

# ARQRV

Association of Residents of Queensland Retirement villages (Inc.)  
BUDDINA QLD 4575

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Productivity Commission  
Locked Bag 2 Collins Street East  
Melbourne VIC 8003

**BY EMAIL: [agedcare@pc.gov.au](mailto:agedcare@pc.gov.au)**

CC: The Australian Retirement Village Residents' Association  
The Retirement Village Residents Association (Inc), New South Wales  
Residents of Retirement Villages of Victoria (Inc)  
Western Australian Retirement Complexes Residents Association (Inc)  
South Australian Retirement Village Residents Association (Inc)

Dear Commissioner

## ***Caring for Older Australians Draft Inquiry Report January 2011 (“Draft Report”)***

I am writing on behalf of the *Association of Residents of Queensland Retirement Villages Inc (ARQRV)*.

The ARQRV wishes to make a submission in relation to Chapter 10 of the Draft Report, in particular Draft Recommendation 10.5.

### ***About the ARQRV***

The ARQRV represents residents of retirement villages in Queensland, and currently has approximately 7500 members across Queensland's 307 villages. It is the largest resident advocacy organisation in Queensland.

The Association was formed in 1992 on advice from the (then) State Minister for Consumer Affairs who saw a need for a body to represent retirement village residents' interests in negotiations with Government and Industry. In 2007 the ARQRV received the Queensland Consumer Protection Award for Outstanding Contribution to a Fairer Marketplace.

The ARQRV fields approximately 4000 complaints annually from concerned residents and their families, and the ARQRV's volunteer Executive dedicates over 10000 hours each year in seeking to resolve these issues.

## **Draft Recommendation 10.5**

This recommendation states:

***“State and territory governments should pursue nationally consistent retirement village legislation under the aegis of the Council of Australian Governments. Changes to state and territory government legislation under this process should:***

- be informed by research jointly commissioned by the industry and government***
- have regard to the industry’s accreditation process.”***

The ARQRV accepts the need for nationally consistent legislation and supports this recommendation to that extent. However the ARQRV is extremely concerned about the final two aspects of this recommendation, and the corresponding sections of the Draft Report.

### ***“research jointly commissioned by the industry and government”***

The ARQRV has a number of concerns about this aspect of the Draft Recommendation.

*Firstly*, the ARQRV queries the very premise on which this recommendation is based, namely the perception that there is insufficient evidence of problems in the industry (Draft Report, p339).

The ARQRV, and its peer organisations in other States (such as the *Retirement Village Residents Association* in NSW), could provide ample evidence of a wide array of problems currently affecting the industry. Elderly residents are being subjected to unfair treatment by scheme operators on a regular basis, yet their plight remains largely hidden from view. The problems do not always appear on the usual radars, such as Court & Tribunal statistics, complaint statistics or media reports because many affected residents are too old, too weary, too unwell, or simply too intimidated to take any action (and media attention disadvantages affected residents by devaluing their own unit). Although villages are targeted at ‘over 55s’, the average age of residents is significantly higher.

Also the very existence of large, resident-funded advocacy groups like the ARQRV is ample evidence of problems in the industry. If there were no problems, there would be no impetus for residents to form such associations.

*Secondly*, the ARQRV is concerned that any such research would be jointly commissioned by “*the industry and government*” without involving the resident advocacy organisations, like the ARQRV. These organisations represent the most important stakeholders – the residents – so any research commissioned without their involvement will lack credibility.

Previous research commissioned by “*the industry*”, such as that commissioned by the RVA (and referred to in the Draft Report on p338) lacks independence in the eyes of residents and their representatives, given the potential for it to be skewed in the interests of the RVA’s constituents who are all village operators.

The ARQRV does not believe that the involvement of “*the government*” in commissioning any such research will overcome this problem because, ultimately, no research will be accepted by residents as being “independent” if the organisations representing residents’ interests are not involved in its commission.

*Thirdly*, the Draft Report assumes that the appropriate evidence to be gathered is related to satisfaction rates among *existing* residents (p338). While such evidence is obviously important, the ARQRV does not believe that such statistics alone can provide an accurate picture of any 'problems in the industry'.

A complete picture can only be obtained by also surveying *past* residents and their families. This is not only because many dissatisfied residents simply leave their village but, in the ARQRV's experience, many existing residents are easily intimidated and may be disinclined to answer survey questions openly and honestly for fear of repercussions, particularly when their own village manager is usually involved in collecting the survey results.

The extent of this fear was confirmed in research conducted by the University of South Australia and then South Australian MLC, Ian Gilfillan. The report was based upon interviews with residents from six retirement villages across South Australia and found, among many other things, that "*residents are frightened of complaining to their managers for fear of retribution*". (See Knowles, K & Gilfillan, I, 2000, *Consumer protection what's that--?: an assessment of consumer protection in retirement villages in South Australia : a report*).

In the ARQRV's experience, a common tactic employed by village operators in response to residents who complain is to publish village-wide circulars that present a one-sided analysis of the issue and which are critical of the resident concerned. Fear of this prospect is sufficient to quell many complaints.

It is also important to survey past residents because, in the ARQRV's experience, many of the current problems in the industry arise at the point of exit from a village. By way of example, two cases that the ARQRV is currently involved in are:

- an 81 year old who sold her retirement village unit for \$380,000 but was left with less than \$70,000 from the sale after the village operator deducted more than \$300,000 in exit charges, including a DMF of more than \$200,000. This lady entered the village in 2003 (well after Queensland's *Retirement Villages Act 1999* commenced) and the village was properly registered. The operator owns more than 30 villages across Queensland and New South Wales. The lady is now unable to complete the purchase of a new residence.
- a 68 year old pensioner who is currently homeless, awaiting the sale of a retirement village unit that has now been on the market for almost two years. This lady is, in her own words, '*at the end of her rope*'. The ARQRV is greatly concerned for her wellbeing. She has asked the operator for an early down payment on her exit entitlement and this has been refused. The operator currently manages over 60 villages across Australia and New Zealand.

Apart from highlighting the need to canvas former residents (and their families) when conducting any research into the problems affecting the industry, these examples also demonstrate the absurdity of any suggestion that the industry is capable of self-regulation.

***"Changes to state and territory government legislation under this process should ... have regard to the industry's accreditation process."***

This aspect of the Draft Recommendation is drawn from the discussion on p399 of the Draft Report regarding certain submissions from industry groups that "*the industry's self regulation accreditation system was a credible alternative to deal with any problems*" and that "*an industry led accreditation scheme [w]as the best regulatory option to provide consumer assurance, facilitate government oversight and drive public accountability*".

The Australian Retirement Village Accreditation (ARVA) Scheme is an Industry-developed, two stage process developed to identify Villages that conform to a set of standards produced by the Retirement Village Association (RVA). The Standards aim to “be realistic, fair and transparent”, and are designed to ensure the protection of residents”. Stage 1, the self-assessment phase, is conducted by the Village Operator and purports to confirm that the Village conforms to all of the 27 standards. (Fail One, No accreditation). Stage 2, an on-site survey conducted by an “independent” team drawn from the RVA membership, seeks to confirm this achievement.

Theoretically perfect, but in practice not so! A recent case illustrates the inadequacy of this self-assessment Accreditation process.

Standard 2.2 deals with Regulatory Compliance and requires that “a system is in place to ensure compliance with relevant regulatory requirements and regulations for the Village Operations”.

A Village was assessed as being fully compliant with the 27 standards and then issued with an ARVA Certificate. However, notwithstanding this “recognition of compliance”; at or about the time the certificate was issued, the Commercial and Consumer Tribunal handed down a Decision stating that the Operator had failed to comply with the Retirement Village Act and had presented to residents a non-compliant budget. How then could the self-assessors and the independent survey team have certified “total compliance” with the ARVA Scheme Standards?

The above is a further illustration that the Corporate Government watchdog role cannot be performed within the Industry.

The ARQRV could not oppose more strongly the notion that the retirement village industry is in any way capable of effective self-regulation.

The submissions in favour of industry self-regulation not only ignore the current, glaring failure on the part of the industry to curb its own excesses, but they fail to acknowledge that the retirement village business model is fundamentally inconsistent with self-regulation.

In other industries, suppliers suffer if dissatisfied consumers opt to take their business elsewhere. This gives the consumer bargaining power in dealing with the supplier, and creates an incentive for the suppliers in that industry to properly self-regulate.

The retirement village industry is different. A retirement village operator only profits (via the exit fees or DMF) when the residents leave or die. On entry to a village, residents lose all bargaining power vis-a-vis their scheme operator, and are placed in a unique position of commercial disadvantage. If a problem arises (and they commonly do) a threat to leave the village is empty as departure triggers a profit for the operator and a loss for the resident, and there is little risk that a departing resident will seek to deter a new resident from taking their place, as they usually don't receive their exit payment until the unit is re-sold.

The retirement village business model inevitably reduces the economic imperative for operators to ‘keep their customers happy’, just as it reduces the economic imperative to properly self-regulate.

The ARQRV does not oppose exit fees, and believes that they are an essential part of any viable village business model – they allow retirees to leverage their capital to obtain a standard of living that their income would not otherwise support, on the basis that they pay for it later, from their capital. However the ARQRV is firmly of the view that the exit fee/DMF business model employed by most villages is fundamentally inconsistent with industry self-

regulation, and believes that residents' lack of bargaining power must be offset by robust government regulation.

Although the ARQRV supports the existing levels of regulation, as being the absolute minimum control process, the Association is also strongly of the view that the future viability of the industry depends on further extensive regulatory tightening.

One submission referred to in the Draft Report (p340) claimed that "*the increase in regulation over the last 15 years has delivered no measurable improvement in outcomes*".

That submission fails to recognise that 15 years ago most villages were owned and operated by church, charity and other not-for-profit organisations, so there was no underlying duty to maximise profits for shareholders, and industry conduct was more inclined towards residents' best interests.

Over the last 15 years, villages have become 'big business', with many large private and public companies building and buying villages, seeking to profit from our rapidly ageing population. For these operators, there is a constant tension between their duty to maximise profits for shareholders (which, in turn, involves maximising the 'turnover' of units) and the need to treat existing residents with dignity and respect. The increase in regulation over that time may not have "improved outcomes" but it certainly will have prevented a sharp decline in the quality of outcomes for residents.

Even though retirement villages were the fastest growing form of housing from 1970 to 2001, the industry has only increased its market penetration from 3.5 per cent to about 5.0 per cent over the last 10 years (Draft Report, p330).

That penetration could and should be significantly higher.

Retirement village industry representatives will argue, just as the representatives of every industry argue, that regulation hinders investment. However investment ultimately follows demand, regardless of regulation. In Queensland, the real hindrance is the lack of demand for the product and consequent difficulty in selling units. There is a fundamental level of scepticism and mistrust among prospective residents, fed by the continual flow of anecdotal evidence in the community of residents feeling 'trapped' or 'ripped off' by village operators. In addition, the children of unhappy residents or former residents are sworn off the village product for life, despite being on the brink of retirement themselves.

If consumers were confident about the village product, and demand for units was increased, then investment would follow, regardless of the level of regulation. Other industries thrive despite a significantly higher level of regulation, such as the consumer credit industry.

The ARQRV is firmly of the view that the future viability of the industry depends on increased consumer confidence through improved regulation.

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Thank you for the opportunity to provide these submissions in relation to the Draft Report.

Yours faithfully

Les Armstrong  
President