This close relationship and overall high level of satisfaction is confirmed through the statistics of the low level of applications brought in the ACAT in recent years.

Experience in other jurisdiction shows that the many years of goodwill developed between operators and residents can easily come undone as both parties attempt to deal with prescriptive legislation. There have been many instances of an “Us versus Them” mentality that can develop which is not part of harmonious living which all stakeholders pride themselves on.

***RVA and ACS contends that the current requirements of the Code, operational and financial relationship enjoyed between residents and their families, operators, government and other key stakeholders is sound and that fundamental change from the Code to Prescriptive Legislation is neither required nor beneficial to the industry.***

### **Resident Satisfaction**

Consistently high levels of resident satisfaction have been supported by independent research. A survey conducted by the University of NSW titled “*Retirement Village Resident Satisfaction in RVA Member Villages in NSW & ACT*” in 2004, provided the following key findings:

- 94% of residents felt that their expectations for retirement village living had been met or exceeded.
- 93% of residents rated their overall life satisfaction as being great or excellent in retirement village life.
- 99% of respondents responded with a neutral response or higher in regards to their satisfaction of living in a village.
- 75% of residents stated that on average, living in a retirement village community was equal to or better than living in their family residence.
- Over 71% of residents felt safer living in a village than their family home.
- 62% of residents were happier now than previously in their family home.

*Whilst we understand that consultation with residents has been undertaken, it is the RVA and ACS's position that residents are overwhelmingly happy with living in retirement villages. The re-formation of the Code Administration Committee will provide the government with the necessary recommendations to assist in the strengthening of the Code.*

### **Other Government Initiatives**

Consideration must be given to other government initiatives such as Harmonisation of Retirement Village disclosure statements and contract clauses being undertaken by New South Wales and Victoria Offices of Fair Trading, and the Productivity Commission's Report into accommodation for the aged, as inputs to any related legislation in the ACT.

*If there is to be any amendment from the Code to an Act and Legislation, it is the position of the RVA and ACS, that this should wait until the above mentioned projects of Harmonisation and the Productivity Commission's Report are finalised in order to avoid any further amendments once these projects have been completed. To have further amendments take place a short time after the introduction of any new legislation would only serve to provide more confusion to operators and residents alike. Further to this, and as stipulated earlier, the preferred position is to strengthen the Code.*