



Ref: IDFT M11/484

Mr R Fitzgerald AM  
Commissioner  
Productivity Commission  
Locked Bag 2 Collins Street East  
MELBOURNE VIC 8003

Dear Mr Fitzgerald

I write in relation to the Productivity Commission's *Caring for Older Australians* Draft Inquiry Report (the draft report).

I note that chapter 10 of the draft report relates to the regulation of retirement villages, an area which falls within the administrative responsibilities of the NSW Department of Services, Technology and Administration. The following comments relate to draft recommendations 10.4 and 10.5.

#### **Draft recommendation 10.4**

Recommendation 10.4 recognises that retirement villages and residential aged care facilities provide fundamentally different forms of accommodation for older Australians and should continue to be separately regulated. This is consistent with the approach taken in NSW.

Retirement villages offer independent living with a choice of different occupation arrangements. These can include strata, community or company title, short and long term leasing, residential tenancy and loan/licence arrangements, most of which are regulated under state based consumer laws. Retirement villages essentially provide a housing lifestyle option for residents that do not need a high level of personal care. Optional services such as meals, cleaning and laundry are available in many villages, along with access to external services to support residents. As noted in the draft report, a number of options exist to facilitate the transition to accommodation providing a higher level of care when needed.

#### **Draft recommendation 10.5**

Retirement villages in NSW are regulated under the *Retirement Villages Act 1999* and Retirement Villages Regulation 2009. This legislation was comprehensively reviewed in recent years, with significant reforms commencing 1 March 2010. The reform process considered legislation in other jurisdictions and opportunities to enhance consistency wherever possible.

I note the draft report's recommendation that national consistency be further pursued under the aegis of the Council of Australian Governments (COAG). NSW Fair Trading and Consumer Affairs Victoria are working on a joint project exploring the possibility for enhanced consistency in retirement village contract terms and pre-contract disclosure requirements. On this point, I note the draft report states, at page 340, "in 2011... certain requirements in the Victorian legislation will be harmonised with those in New South Wales". Please note that this project remains in the planning stage, with discussions focussing on the possible scope for harmonisation.

As part of the discussion under draft recommendation 10.5, it is suggested that residential parks which market to older persons be brought under retirement village legislation. While a number of other jurisdictions regulate residential parks under tenancy laws, NSW has a separate system of regulation for residential parks. The *Residential Parks Act 1998* contains specific protections for residents that own their own home in a residential park. This Act also addresses a range of issues unique to park living which are not relevant to retirement village residents.

I note that table 10.8, headed 'State/territory legislation of residential parks', incorrectly refers to the *Residential Tribunal Act 1998*. This Act has been repealed. The legislation governing residential parks in NSW is the *Residential Parks Act 1998* and Residential Parks Regulation 2006.

I look forward to seeing the final report and thank you for the opportunity to comment.

Yours sincerely

21.3.2011

**Peter Duncan**  
**Director General**