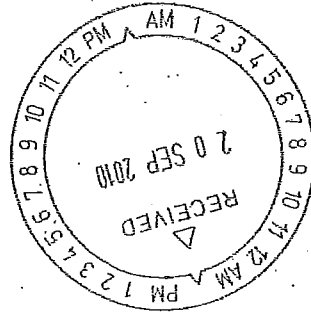


[Redacted]
Tel. [Redacted]

pl.

Ms. Mary Porter MLA
Member for Ginninderra
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601



Dear Ms. Porter

RE: RETIREMENT VILLAGES BILL 2010.

I refer to the above currently under public consultation and offer my comments for your consideration in any proposed amendments to the Bill.

Clarity regarding which clauses apply to which Retirement Village models

At the outset I would like to request consideration be given to the inclusion of more non-exhaustive examples in the various definitions of residence agreement to reflect the reality of the various Retirement Villages Schemes – that is Licenses, Loan Deeds, Subleases and Service Agreements as well as those schemes whereby units are owned outright. This is recommended to ensure better and clearer understanding by potential and residents who are aged and not also legally trained of which clauses are intended to apply to which types of residence village models.

Cancellation of Retirement Village schemes

At Section 17 of the Bill there is provision for the Scheme Operator to cancel the registration of the Retirement Village. In my view this Section fails to give residents sufficiently strong rights relative to object against a Scheme Operator's application to cancel. There must be stronger protections for residents in this Section. For example, some interstate Scheme Operators have in recent years tried to use increased land values to cancel out of Schemes and this disadvantages residents while riding roughshod over many long-term residents at a time in their lives where they aren't in a financial position or health to readily accept such changes. It is one thing to seek to cancel a scheme because units are beyond repair or the Village is no longer financially viable based on numbers (that is, too many empty residences & too few residents to fund necessary costs of maintaining a village); it is quite different to seek to cancel a scheme and uproot people simply because the operator can make a substantial financial gain arising from increased land values.

(49)

Ensuring Scheme documentation complies with legislation and that documents have no glaring errors which mean that what is intended is not what is drafted

Entrants to Retirement Villages are at a vulnerable point in their lives. The standard of documentation for various Villages/Schemes varies widely. While the draft legislation sets out what should be in each document, there is no independent body which checks this before a Scheme goes into operation. It would seem highly advantageous to require, as part of a Scheme's registration, that the documentation be vetted by an independent body to confirm it contains the required provisions.

Separately to this, some Schemes might contain the required provisions but their other provisions might be poorly drafted such that there are glaring inconsistencies which increase the likelihood of litigation at some point in the future. For example, there is one set of documents for a local Retirement Village Scheme whereby the method by which the refund of the ingoing contribution is calculated (and advertised as calculated) is, through a drafting error, the opposite from what is drafted. I understand this has been raised with the Scheme Operator who have refused to change their documents although have acknowledged in correspondence the correct way in which their documents are to be interpreted.

Removal of existing Code Time Period with respect to residents under a Sublease model

My wife and I are presently in the process of entering the [REDACTED] at [REDACTED] - all of which are happening more because of need than due to the Bill's enactment. The current documentation requires the Village Operator to, essentially, refund the money due to us within the 'Code Time Period' if a 'buyer' has not been found earlier than this for our unit. The present period is 6 months. However, the Village documentation says that where there is no Code Time Period, that requirement to refund by the end of the Code Time Period does not apply.

It appears that the new Retirement Villages legislation does not provide for any code Time Period where a residence contract is by way of a long-term Sublease. This means the new legislation will disadvantage existing [REDACTED] residents. I would seek that amendments be made that preserves the current 6 month period (at least) for long-term Sublease village residents if the 1 month refund period that appears will be applicable to residents who are in villages under a license model is not to apply.

Appropriate 'Code Time Period' for Sublease models

Unlike a unit, which is owned outright, it is not possible in the current lending climate to borrow against a unit held under a Sublease to fund payment of an accommodation bond for a Hostel entry. This places a resident under a Sublease model at a greater disadvantage. I submit that it would be appropriate to set a

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refund time for a Sublease model which ties in with the end of an 'interest' free period that Hostels provide. For example, some Hostels will give a new resident 3 months to pay an accommodation bond prior to interest beginning to run.

We have sought some detailed advice from our solicitor regarding how the proposed legislation negatively impacts on the [REDACTED] Sublease model. Please find attached a copy of that advice which details the concerns and also makes recommendations for amendments.

Provision of Public Information Document

At the moment there is more demand than supply for retirement villages. This means that there are a number of Villages which entry to which is being sold 'off the plan'. In many instances the information set out in the public information document is not available at the time of advertising.

While section 58 of the Exposure Draft identifies an offence to give public information document to prospective resident before the retirement village contract is entered into, I submit that the information should be provided before the retirement village is allowed to take any deposits (whether as a processing fee or otherwise) for that village.

For example, we initially considered entry and paid both the holding deposit to enter into [REDACTED] at [REDACTED] and at a time when documentation was neither ready nor provided prior to payment of the \$1,000 holding deposit. It wasn't available for a number of weeks after and only through one's solicitor. It is my understanding that potential purchases of residential properties are given on request a copy of the sale contract prior too any action or other sale mode. Why then doesn't the Exposure Draft treat Retirement Village documentation similar to residential sales?

Should you require further information or explanation on the above, please do not hesitate to contact me at the above.

Yours sincerely

[REDACTED]

16 September 2010

**COMMENTS/CONCERNS REGARDING EXPOSURE DRAFT OF RETIREMENT
VILLAGES BILL 2010**

The major concern revolves around the proposed treatment of Retirement Villages such as [REDACTED] where the residence agreement is compromised of a Sublease, a Loan Agreement and a separate Service Agreement.

The [REDACTED] Sublease documentation provides that if a resident vacates the Unit and no Eligible Transferee is found to whom the Sublease may be transferred or a New Sublease granted (that is no 'buyer' has been found) within the Code Time Period, the Retirement Village Operator will effectively surrender the Sublease/transfer it back to the Village Operate in return for the Village Operator complying with its obligations which include repaying the Loan Amount to the Resident minus any payments the Resident is otherwise required to make to the Village Operator.

The Code of Practice sets a Code Time period of 6 months.

The [REDACTED] Sublease documentation states that where there is no Code Time period, this 'buy back' provision does not apply. As a result, should the *Retirement Villages Bill 2010* but enacted such that there is no, effective 'Code Time period' for repayment, residents who at [REDACTED] who under the current Code have a guarantee of receiving their funds 6 months after vacating at the latest, will have their rights significantly adversely affected. Without a Code Time period, residents would have to wait until a 'buyer'/eligible transferee could be found.

There are additional concerns in terms of clarity as to how the various provisions of the exposure draft of the *Retirement Villages Bill 2010* would apply to in the [REDACTED] situation which are set out below.

Concern 1

What is the ingoing contribution where a Sublease and Loan model is utilised?

Basis of Concern

Section 27 of the exposure draft of the *Retirement Villages Bill 2010* ("the Bill"), defines ingoing contribution to mean an amount payable by a person under a residence contract to secure a right to live in the retirement village whether or not the payment alone secures the right, or something else is also required to secure the right.

Under the [REDACTED] Sublease model, the resident pays \$8,000.00 'rental' to secure the right to live in the Village. However, the scheme operator will not enter into the sublease unless the Loan Agreement is also entered into and the Loan amount paid. The Sublease rental is not refundable. The Loan amount less certain fees which are to be deducted (the amount of which is dependent upon whether the resident has chosen the capital guarantee or sublease termination payment option) is refundable. The [REDACTED] Sublease model also entitles the resident to the capital gain, if any, between the Loan amount originally paid by the resident and the amount to be paid by the new resident (excluding their rental component and service agreement component).

Section 19 of the Bill defines what constitutes a residence contract. Section 19(1) states that it includes contracts, which cover the matters, set out in sub-section (2) as well as ancillary contracts, which *depend on, or arise out of, the making of the residence contract or another ancillary contract.* The Loan Agreement does not cover matters set out in sub-section (2). It is unclear whether a separate loan agreement which provides that the loan is to be made on the date of the loan contract with the only reference in it to the Sublease is that the Sublease expiry date is the trigger for the Repayment Date means that the contract is an ancillary contract and thus included in the definition of residence contract.

Proposed change

To remove doubt, I would suggest that the above situation be included as a non-exhaustive example of an ancillary contract.

Concern 2

Is there a Code Time Period in the Bill in relation to retirement village residents whose residence contract is based on a leasehold interest and, if so, what is it?

Fundamental to this concern are the following questions:

(a) Does Division 4.5 apply to residents who hold a leasehold interest or does Division 6.3 apply instead?

(b) If Division 4.5 applies, what is the Code Time Period dependent upon how the residence contract ends?

Basis of Concern

Does Part 4.5 apply to the Sublease model?

Under section 19(2)(d) of the Bill makes it clear that a contract based on a leasehold interest is a residence contract. Accordingly, Part 4 of the Bill would seem to apply to the [REDACTED] Sublease model.

Section 44 states that in Division 4.5 a resident includes a person who, for someone else, enters into a residence contract to secure the other person's right to live in a retirement village.

The Dictionary to the Bill states that resident generally means the definition set out in section 10 - a person who has a right under a residence contract to live in the retirement village and receive 1 or more services in relation to the retirement village. The Dictionary further states, though, that for the purpose of Division 4.5 the definition in section 44 applies.

Presumably, the definition in section 44 is not meant to only include people who pay on behalf of someone else to secure that other person's right to live in the retirement village as this would mean that there is nothing in the code about how people who have a normal License model residence contract end their contracts. If the definition of resident were then taken to include the broader section 10 definition, a leasehold interest would seem to be included.

What is the time frame for repayment of an ingoing contribution depending upon the different ways in which a residence contract may be ended under Division 4.5?

Section 46 of the Bill (Part 4 Division 4.5) states that if a resident ends a residence contract in accordance with section 45 of the Bill, the scheme operator commits an offence if it fails to refund the full amount of the resident's ingoing contribution to the resident within 30 days after the day the residence contract ends and section 47 allows this amount to be recovered as a debt.

By contrast, section 48 sets out the basis on which scheme operators may end a residence contract *but does not specify any time frame for repayment of the ingoing contribution*. Thus there does not appear to be any time line required to repay a resident where the scheme operator ends the residence contract.

Section 48 also constitutes a negative change from the current Code as it sets out how the scheme operator ends the contract, rather than continuing the current situation whereby the scheme operator must apply to someone independent on those grounds to end the residence contract.

The same problem arises in relation to section 52. While sensibly ending a contract upon the death of the resident, there is nothing in the Bill regarding time frame for repayment in those circumstances.

Does Division 6.3 apply to long-term residents/residents who hold a Sublease and are entitled to at least 50% of any capital gain?

For the purpose of Division 6.3, resident of a retirement village is defined to mean a resident who owns an accommodation unit in the retirement village.

The Dictionary to the Bill defines 'own' as "a person owns an accommodation unit if the person has a leasehold interest in the parcel on which the accommodation unit is located". In the ACT, the normal method of ownership of property is by way of leasehold interest. In the sublease model of retirement villages, a sub-leasing plan is registered showing the individual units and the Subleases then make reference to the sublease being of a particular part of the Block shown on the sub-leasing plan. It is unclear from this definition as to whether a leasehold interest in part of a parcel is included or only leasehold interests in the entire parcel.

This confusion as to whether Subleases are included in the definition of 'own' is exacerbated by section 78(2) which defines a long term resident as a resident who does not own an accommodation unit but whose residence contract is in the form of a long-term lease and includes a provision that entitles the resident to at least 50% of the any capital gain in the unit. The note below section 78 refers the reader to the dictionary for the definition of 'own', implying that long-term residents do not, therefore, 'own' their unit.

The reference in section 78, however, to long term resident relates to a requirement upon the scheme operator to specify in the exit entitlement and liability statement the amount for which a long-term resident's accommodation unit has been sold – thus implying that division 6.3 is indeed meant to apply to Sublease models.

If Division 6.3 is intended to apply to the Sublease model/long-term residents then it

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will mean that under the Bill they will be in exactly the same position as if they outright owned their unit and have to await a 'buyer'. This constitutes a backwards step for the majority of Bellerive residents.

Proposed changes/recommendations

1. Section 44 – definition should be amended to include the definition in section 10.
2. Division 4.5 should apply to all types of residence contracts with respect to how those contracts may be ended.
3. A separate division/part should be drafted to specify the time frames for repayment of ingoing contributions for the various types of retirement village models – license, sublease and outright ownership. Clear definitions should be included in that part as to the definition of resident for the purpose of each type of repayment clause. For example, for the license model of retirement village, the definition would include the generally definition at section 10 plus that presently in section 44 but specifically exclude residents who are long-term residents or who own their unit. For the sublease model, the definition would be residents who are long-term residents. For the ownership model, the definition would be with reference to ownership.
4. If the sublease model does not have the same repayment time frame as appears proposed for the licence model (that is, 1 month) then it should **not** be treated the same as outright ownership (particularly where some subleases may not entitle a resident to all of the capital gain or might purport to entitle the resident to all of the capital gain but then calculate an exit fee based on a proportion of the sale price rather than the original purchase price).

Sublease models should be viewed differently from outright ownership, as they are different. While theoretically it is possible for a resident to borrow against an interest in a sublease, the practicality is that few, if any, lenders are prepared to lend in relation to these form of 'ownership'. A resident who owns their unit and requires access to their equity to pay an accommodation bond or accommodation charge can potentially borrow against their unit. A resident who has a sublease interest is realistically unable to do this.

Sublease model resident contracts should continue to have a repayment time frame by the scheme operator (where a buyer has not been found) of 6 months.

5. Definition of 'own' in Dictionary – should be further clarified so as to make it clear that it only means a leasehold interest over the entire parcel on which the accommodation unit is located, not a leasehold interest of part of that parcel.
6. A definition of long-term resident should be inserted into the Dictionary in the Bill rather than in section 78 with a further definition of 'long-term lease' being given (as none is presently included)
7. The repayment obligations in clause 46 & 47 should be extended to cover where the residence contract ends other than through the resident giving notice.



Ms Mary Porter AM MLA
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Dear Ms Porter,

I am writing to submit some general comments relating to the Exposure Draft of the *ACT Retirement Villages Bill 2010*, proposed to provide a legislative framework to govern the operations of independent living units in retirement villages in the ACT.

By way of background, National Seniors Australia (NSA) is the country's largest organisation representing the over 50s, with over 280,000 members' nation-wide and nearly 6,000 members in the ACT. This broad-based support enables NSA to provide a well informed and representative voice on issues of concern for people aged 50 and over.

NSA wishes to express in principle support for the proposed legislation as it believes it increases protection for retirement village residents. The current Code governing retirement village living and management in the ACT (the *Fair Trading (Retirement Villages Industry) Code of Practice 1999*) does not offer a legislative framework and therefore is not enforceable.

While acknowledging the importance of legally binding governance arrangements, NSA is concerned about the potential of over-regulation and urges that regulatory and management arrangements are informed by, and cater for residents' needs and preferences. Subsequently, regulatory compliance with legislation should not simply occur for compliance's sake but with the objective that compliance will indeed enhance living arrangements and services for the residents.

NSA welcomes the objectives of the proposed Bill as identified in Part 2, particularly the emphasis on "consumer protection" as an over-arching theme. However, NSA feels that the proposed legislation would benefit from including a list of general or guiding principles similar to the list of principles currently included in the Code. These principles should guide the management of and the services provided by retirement villages and would subsequently contribute to protecting and enhancing residents' rights by providing an important reference point for addressing misconduct and violation of the legislation.

Against this background, NSA wishes to submit specific remarks relating to the three core areas of the proposed Bill, namely information provision and disclosure (part 5), financial management (part 8), and dispute resolution (part 11).

1. Information provision and disclosure

NSA considers information provision and disclosure to be a critically important objective of the proposed Bill relating both to information made available to potential residents prior to moving into an independent living unit in a retirement village, as well as to information which is provided to residents on an ongoing basis, particularly regarding financial matters.

ACT	NEW SOUTH WALES	QUEENSLAND	SOUTH AUSTRALIA	VICTORIA	WESTERN AUSTRALIA
23 Torrens St Braddon ACT 2612 PO Box 78 Deakin West ACT 2600 Ph: 02 6282 7677 Fax: 02 6282 7655	Level 10, 169 Kent St Sydney NSW 2000 GPO Box 9692 Sydney NSW 2001 Ph: 02 9251 6088 Fax: 02 9251 6755	Level 6, 243 Edward St Brisbane QLD 4000 GPO Box 1450 Brisbane QLD 4001 Ph: 07 3233 9191 Fax: 07 3229 0355	Level 6 185 Victoria Square Adelaide SA 5000 Ph: 08 8218 4811 Fax: 08 8218 4851	Level 4, 34 Ousean St Melbourne VIC 3000 GPO Box 451 Melbourne VIC 3001 Ph: 03 9620 1311 Fax: 03 9620 1399	City West Letteries House, 2 Dalby St West Perth WA 6005 Ph: 08 9420 7274 Fax: 08 9420 7276

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The proposed Bill acknowledges this and Part 5 outlines in detail the required content of the *Public Information Document* (PID) which has to be provided to each potential resident by the village operator. While NSA endorses information provision and transparency, it is concerned that the information required to be incorporated in the PID will result in a lengthy and complex document. NSA questions whether it is useful to regulate the content of a PID to such a high extent, especially as the objective is to make information about the villages more accessible and easier to understand. In the interests of the potential resident, the information presented in a PID should be relevant, concise and easy to understand, and the content requirements outlined in Part 5 of the proposed Bill ought to reflect that.

In relation to providing and disclosing financial information to residents, addressed in Division 8.6, NSA considers it the responsibility of village operators to ensure that residents are informed in a regular, concise, transparent and accountable manner about the financial viability of the village, especially as residents themselves have a financial interest in the retirement village.

NSA believes that the retirement village operator should be required by legislation to supply residents with quarterly financial statements rather than a village resident having to submit a written request for a statement (section 145). Similarly, a retirement village operator should be required by legislation to provide audited annual financial statements to all residents, instead of the statements having to be requested by residents (section 146). Consequently, NSA urges that sections 145 and 146 be revised accordingly.

2. Financial management

While the requirement of a deposit may be reasonable, NSA considers it unfair that the scheme operator may require the resident to pay the cost of the improvement before the improvement is made (Section 95 - Payment of capital improvements). After all, a house owner would not be required to pay the full amount for a renovation project up front; so why should retirement village residents.

NSA is concerned that Section 127, subsection 2b contains an unreasonable requirement. It states that if the former resident's right to live in the accommodation unit has not been sold within 90 days, then the former resident continues to be liable for paying the resident's proportion for the general services charge for up to nine months after vacating the unit, unless the unit is sold prior to that. NSA believes that financial ties between a former resident and the retirement village operator should not continue to exist for up to nine months after the resident vacated the premise,

The 90 days period further seems to contradict statements made in Section 46 which asks the scheme operator to refund the full amount of the resident's ongoing contribution to the resident within 30 days after the residence contract ended and the resident had vacated the premises. NSA considers this time frame to be more reasonable and believes that they both should be aligned.

Anecdotal evidence suggests that the majority of people vacating a retirement village's independent living unit do so because they are proceeding to a residential aged care home. Once the necessity to move into a residential aged care home arises, people need to be in a financial position to do so, and financial assets still tied up with the retirement village prevent a smooth transition and cause financial and emotional pressure.

NSA believes that, as a guiding principle, personal and other service charges should only be extended to the resident if he/she is also the beneficiary of these services. In other words, "charges cease when services cease". Subsequently, sections 136 and 137 need to be revised as they require residents to pay for a period of up to 28 days for services that are not delivered.

3. Dispute resolution

NSA welcomes detailed procedures for resolving retirement village disputes contained within the Draft Bill. In particular, NSA believes that part 11 provides an important mechanism to strengthen resident's rights and enhance their protection against misconduct, including false or misleading information, by a retirement village operator at a stage in their life when many people are particularly vulnerable.

NSA would be pleased to assist the ACT Government further in its development of the *ACT Retirement Villages Bill 2010*. To expand on any of the issues addressed in this letter, please do not hesitate to contact [REDACTED] on (02) [REDACTED]

Yours sincerely,

[REDACTED]
[REDACTED]

6 October 2010

PI

Comments on the Exposure Draft:

The word 'dictionary'

'Dictionary' is a book which contains words of a language, with their meanings; therefore, it defines the meaning of a word.

The NSW Act and the Qld Act properly use the word 'definition'. 'Definition' is a word which describes the meaning of, not only a word, but a term or a phrase. It would be more appropriate to use the word 'definition' in the description of words, terms and phrases.

Contents Pages


The contents pages contain about 49 Offence Clause headings. Neither the NSW Act nor the Qld Act follow this procedure. The overuse of the Offence Clause as a major clause detracts from a clear reading of the proposed Act. It also introduces an element of 'offensiveness' which is obviously not the intention. It would seem more appropriate for the Offence clauses to become sub-clauses of a main clause.

ACAT

Many retirees interpret the term 'ACAT' as 'Aged Care Assessment Team'. The use of the abbreviation for ACT Civil and Administrative Tribunal as ACAT in several places needs to be reviewed or more clearly defined.

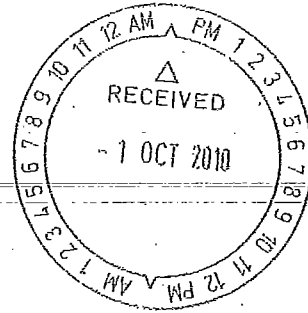
The word 'may'

The use of the word 'may' occurs at least 80 times in the Exposure Draft. The word 'may' expresses a possibility or a wish or a softening of a more direct approach. What benefit does the use of the word 'may' in so many instances confer? pl


Member of Steering Committee
2 August 2010

30 September, 2010

Ms Mary Porter AM MLA
Deputy Speaker
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601



RETIREMENT VILLAGES BILL 2010: EXPOSURE DRAFT

Dear Mary,

I am a resident of [REDACTED] and have been for a period of almost 5 years. I have enjoyed my time in the village where I have been able to take full advantage of the facilities and am making the most of my retirement.

I have looked through the Draft Exposure Bill for retirement villages and support your objectives of:

- Increased disclosure of information for prospective residents
- Increased transparency during the budget process; and
- A strong dispute resolution process

We have in this village a vibrant community that enjoys retirement living and the village life. There is a good relationship between residents and the management of the village because we are fortunate to have caring and friendly staff who seek to spend time with the residents and are alert and responsive to their needs. This is not accidental but fostered by management policy.

However it does concern me that the introduction of any overtly prescriptive legislation may, with the best of intentions, defeat its own purpose. Specifically, bureaucratic processes and procedures may so occupy the staff in the village that they may have little time or energy left for what should be the real purpose of their work – to give personal care and attention to the residents. It would not be the first time that the spirit of the law is lost in the enforcement of the letter of the law.

There appears to be significantly less flexibility in the Exposure Draft when its requirements are compared with those in the current Code of Practice. I believe the overly prescriptive nature of the Exposure Draft will provide extra, un-needed work and processes for both operators and residents, and will have the ability to cause grief and distress to both residents and operators alike. Not least of the unintended consequences could be the loss of valuable and valued staff (primarily "people people") who lose job satisfaction and seek more self-fulfilling employment elsewhere.

I would urge you to strongly re-consider the Draft Bill and look at other avenues for strengthening the protection of residents in villages in the ACT, such as strengthening the Code of Practice which I believe is currently meeting its objectives and functioning predominately well.

Kind Regards

[REDACTED]

Member Residents Committee

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Mary Porter

MLA

Minister, thank you for allowing me this opportunity to comment on the 'EXPOSURE DRAFT', **Retirement Villages Bill 2010**.

My name is [REDACTED] I am not a resident of a Retirement Village; however, I do hold a General Power of Attorney for [REDACTED] who currently resides in a retirement village. It is on his behalf that I submit these comments.

There are several points on which I would like to comment. I am aware there are many other aspects which residents generally would be concerned with, but I consider the following to warrant emphasis.

Section 501(2) of the Draft ratifies existing contracts but does not ensure such contracts are compliant in any way. There is no onus placed on an operator to upgrade existing contracts to ensure compliance. The Bill recognizes that existing contracts may not comply with the new regulations and at the same time removes any suggestion of culpability by a Village Operator where such contracts fail to comply with the new regulations

You will be aware that the residential population of a retirement village is fairly mobile. Residential contracts under these regulations will place existing residents at a significant disadvantage while ensuring significant advantages flow on to new residents. I further suggest a lot of confusion will eventuate within the operator's administrative organization because of the wide gap in information to be made available and the conditions to be met by the parties to residential contracts within the same complex.

Sections 8.2 and 8.3. The second issue which I consider important rests in the operator's sole responsibility to provide funds for the '**Capital Replacement Fund**' and a '**Maintenance Reserve Fund**' from residents Ingoing Contribution. I am aware of at least one operator who uses a '**Depreciation**' item in its annual maintenance budget in order to raise funds, presumably for replacement and maintenance of Capital Items. Further this item represents a major element within the Residents Annual Contribution. The weekly contributions payable by a resident affects their ability to meet the rising costs of living in today's society. The Ingoing Contributions in many cases I believe represent in totality a resident's 'Nest Egg'. A resident enters a contract knowing what percentage of his/her contribution will be payable on termination of their contract and an operator should take into account the requirements of Sections 8.2 and 8.3 of the bill in providing such information to a resident.

Finally, existing residential contracts in many instances provide, on termination of a contract, for a return of the ingoing contribution less a percentage. There is no requirement within existing contracts for an operator to return any percentage of Capital Gain received by way of sale to residents whose contracts are terminated. This seems particularly unfair to a resident who may reside in a village for a number of years, whose residential unit attracts a considerable capital gain and who wishes to terminate their contract for personal or any other reasons.

In summary, I believe this Bill should provide for an operator to upgrade existing contracts to ensure compliance and therefore ensure existing residents are not disadvantaged.

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Thank you for your time.

Sincerely,



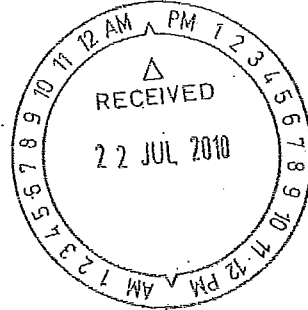


REI ACT

REAL ESTATE INSTITUTE
OF THE AUSTRALIAN CAPITAL TERRITORY

19 July 2010

Mary Porter AM MLA
Member for Ginninderra
C/- ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601



Dear Ms Porter

Following our recent meeting and your request for a comment from me on new legislation being proposed by you, I provide the following. As I understand our meeting, the intended legislation deals with a range of issues in relation to the operation of Retirement Villages. Your request of me was for REI ACT to provide some comment on a specific section of the legislation as covered in Division 6.3 of the proposed Act, being the **Reselling of accommodation units**. I trust you find the following is pertinent.

Background

As noted at our meeting I have been involved in agency practice and the property sector in the Canberra area since 1970. While Retirement Villages have not been an area in which I have been greatly involved, I did do an extensive report on this market segment for a client group some 20 years ago. At that time I visited most of the then Retirement Villages in the ACT, as were operating then. I undertook inspections of the facilities and spoke with the management about their operations and I also visited Villages interstate. Hopefully this affords me some understanding of the basic issues at least, however, I will restrict my comments to the nominated topic.

Given the request is to comment on issue of law I must caution that I am not a lawyer. However, I have been an agent for a long time and I believe that I am reasonably familiar with the legislation governing agency practice in the Territory and over the years I have had involvement with a range of regulatory personnel in regards to the interpretation of the Agents Act, in its various forms.

The Issue

On the issue of the reselling of accommodation units, you stated that you wanted some comment on the practice of the retirement village handling the sale of what are known as "Self Care" on behalf of a resident or past resident. That is the practice where the management of the village management exclusively deal with the buyers and sellers.

I did mention at our meeting that I was aware of the involvement of the management in the sale of property with retirement villages, but it has not come up as an issue in my time on the Council of REI ACT, that is until now. In any event I did say to you that I felt there are questions as to the appropriateness of this practice and I say this for the following reasons:

- It seems that the village management as opposed to the market imposes its influence over the pricing of the property. However, I am aware that this level of control is at times accepted by the buyers at the time of the initial purchase;
- While the appropriateness of the price control of the village may be a contractual matter, the other issue is the legality of the village management acting outside of the law, in this case the Agents Act, is another topic altogether.

You said that your intention was to see the sale of accommodation units opened up to market forces and that the sale of the accommodation units should be handled by licensed and/or registered real estate agents. You saw that latter in particular offering a greater opportunity for the resident to exercise a greater level of control over the process, especially given the nature of agency practice and the additional responsibilities and transaction requirements that exist under the Agents Act.

Advice & Comment

I have included as an attachment to this correspondence various extracts of the Agents Act 2003 (the Act), which I see as pertinent to the issue. I confirm my advice that I see the sale of accommodation units by the village management could be a breach of the Act, that is unless the people handling the sale are licensed and/or registered agents. I provide the following in support of this view.

- Under Part 1 section 6, there is a list of exceptions to the Act. I am not aware that retirement villages meet the criteria. As such, they may be liable for prosecution as detailed in Part 1 section 5 of the Act, which refers to the **application of the Criminal Code**.
- It is Part 2 section 8 that I see as critical. I cannot see that the actions of village management as being anything other dealing in land as referred to in section 8(2)(a) and section 8(2)(b)(i)&(ii). And for the purpose of clarity I refer you to the definition of land in the Act, which is: -land includes an interest in land. I would suggest that the meaning of this, as I understand the law, is that the sale of property sitting on a piece of land is covered by the Act.

If the view I have expressed is correct of course then the next issue for the village management is that they are in breach of Part 3 Division 3.1 section 18, and in that section I refer to subsection (2), which states: - **An offence against this section is a strict liability offence**. That is, if you are not an agent when you are doing things that require you to be, then there is little that a person can do as the fact of a breach brings the Act into play.

- As detailed in Division 3.2 section 24, it would be possible for retirement villages to become licensed as agents. However if they were to be licensed then they would fall under the provisions of Division 3.4 of the Act, Occupational discipline. While they already may well be required to meet the obligations of the Fair Trading legislation, as agents there are more requirements for specific compliance under the Act which governs agency practice. In particular Division 5.4, **Conflict of interest** would be an area of interest. It seems to be that this may well be one of the provisions of the Act that you are seeking to have employed through the proposed legislation.

D. I have included sections from Division 5.5. In particular section 78 & 79 which have the benefit of ensuring "truth in advertising", while section 88 deals specifically with false representations to sellers or buyers.

E. There are also additional provisions in the Regulations to the Act which provide yet additional protection for consumers. I note two areas:

- Nature of agreements that an agent must enter into with a principal.
- **Rules of Conduct**, which places yet further conditions on an agent over and above a normal commercial transaction.

Conclusion

I trust this provides you with the understanding that you require. REIACT would be supportive of any move to ensure that all persons dealing in the sale of property, that are not the owners of that property, are covered by the Act. While I have been advised that such a position is self serving given my position as head of REIACT, my response has always been to agree. I acknowledge that while I am seeking to protect my members interests, in so doing I am also seeking the enforcement of the protection provisions of the Act being available to all. No one has ever successfully argued that there should be different rules for the same activity, irrespective of the people.

I look forward to advice on the progress of the proposed legislation.

Kindest Regards



Extracts from Agents Act 2003

for advice to Mary Porter

Part 1

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct, intention, recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Application of Act

This Act does not apply to the following:

- (a) an executor under a will or an administrator under letters of administration;
- (b) a trustee of a deceased estate;
- (c) the public trustee;
- (d) a trustee company under the *Trustee Companies Act 1947* exercising functions under that Act;
- (e) an administrator, a receiver or a liquidator under the Corporations Act;
- (f) a manager under the *Guardianship and Management of Property Act 1991*;
- (g) a bailiff;
- (h) a sheriff;
- (i) another court officer;
- (j) a lawyer exercising the functions of a lawyer;
- (k) a Minister;
- (l) an entity prescribed by regulation.

Part 2

Key concepts

8 Carrying on business as real estate agent

- (1) A person *carries on business as a real estate agent* if the person provides, or offers to provide, a real estate agent service for a principal for reward.
- (2) Each of the following is a *real estate agent service*:
 - (a) buying, selling, exchanging, leasing, assigning or otherwise disposing of land;
 - (b) negotiating with, or inducing or attempting to induce, a person to—
 - (i) buy, sell, exchange, lease, assign or otherwise dispose of land; or
 - (ii) enter into, or make or accept an offer to enter into, a contract to buy, sell, exchange, lease, assign or otherwise dispose of land;
 - (c) collecting payments under a lease;
 - (d) collecting payments under a mortgage of land or payments under a terms contract for land;
 - (e) acting as manager of an owners corporation for a units plan;
 - (f) any other service prescribed by regulation for this section.
- (3) To remove any doubt, a person does not carry on business as a real estate agent only because the person carries on business as a stock and station agent.

Part 3

Licensing of agents

Division 3.1

Agents to be licensed

18 Real estate agents must be licensed

- (1) A person commits an offence if—
 - (a) the person is not a licensed real estate agent; and
 - (b) the person—
 - (i) carries on business as a real estate agent; or
 - (ii) pretends to be a licensed real estate agent.

Maximum penalty: 100 penalty units, imprisonment for 12 months or both.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to the provision of a service by a person if the person is otherwise licensed to provide the service.

Division 3.2

Eligibility, qualifications and disqualification for licences

24 Eligibility for licences

- (1) An individual is eligible to be licensed if the commissioner for fair trading is satisfied that the individual—
 - (a) is an adult; and
 - (b) has the qualifications required under section 25 for the licence; and
 - (c) is not disqualified under section 27 (People disqualified from being licensed) or section 51 (People disqualified from being registered); and
 - (d) for a travel agents licence—the individual is eligible under section 26 (Additional eligibility grounds for travel agents).
- (2) A person in a partnership is eligible to be licensed if the commissioner for fair trading is satisfied that—
 - (a) the person is eligible to be licensed under subsection (1); and
 - (b) no person in the partnership is disqualified under section 27 or section 51.
- (3) A corporation is eligible to be licensed if—
 - (a) the commissioner for fair trading is satisfied that no director of the corporation is disqualified from being licensed under section 27; and
 - (b) at least 1 director of the corporation holds a licence of the same kind.
- (4) However, a corporation is eligible to be licensed as a travel agent if—
 - (a) the commissioner for fair trading is satisfied that no director of the corporation is disqualified from being licensed under section 27; and
 - (b) at least 1 director of the corporation satisfies the eligibility requirements of section 24 (1) (a) to (c); and
 - (c) the corporation satisfies the additional eligibility requirements in section 26 (1) (Additional eligibility grounds for travel agents).
- (5) To remove any doubt, a regulation may provide that a person may be issued with an agents licence with stated conditions if the person does not have stated qualifications.

Division 3.4

Occupational discipline—agents

Note Under the *Fair Trading (Consumer Affairs) Act 1973*, s 7, the commissioner for fair trading may receive and investigate complaints in relation to the supply of goods and services or the acquisition of interests in land.

Division 5.4 Conflicts of interest

77 Agents must not act for buyer and seller of land

- (1) An agent commits an offence if the agent acts as agent for the buyer and seller of the same land at the same time.

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is a strict liability offence.

Division 5.5 Advertisements and other statements

78 When is a statement published?

A statement is *published* if it is—

- (a) included in a newspaper, periodical publication or other publication; or
- (b) publicly exhibited in, on, over or under a building, vehicle or place (whether or not a public place and whether on land or water), or in the air in view of people on a street or in a public place; or
- (c) contained in a document given to someone or left on premises where someone lives or works; or
- (d) broadcast by radio or television; or
- (e) electronically disseminated by other means (for example, by inclusion on a website).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

79 False or misleading advertisements

- (1) An agent commits an offence if—
- (a) the agent publishes an advertisement; and
 - (b) the advertisement contains a statement about the agent's business; and
 - (c) the agent publishes the advertisement knowing that, or being reckless about whether, the statement—
 - (i) is false or misleading; or
 - (ii) omits anything without which the statement is misleading.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) (c) (i) does not apply if the statement is not false or misleading in a material particular.

- (3) Subsection (1) (c) (ii) does not apply if the omission does not make the statement misleading in a material particular.

88 False representations to sellers or buyers

- (1) An agent commits an offence if the agent—
- (a) acts for a seller of land; and
 - (b) makes a dishonest representation about the agent's estimate of the selling price of the land—
 - (i) to the seller; or
 - (ii) to a buyer; or
 - (iii) in an advertisement or other publication.

Maximum penalty: 100 penalty units.

- (2) A registered salesperson commits an offence if the salesperson—
- (a) is employed by a licensed agent who is acting for a seller of land; and
 - (b) makes a dishonest representation about the salesperson's estimate of the selling price of the land—
 - (i) to the seller; or
 - (ii) to a buyer; or
 - (iii) in an advertisement or other publication.

Maximum penalty: 100 penalty units.

- (3) For this section, a representation is *dishonest* if—
- (a) the representation is dishonest according to the standards of ordinary people; and
 - (b) the maker of the representation knows that the representation is dishonest according to those standards.

Retirement village consultation (Belconnen Labor Club) 5/8/10

- Concern about the levy charged being raised by excessive amounts
- Concern about using the CPI to determine increases in the cost of living, suggestion that the wage index be used instead
- Suggestion that the legislation include measures to control the DMF to ensure that it does not change unexpectedly, or become too high
 - Statement by someone living in RV that the DMF has been raised for people moving into the village – suggestion that this reduces the price of units for people trying to sell their home in the RV
- Support for measures which attempt to ensure that management work in partnership with the residents to determine fees payable by residents
- Belief (general) that the DMF is where RV operators make most of their money
- Suggestion that legislation should cover who can enter RV, suggestion that legislation should fix an age to prevent RV operators changing the age that people can enter into the RV
- Suggestion that legislation should cover the exit price paid when a person exits the RV to ensure that they receive what is promised in their contract
- Suggestion that fines for RV operators breaching provisions should be made bigger
- Suggestion that the office administering legislation should prepare an annual report and then release this to residents
- Suggestion that legislation should impose a time limit on the amount of time you should have to wait before receiving the money raised from the sale of RV property
- Concern about residents having to pay half the bill of the solicitor

Retirement village consultation (Thursday 17th June 2010)

Note: s means section

Areas of concern

- Is there a need for retirement village legislation in the ACT
 - [REDACTED] would like a list of issues that have occurred as he doubts there are any
- What will be the cost of compliance with the legislation *
- Whether a real estate agent will be able to sell the unit (number of parties not in favour of this proposition) *
- s 46 states that the full amount is payable, this is inconsistent with the sections that follows
- Wanted to know whether there is a possibility to replace the Qld model for disclosure with the model being developed in NSW and Vic
- Question what the difference was between registered and unregistered retirement villages?
- Question who will be responsible for the registration of the RV's (in the sense of which government agency/body will handle the registration)
- Concerns that division 7.3 (s 88 relating to powers of attorney) is unclear
- Questions about the quorum for meetings
 - Question whether the Quorum could be a majority (rather than a special majority)
 - When considering the number of units for the quorum should the number be occupied units rather than units
- When will a quantity surveyor be needed, and how often will a quantity surveyor be needed?
- Questions concerning the statutory charge over RV and the need for registration under s 151 and division 8.2 and 8.3
 - Concern that the statutory charge could affect the willingness of lenders to lend
- Question as to who will be responsible for paying dispute resolution in the event that it occurs?
- What are the practical requirements of becoming/being a RV agent?
- How will the capital maintenance/replacement work in effect: look at possibly the NSW model

- Concern about the functioning of s 72 (setting a sale price)
- Concern about the functioning of s 130
- Concern about the wording of s 131 (particularly the wording of a change greater than CPI)
 - Also concern over whether there should be a special majority requirement
- S 146(1)(a) – whether this should be assets and liabilities as they relate to residents rather than in general
- Question whether the ‘offence’ needs to be used – it’s not friendly
- Concern about the 90 day waiting period in s 127
- In regard to financial statements
 - Who is the chief executive for the purpose of financial statements?
- With regard to the path that disputes go through, should there be a step before the dispute goes to ACAT – Mary advises there was meant to be a 3 step process. She said that she will clarify in the legislation
- Question whether in the provision relating to sale price there should be included a statement that the sale price would include negotiation between both parties who are involved
 - Suggestion that where no negotiation can be reached there should be a final price determined by an independent party who is a professional at valuing property



RETIREMENT VILLAGES BILL 2010 (ACT)
EXPOSURE DRAFT
SUBMISSION TO MARY PORTER

SUBMITTED BY
Illawarra Retirement Trust (IRT)
22 September 2010

IRT 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.

It is our view that the desired outcomes can be achieved by amending the current Code, which unlike prescriptive Legislation provides flexibility for residents and operators whilst maintaining strong consumer protection.

IRT is 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.

IRT submit 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.

As you will be aware, submissions to the Productivity Commission into accommodation for the aged has closed and it is submitted that it would be prudent to delay tabling of the ACT Draft Bill until the recommendations of the Productivity Commission report are known.

It is also argued that as there are several ACT village operators who also operate villages in NSW, it would be efficient and effective for the ACT Legislation to be the same as the NSW Legislation. Kangara Waters Residents' Committee agree to this approach.

Specific comments and suggestions for changes to the Draft Bill are detailed below:

Item	Section	Issue / Recommendation
1.	S7 Meaning of retirement village	<p>Issue:</p> <p>There is no age definition only "older members of the community" whereas Section 57 (b) allows for the "age limits" of residents to be specified in the public information document.</p> <p>It is argued that the above definition is too vague and the flexibility for each village to set their own age limits means that there will be no consistency across the industry, creating confusion when prospective residents are researching their options for retirement living.</p> <p>The "age limits" also implies that there could be an upper limit stipulated by an operator.</p> <p>Recommendation:</p> <p>Use the same definition used in the NSW legislation.</p>
2.	S11 Meaning of scheme operator	<p>Issue:</p> <p>This section does not make it clear that a scheme operator can be an organisation or business</p> <p>Recommendation:</p> <p>State that a scheme operator can be an organisation or a business.</p>
3.	S12(3) Registration of retirement village scheme	<p>Issue:</p> <p>The process, cost and details around registration are not clear.</p> <p>Recommendations:</p> <p>More details are required.</p>
4.	S26(1)(b) Offence—failure to give copies of residence contracts to other parties	<p>Issue:</p> <p>"As soon as practicable" is not specific enough.</p> <p>Recommendation:</p> <p>Provide a specific timeframe, say 7 days.</p>

5.	S34(c) Offence—failure to repay amounts after residence contracts rescinded	<p>Issue: “Immediately” is not specific enough.</p> <p>Recommendation: Provide a specific timeframe, say 7 days.</p>
6.	S34 and S36 Trustee must repay amount if contract rescinded during cooling-off period	<p>Issue: It is considered that the cooling-off period of 21 days is too long.</p> <p>Recommendations: Reduce the cooling-off period to 7 business days.</p>
7.	S46 Ingoing contribution - operator must refund full amount within 30 days after contract ends	<p>Issue: The timing of the refund of the ingoing contribution within 30 days is not acceptable. Section 127(2)(b) provides that the resident is liable for a proportion of general services charges for up to nine months.</p> <p>Thirty days means serious cash-flow issues for operators and this would seriously affect the industry. The property would likely not have been sold and its value not established, resulting in an unfair and unequal agreement. In addition, financiers may be reluctant to advance money to older villages which may be most in need of refurbishment.</p> <p>Recommendation: Refund of ingoing contribution must be made within 30 days when the resident’s right to reside is sold or a period of six months after the former resident vacates the premises, whichever is sooner. .</p>
8.	S56 Definitions - ACAT	<p>Issue: This is the first reference to the ACT Civil and Administrative Tribunal (ACAT). Using the Acronym ACAT is very confusing as ACAT referring to the Aged Care Assessment Team throughout Australia is known by this acronym to both providers and residents.</p> <p>Recommendation: Include a definition of ACAT.</p>

9.	S61(1) Access by residents to certain documents	<p>Issue: This section would be confusing to residents as they would already have a copy of the residence contract and public information document.</p> <p>Recommendation: Remove this section.</p>
10.	S69(2) and S69(3) Condition reports	<p>Issue: By waiting for up to 2 weeks after occupation for the resident to complete the condition report provides an environment for potential dispute</p> <p>Recommendation: Set condition reports to be completed by the operator and resident prior to occupation.</p>
11.	S72 and S73 Resident may set the sale price of the unit and appoint a selling agent	<p>Issue: It is not necessary for scheme operators to be licensed agents as we are selling our "own" real estate.</p> <p>Recommendation: Remove the provision for the need for a selling agent.</p> <p>Issue: We do not support the option for residents setting the sale price.</p> <p>Recommendation: Set the sale price to be agreed by both the resident and the operator as the result affects both. If no agreement can be reached on the sale price, the parties are to go to a registered valuer who will set the price.</p>

12.	S78(2) Definition of long term resident	<p>Issue:</p> <p>There needs to be clear distinction between owner and non-owner arrangements throughout the Draft. Of particular conflict is the definition of <i>long term resident</i>. The definition of 'own' in the dictionary in the Draft refers to the person who has a leasehold interest. Yet S78(2) defines a long term resident as a person who does not own an accommodation unit but whose contract is in the form of a long term lease. The confusion follows through in S71, S72 and S73.</p> <p>Recommendation:</p> <p>Correct S78(2) definition of <i>long term resident</i> to clear up the conflict.</p> <p>Review and revise the Exposure Draft to make a clear distinction for owner and non-owner arrangements as applicable.</p>
13.	<p>S80 Relatives may continue to live in units</p> <p>S81 Relative may enter into residence contract</p>	<p>Issue:</p> <p>This section would have a negative impact on residents and operators. It provides automatic right of continued occupation of the unit and does not allow for the equity of occupation through the waitlist process. If this section remains unaltered, operators would have to limit or not permit relatives to reside in the residents unit for any length of time. This may be detrimental to the resident, particularly where the resident may be unwell and need the support from a relative.</p> <p>Recommendation:</p> <p>Adopt the provisions of Section 81 of the Retirement Villages Act 199 (NSW).</p> <p>Issue:</p> <p>There could be a conflict of interest if the relative is also the person that has set the sale price for the unit.</p> <p>Recommendation:</p> <p>Set the sale price to be agreed by both the resident and the operator (S72).</p>

14.	S97 Meaning of capital replacement	<p>Issue:</p> <p>The definition of capital maintenance and capital replacement is unclear.</p> <p>Recommendation:</p> <p>Ensure that the definitions of capital maintenance and capital replacement are clear.</p>
15.	S99(2) Capital replacement fund	<p>Issue:</p> <p>It is misleading to say "the scheme operator is solely responsible for contributing to the capital replacement fund" when Section 97 states that contributions come from new resident ingoing contributions. In the case of the maintenance reserve fund, Section 110 and 112(2) similarly describes how residents are solely responsible for contributing to this fund.</p> <p>Recommendation:</p> <p>In S99(2), replace "scheme operator" with "residents of the retirement village".</p>
16.	S105 & S118 Capital replacement reserve and maintenance reserve reports	<p>Issue:</p> <p>Some village operators have extensive in-house qualified planning and development expertise that can establish a costed maintenance program and future capital replacement program. By having the requirement to commission a quantity surveyor will add to the cost and ultimately reduce available resources in these funds</p> <p>Recommendation:</p> <p>Include "or other qualified personnel" in S105(2)(a) and S118(2)(a).</p>
17.	S110 Meaning of maintenance reserve fund contribution	<p>Issue:</p> <p>The definition that contributions to the fund are from a proportion of ingoing contributions may be incorrect. It is suggested that the intention is that contributions to the fund are made by residents out of general service charges.</p> <p>Recommendation:</p> <p>Change the definition to indicate that contributions to the fund are made by residents out of general service charges.</p>

18.	S130 Scheme operators paying general services charge	<p>Issue:</p> <p>The impact of this section would mean that there is a potential shortfall to the general services operating budget.</p> <p>Recommendation:</p> <p>Any general services charges to be paid by the operator should be paid into the general services operating account and not the maintenance reserve fund.</p>
19.	S131 Increasing general services charge by more than CPI	<p>Issue:</p> <p>There is no provision to allow general services charges to be based on a percentage of the pension.</p> <p>Recommendation:</p> <p>Include an option to allow general services charges and changes to the general services charges to be based on the pension.</p> <p>Issue:</p> <p>In the event that a previous year deficit is carried forward, the increase in general services charges is likely going to exceed CPI even if the overall expenditure is kept within the CPI.</p> <p>Recommendation:</p> <p>Include an option to allow general services charges and changes to the general services charges to be increased by more than CPI, with resident consent.</p>
20.	S147(1) Copy of the annual financial statement to Chief Executive	<p>Issue:</p> <p>Giving a copy of the annual financial statement to the Chief Executive (of the public sector administrative unit, per Legislation Act 2001 S163) is unnecessary. The Exposure Draft does not refer to any financial oversight role by the Chief Executive.</p> <p>Recommendation:</p> <p>Remove section 147 (1).</p>

21.	S151(1)(5) Statutory charges - exemptions	<p>Issue:</p> <p>The sections state that the chief executive can decide that a statutory charge should not apply because of specified circumstances. We believe that organisations that are religious, charitable or community purposes ie those with not-for-profit status should be automatically exempt.</p> <p>Recommendation:</p> <p>Reword section 151(5) to make not-for-profit status organisations automatically exempt from statutory charges.</p>
22.	S163 to S178 Resident committees and resident meetings	<p>Issue:</p> <p>There is no clear distinction between the formation and operation of the resident committee and that of the meetings of the residents. For example, 163(1) provides for the election of a residents committee. Yet S169 to S172 refer to meeting of the residents. For example, resolutions according to S171 and S172 are made by “a meeting of the residents” – ie what is the role of the residents committee?</p> <p>Recommendation:</p> <p>Review references to residents committees and meeting of residents throughout the Exposure Draft.</p>
23.	S164 to S178 The operation of residents committees	<p>Issue:</p> <p>The establishment and operation of a residents committee is agreed.</p> <p>However, resident decisions can “take effect” on matters including S164(1)(c)(ii) “any other matter affecting the management or operation of the retirement village” without operator consent and sets a platform for adversarial conflict.</p> <p>Recommendation:</p> <p>Add Section 74(2) from the NSW Retirement Villages Act 1999 – “A vote of the residents on a matter referred to in subsection [(1)(c)(ii)] does not bind the operator of the village”.</p>

24.	S168(1)(b)(ii) Retirement villages without residents committees – formula for number of residents	<p>Issue:</p> <p>The formula for determining the number of residents that may give a written request to the operator for a meeting has a drafting error.</p> <p>Recommendation:</p> <p>Before the term “a majority of the occupied units” insert “residents from”.</p>
25.	S171 Special resolutions	<p>Issue:</p> <p>The description of how to calculate the number of votes to pass a special resolution is unnecessarily complex.</p> <p>Recommendation:</p> <p>Adopt the wording of Schedule 1 Part 3 Number 6 of the NSW Retirement Villages Act 1999 “A special resolution is carried only if it is passed by at least [two-thirds] of the number of residents who participate in the ballot”.</p>
26.	S175 Offences - postal votes	<p>Issue:</p> <p>The process for managing postal votes is overly prescriptive and comes with penalty points for getting any one of the very specific requirements wrong.</p> <p>Recommendation:</p> <p>Adopt Schedule 7 Provisions relating to consent of residents (3 Postal votes) of the NSW Retirement Villages Regulation 2009.</p>
27.	S176 to S178 Quorums and meetings adjourned	<p>Issue:</p> <p>The process for determining quorums and meetings adjourned is overly prescriptive and complex. NSW has quorum provisions for only special resolutions.</p> <p>Recommendation:</p> <p>Apply quorum requirements to special resolutions only and not ordinary resolutions and simplify these provisions. Consider using Schedule 7 Provisions relating to consent of residents (4 Quorum required for special resolution) from the NSW Retirement Villages Regulation 2009.</p>

28.	S182 Dispute resolution – referral to mediation	<p>Issue:</p> <p>It appears that the Dispute Resolution mechanism from the Code of Practice has disappeared. This mechanism included a Disputes Resolution Committee, and does not involve ACAT or the ORS until a later stage in the process. It avoids early applications to ACAT.</p> <p>Recommendation:</p> <p>Adopt an interim step for dispute resolution between tier one – the resident and operator meets to discuss, and tier two – application to ACAT.</p> <p>The Code Administration Committee made up of representatives from residents and operators and chaired by a representative of the ORS, is an effective alternative to dealing with disputes, keeping the costs to residents, operators and government to a minimum.</p>
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RV CONSULTATION NOTES

Public Information Document

Agreed

- Public information document is good
- ORS is the appropriate body to enforce legislation
 - There should be as little ORS intervention in the operations of RVs as possible
- Public information document should be simple, containing only essential facts to enable easy comparison
 - This would be complex in the present environment as RVs are complicated, but should be the end goal
- Would be a good idea to have a series of public information documents of increasing information as residents become increasingly connected to the RV
- Public information document should explain the difference between different types of RV models

Deposits

Agreed

- Non-refundable deposits are not as common anymore
- Are OK, provided that they are refundable in situations where appropriate
- Administration fees are OK, as long as they are reasonable
- Where there is a non-refundable deposit involved, it should be disclosed and reasonable

Deferred management fee

Agreed

- Recognised as necessary but must be reasonable and disclosed
- It would be a good idea if the DMF was included as one of the costs that needed to be disclosed in the public information document
 - Disclosure might include the timing of the DMF in the Public Information Document
- Public Information Document should remain flexible

Sale of property

Agreed

- 6 months is an appropriate period for ingoing contributions to be repaid
- The amount that a property is sold for should be agreed between resident/resident's estate and RV operator
- Legislation should specify which models of RV the sale provision relate to
- Legislation needs to clarify between who is an owner and who is not

Capital gain

Agreed

- As long as the situation is disclosed then it should be fine

Liability for maintenance fees

Contested

- Industry would prefer the introduction of the NSW provisions in the ACT

Contracts – cooling off period

Agreed

- ACT legislation needs to be more clearly set out
- Long cooling off provisions may benefit both parties

Contested

- Industry believes ACT legislation could mirror NSW legislation as it has proven effective there

Contracts – married couples and carers

Contested

- Question whether under the NSW legislation it is possible for spouse to move in without renegotiating the contract – if so, we should include the same provisions here
- Aged Care Assessment Team could be used to determine whether someone should be considered a carer

Compulsory disclosure of financial documents

Agreed

- Could be included in the Public Information Document
- Should only say that the money is being used for what it is being set aside for and is otherwise safe – should not disclose the quantity

COTA ACT ██████████ Consultation

- Support for the minimum standards that the legislation sets out, the previous standards set out in the code were not effective/very good
- The bill should be shortened and simplified, suggestion that many of the provisions in the legislation should be contained in regulations
- Concern that chief executive would be a new government department, many believed that increased 'bureaucracy' would be bad
- S 17 does not go far enough in the protection of residents in the event that the RV operator decides to deregister
- Concern that Part 8 (the financial management provisions) may undermine existing rights of the residents
- Support for dispute resolution being managed internally for as long as possible
- Suggestion that a plain English document could accompany the legislation so as to make residents better aware of their rights
- Suggestion that some provisions could be included in regulations, making them easier to change
- Suggestion that each component of the RV i.e. different sections of the RV have their own resident's committee
- Concern that two pieces of legislation (from Cth and ACT) would make aged care living more complicated
- Concern that the code of practice and the Act may have the same dispute resolution mechanism and the dispute resolution mechanism from the code has not worked
- Concern that there is no link between RV and nursing home, should be provisions which allow people to move between different levels of care
- Suggestion that the Act should include provisions which would require a RV operator to provide more detailed statements on the financial position of the RV operator's business
- Concern about what happens in the event of a RV going bankrupt, would like to know:
 - How much goes to village residents
 - Suggestion that the RV operator should provide detailed financial information on its relative financial position on a routine basis
- RVRA concerned about the role of Resident's Associations under the bill
 - Would like provisions to ensure that the associations are given consolidated data (in particular would like the information on who is the head of the resident's committees)
- Would like to know the division of spending between the owners and the residents on the costs of maintenance (particularly interested in the amount of profit that RVs are generating)
- In the case of RV run by a Church Org., would like to know whether the Church's contributes to the maintenance costs of the RV, and would like to know whether the ACT Government would consider subsidising non-Church sponsored RVs?

- Suggestion that two sections of the legislation could be created for profit and non-profit villages and different arrangements, such as lease or purchase.
- Concern that when people go to lawyer the lawyer has no working knowledge of the RV legislation

Summary of concerns expressed during the Kangara Waters visit to discuss RV
Legislation on 25 June 2010-06-28

- Concerns that the legislation will override existing contracts entered into by the residents previously
- Concerns that rights will be altered under the Legislation, would also like to know how rights will be altered
- Would like to know the effect of the legislation on their particular contract (in particular 'Annex D' of the Kangara Waters contract fixing recurrent charges)
- Would like to know whether residents will be have to pay for 'Capital Replacement' when facilities need repair/updating – also the impact of this upon people who have entered contracts which give provide differently for capital improvement works
- Complaints about the existing financial statement provided to residents (see suggested financial statement from *Retirement Villages Regulation 2009* (NSW) also included in the same folder as this file is in)
- Concern about what happens to the contracts of residents in the event that the RV scheme operator goes bankrupt, or is bought out by another operator (particular concern about whether contracts would still be valid) – statement that this should be included in the legislation
- Would like to know who the chief executive is
- Would like to know what protection there will be for residents in the event that the chief executive cancels the registration of the RV
- Concern about whether s 23 will restrict the rights of residents to enter into contracts that have conditions better than those prescribed in the legislation despite the presence of s 18
- Concern about the effect of s 48, potentially giving scheme operators too much power over residents
- Suggestion that s 48 3(c) example 1 should be broadened to include that the care is not normally provided by the RV, and cannot be provided by RV or another organisation or persons
- Suggestion that determination as to whether a person should continue to live in RV should be made by GP or other qualified health professional
- Concern about what occurs under s 126 when a resident dies (this is likely answered by s 127)
- Suggestion that s 131, instead of being attached to the CPI should instead be attached to the pension, or average weekly earnings
- Concern that Division 12.3 is too long
- Statements to the effect that residents do not care whether they have right to sell property
- Concern about whether the legislation addresses those villages which are run not for profit and those that are profit motivated
- Suggestion that there should be additional provisions in the legislation to assist residents in enforcing their contractual rights
- Suggestion that some parts of the Act could be contained in regulations allowing the Act to be shortened

Retirement Village Industry Code of Practice

Because irt has a mortgage on Kangara Waters my solicitor is of the opinion that there is no protection for residents' rights should irt default and the mortgagee exercises his right to sell. He feels that residents should have a lease and the law should be changed so that, if a mortgagee sells, no purchaser can ignore the residents' contracts. My solicitor agrees that the possibility of irt defaulting is remote but feels that security of tenure should be guaranteed for residents by amending the Retirement Village Industry Code of Practice to cover this eventuality.

VILLAGGIO SANT' ANTONIO

Self Care Villa Residents Committee

Phone [REDACTED]

Ms. M. Porter MLA

20/05/2010

Dear Mary

Having just read the Exposure Draft of the Retirement Village Legislation, I would like to register with you the following:-

REF:-- Retirement Industry Code of Practice.---Division 2, Paragraphs 12 to 15.

Some elements of the above have been incorporated into the new proposed legislation, but we would like to see all the elements used. We would like to retain, as an entitlement,

1. Residents having input into the preparation of the services fee budget. (Div 2 Par 14.3)
2. Budget prepared within a reasonable time prior to the end of financial year. (Div 2 Par 14.1)
3. Budget prepared in time for residents AGM and to be agreed upon by both residents and scheme operator prior to end of financial year. (Div 2 Par 13 2.b.i)

These examples are the main areas of concern to us but we would like to see this Division of the Code included in its entirety. We would be very happy to have the opportunity to discuss this in more detail if you would like to.

We also seek clarification regarding the overall validity of contracts between residents and a scheme operator in existence prior to the Legislation coming into effect.

Yours Faithfully

[REDACTED]

[REDACTED] Self Care Villa Residents Committee.

VILLAGGIO SANT' ANTONIO

Self Care Villa Residents Committee

[Redacted] Phone [Redacted]

Ms. Mary Porter

revised 11/08/2010

RE: FIRST EXPOSURE DRAFT- PROPOSED LEGISLATION ACT RETIREMENT VILLAGES

Dear Mary

Please receive from the Self Care Villa Residents of Villaggio Sant'Antonio submissions on the following divisions of the Proposed Legislation. (4 pages in total)

Part 4. Div 4.1 (contracts)

Part 6. Div 6.3 (reselling accommodation units)

Part 8. Div 8.1 (financial management) Div 8.3 (maintenance reserve fund)

Div 8.4 (services charges)

Part 10 (residents participation) Part 11 (disputes) Part 16 (transitional)

SUBMISSIONS AS FOLLOWS: (specific to the Legislation)

Part 4, Div 4.1, Sect 20 (1) (h).

This should refer only to the "Maintenance Reserve Fund Contribution", not " the amounts payable by a resident for the Maintenance Reserve Fund" as Sect 110 in defining the Fund, states that there is only one payment namely the " Maintenance Reserve Fund Contribution". Therefore all references in the legislation to " levies" or "amounts" payable into the Fund should clearly state that these are against the Fund itself.

Capital Replacement Fund Contribution should also be listed under Sect 20 if the scheme operator intends to apportion some of the residents Entry Contribution to the Fund(Div 8.2, Sect 97)

Part 6, Div 6.3 Sect 78 (2) Under Long Term Resident

- (a) As well as 'Long Term Lease' Should specify other terms of contract such as "Loan Agreements", "Licence to occupy" etc.(See 1st paragraph under "general matters" in this submission)

~~(b) Delete 50% and replace with "a percentage" as agreements on capital gain sharing percentages vary to lower percentages than 50%.~~

Capital Gains sharing contracts should specify precisely the basis of capital gain calculations.

Part 8, Div 8.1 Sect 94 (3)

Should add "Residents must be in agreement with this". This provision must apply to other similar quotation requirements in the Legislation.

Part 8, Div 8.3

The proposed Legislation requires scheme operators to obtain an independent report from a quantity surveyor regarding expected costs over 10 years, to be updated yearly, and a budget created yearly. With this information any competent manager should be able to cover these costs from a properly calculated, initial payment in the form of the new residents entry contribution. Ambiguity about this in the proposed Legislation will potentially leave the legislation open to abuse.

Part 8, Div 8.4

We submit that it is essential to totally rework **Sect 124**. We feel very strongly that **Sect 124** should be removed and replaced by the following:-

Retirement Villages Industry Code of Practice, Div 2- Resident input to Village Management Sections 13 and 14.

Currently. The proposed Legislation indicates that the budget can be devised by the scheme operator without any input from residents, does not require mutual agreement between operator and residents and only allows for supply of budget details to residents 14 days prior to the end of the financial year. The budget for services that residents will pay for should be prepared in consultation with, and with input from, residents and should be prepared and agreed upon in time for residents to formally accept at their AGM (or special general meeting if date of AGM is not appropriate) This should all happen significantly earlier than 14 days from the beginning of the new financial year. (as proposed Legislation)

The existing Code of Practice allows for this, creating a situation where harmonious agreement on the budget can be achieved, whereas advice of a budget devised without consultation and made available to residents only 14 days before the end of the financial year will create the strong possibility of disagreement requiring appointment of a referee and resolution prolonged into the financial year. Any budget devised without resident input and agreement will be open to possible abuse and possible resident resentment.

We submit that **Sect 127** should be removed. A resident no longer residing in a village should not be liable for any General Services Charge. If it is deemed that removal of **Sect 127** is not possible, then **Sect 127, 2,b, ii**, should be amended to read 90 days (instead of 9

~~months) for two reasons: 90 days is more than enough extra payments for a former resident to pay and secondly to maintain consistency with 127, 1, b.~~

The Legislation should state that any surplus or deficit in the years Weekly Service Charge Budget should be carried forward to the next year's budget.

Sect 131, 2. iv should be removed. The Maintenance Reserve Fund by definition has nothing to do with the General Services Charge. (Nor should it)

Sect 135,3 Should add " Residents must be in agreement with this ". This provision must apply to other similar quotation requirements in the Legislation.

Part 10

The Legislation should include; from the ACT Code of Practice for Retirement Villages ,**Part 2, Div 2, Section 15, Village Rules**

Scheme operators should be required to make all decisions affecting residents in an environment of harmony and co-operative consultation, with the best interests of residents taking priority.

Where there is a Board of Directors, village residents, or residents' representatives, should be eligible to stand for election.

Part 11

The Legislation should have provision for a free of charge mediation process for disputes within a village to limit the need for referral to ACAT, with action required within 14 days.

The Legislation should have a requirement to retain the existing " Disputes Resolution Levy".

Part 16

Sect 505. There is a need to qualify that although **Part 16** expires after 12 months, the validity of contracts existing prior to this Legislation becoming law will be retained. In other words, a statement that existing residents of retirement villages will not be worse off as a result of the legislation and will retain any benefits and conditions superior to the minimum requirements of the legislation.

GENERAL MATTERS:- (not covered by the Legislation)

There is a very important need to clearly delineate between the different sections that refer to different arrangements that will govern different types of villages.

Annual Reporting:- The legislation should provide for a published Annual Report of the ACAT(?) stewardship of the Retirement Village Industry and its residents. If the annual report is included as part of a departmental annual report there should be a requirement for substantial information to be supplied to show proper responsibility is being taken for the care of elderly in retirement villages.

Discrimination:- Villages receiving government subsidies should not be allowed to discriminate in accepting or rejecting residents on the basis of race or religion.

The Legislation should have a provision for disputes over variation between existing contracts and new legislation to be resolved.

We would like to have confirmed that there will be future opportunity to make submissions on the Proposed Legislation.

Generally, in all cases, we feel that any legislation should foster a need for co-operation and consultation between residents and scheme operators, and encourage harmonious resolutions in keeping with the legislation and regulations.

We believe these general matters should be clearly defined. If they, or any other part of the Proposed Legislation, are covered by other legislation it should be stated that is the case.

Retirement Villages Legislation

Mary's Meeting with the University of the 3rd Age Members
Monday, 9th August

1. Deferred Management Fees
 - a. It was clarified that these fees differ, depending individual contractual arrangements
 - b. It was ascertained that there are six different contractual agreements.
 - c. However, the general agreement was that when the unit is sold an accumulated amount on the value of the property is forwarded to the management/ owners.
 - d. Someone stated that the total amount is calculated as 2.5 % of the purchase price for ten years plus 50% of the capital value increase of the unit from date of purchase to date of sale.
2. Concern was raised regarding buying into the retirement village, which some stated that it was very complicated. They have suggested that public education and information be availed to people to enable them to fully understand what they are buying into.
3. The charging of legal fees was also raised as a concern. An example was given of Ridgecrest which allegedly charges \$800.
4. The issue of couples not being able to sign a contract was raised. They said that with the current provisions, two DMF's would have to be paid since the partner would have to sell off and buy again. (this is in the case where a resident would like the partner to move in, having married)
5. General rule about relatives living with the owner of a villa, or a permanent carer. **The idea would be beneficial to the government as it would increase beds in nursing homes. Further classification is needed.**
6. The question of an owner being able to vacate a house for a certain period of time and then moving back. Some people take extended holidays in Europe, or are in hospital. In both cases they are being charged for services they are not utilising.
7. The question of what the management/ owner can do with the residents' money. Should they be requested to declare?
8. The question of who is responsible for the level of maintenance inside a villa?

9. Can they invest in derivatives/ Should they?
10. Since the management and owners run or own retirement properties around Australia, will the legislation protect people's movements from state/ territory to state/ territory?
 - a. Is an "umbrella legislation" necessary?

Bourke, Katie

2012/0067

From: [REDACTED]
Sent: Friday, 27 January 2012 10:07 AM
To: CORBELL
Subject: ACT RVRA Inc.
Attachments: ACT RVRA Inc.pdf

Dear Attorney - General,

Please see attached document regarding the Retirement Villages Bill 2011.

Kind regards

[REDACTED]
ACT Retirement Village Residents Association Inc.

TO

- Minister
- Chief of Staff
- Director/Adviser
- Media Adviser
- ASE
- Reply
- Advise
- Noted
- File
- []
- Adviser
- EO
- DLO
- Arrange meeting
- For information
- Refer to
- Action

COMMENT

322

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ACT Retirement Village Residents Association Inc.

To: inform, represent and negotiate for self care residents.

Ms Mary Porter, AM, MLA
Deputy Speaker
ACT Legislative Assembly
CANBERRA ACT

27 January 2012

ACT RVRA

Dear Ms Porter

Retirement Villages Bill 2011

Since you introduced your Private Members Bill, the **Retirement Villages Bill 2011**, on 16 November last, our Committee has examined it in detail.

We congratulate you and appreciate the detailed research for, and development of, the Bill. Hopefully, very soon, the ACT will no longer be the only jurisdiction in Australia without appropriate legislation covering residents in Independent Living Units in retirement villages – and, as a result, there will be a legal structure specifying the rights and responsibilities of Operators, Managers and Residents.

We fully support both the objectives of the Bill and the issues that are covered in detail. There are, however, three important matters that are not covered. The first two were specifically enunciated in the Code of Practice, whilst the third is required to protect the financial security of residents in unpredictable circumstances.

- (i) The first, relating to input of residents into the **Annual Budget** for the forthcoming year, is covered clearly in **the retirement villages handbook (2008)** [pp 9-12], the substance of which is taken from Section 14 of the **RETIREMENT VILLAGES INDUSTRY CODE OF PRACTICE** established under the *Fair Trading Act 1992*. These publications provide an obligate requirement (i) for Management to provide residents with a detailed draft Annual Budget for the forthcoming year, thus enabling them to have an input into the final Budget, and (ii) for this Budget to be approved by residents.

No such provision is included in the Draft Act. We feel strongly that such a requirement (for residents to participate in the development, and approval, of the General Services Charge Budget) should be included in the Bill, and suggest it be covered in **Part 8, Division 8.4, Services charges**.

- (ii) Reference is also made in both the **RETIREMENT VILLAGES INDUSTRY CODE OF PRACTICE** [Section 15] and *the retirement villages handbook* [p 13] for the requirement for retirement villages to have a set of **Village Rules**.

Village Rules regulate the day-to-day living arrangements in a village, visitors and guests, noise, parking, pets, gardening, garbage disposal and village security. A list setting out basic requirements should be included as one of the public information documents. These rules can be amended as required by residents voting at a special meeting [Section 15 (2) **CODE OF PRACTICE**] and [p 13 *villages handbook*] as circumstances in each village change.

There is presently no reference to Village Rules in the Draft Bill. The ACT Retirement Village Residents Association (RVRA) feels strongly that this omission should be rectified.

E-mail:

32/1



(iii) In the Retirement Villages Bill: Part 9 Charges created over retirement village land to protect residents' rights.

In order to protect the financial security of residents who do not own an accommodation unit in a village, we suggest that Section 168 (4) the exemption of a statutory charge, should be reconsidered. Without such statutory charge, residents are put at risk of financial ruin if there is a change of ownership of the village, or if the village goes into administration, or if the village is closed for refurbishment or redevelopment. We would appreciate the opportunity to discuss this important issue.

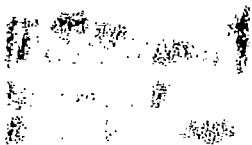
As we believe that our views should be made known to relevant Ministers, we are taking the liberty of sending a copy of this letter to the Chief Minister, the Attorney - General and the Minister for Ageing.

We request urgent consideration of these matters with a view to an early meeting for discussion.

Kind regards



ACT Retirement Village Residents Association Inc.
(ACT RVRA)



029/11



Ms Katy Gallagher MLA
Chief Minister
GPO Box 1020
CANBERRA ACT 2601

Retirement Village
Association Limited
Suite 4, Level 7
350 Collins Street
Melbourne VIC 3000
Freecall 1800 240 080
Telephone 03 9670 0255
Facsimile 03 9670 2255
Email info@rva.com.au
ABN 18 100 945 211

Dear Chief Minister

I write to you in relation to the *Retirement Villages Bill 2011* that was tabled in the Legislative Assembly on 16 November 2011 by Ms Mary Porter AM MLA.

The main purpose of this letter is to request that the ACT Government undertake a regulatory and economic impact assessment of this Bill before agreeing to support it in the Assembly. In addition, we would like a meeting with you in February to formally discuss our industry's concerns.

As you may be aware, the Retirement Village Association (RVA) has been a longstanding supporter of the Fair Trading (Retirement Villages Industry) Code of Practice 1999. This Code delivers a fair and balanced operating environment for residents and operators in the ACT with a very low level of complaint activity compared with other jurisdictions. In fact, no matters have been heard by the ACT Tribunal. The RVA has consistently argued that there does not seem a need for prescriptive legislation when the Code is working well.

Despite reservations about a legislative approach, the RVA and our members have worked constructively with Ms Porter MLA to ensure that any legislation introduced enshrines the same balance contained within the Code.

It is with some surprise, that when we saw the [redacted] representations have not been taken into consideration. If enacted, it will potentially affect new investment in the Territory, including new construction investment.

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Over January, the RVA and our ACT based members including the Hindmarsh Group, IRT, Goodwin Aged Care Services and Uniting Care Ageing, will be preparing a Submission for your consideration. This Submission will be a joint Submission with Aged & Community Services.

It is our intention that this Submission will present evidence of the additional compliance burdens and the likely impact on investment in the Territory. In addition, we will be looking to put forward suggestions for how the Bill could be amended to deal with what may be unintended investment consequences.

Finally, I make the following points regarding this Bill:

- Provisions in the Bill are inconsistent with legislation in other jurisdictions, and the RVA supports harmonization where possible.
- The Federal Government is currently considering a recommendation from the Productivity Commission that proposes model or national legislation for retirement villages. There is some likelihood that any ACT Legislation would need to be changed in the near future.
- The Federal Government is likely to make announcements regarding the role of retirement villages in the aged care continuum in the lead up to the Federal Budget in May.

Thank you for considering these matters and your office should feel free to contact me to arrange a meeting at an appropriate time. I can be contacted on [REDACTED]

Yours sincerely

[REDACTED]

17 January 2011

With over 750 members, the Retirement Village Association (RVA) is the national peak body representing Australian retirement village operators, managers, owners, developers, investors, and industry specialists.

Website: www.rva.com.au

White, Stephanie

From: Manuel, Tania
Sent: Tuesday, 10 January 2012 4:17 PM
To: Anderson, Erin
Cc: Quinton, Peter; White, Stephanie
Subject: RE: M-12-7 Barr Brief - Meeting with ACT Retirement Village Residents Association 1 Feb 2012

Hi Erin

Thanks for this. I will get back to CSD with these comments.

Re the Code Cttee meeting, I will ask Brett for some dates, but I am assuming that this will be in either February or early March.

Cheers

Tania

From: Anderson, Erin
Sent: Tuesday, 10 January 2012 4:08 PM
To: Manuel, Tania
Cc: Quinton, Peter; White, Stephanie
Subject: RE: M-12-7 Barr Brief - Meeting with ACT Retirement Village Residents Association 1 Feb 2012

Hi Tania

Thank you for seeking our input on CSD's brief. We support your suggested additions to the CSD brief.

We would like to be involved in the Code Administration Committee's next meeting, this might serve as an appropriate forum to discuss Ms Porter's bill. What sort of dates do you have in mind? The DDG will be writing to stakeholders seeking views on the bill, although I note we are waiting for the AG's agreement to this approach (noting that AG is on leave until next month).

Erin

From: Quinton, Peter
Sent: Tuesday, 10 January 2012 3:29 PM
To: Anderson, Erin
Subject: FW: M-12-7 Barr Brief - Meeting with ACT Retirement Village Residents Association 1 Feb 2012

Peter Quinton

Peter Quinton | Senior Manager Civil Law | Registrar Cooperatives
Phone 02 62070546 | Fax 02 62050937
Legislation and Policy | Justice and Community Safety Directorate | ACT Government
12 Moore Street Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

This email and any attachment is confidential between the ACT and the addressee.
If it has been sent to you in error, please delete it and notify us.

From: Manuel, Tania
Sent: Tuesday, 10 January 2012 2:50 PM
To: Quinton, Peter
Subject: FW: M-12-7 Barr Brief - Meeting with ACT Retirement Village Residents Association 1 Feb 2012

Hi Peter

Attached is a draft brief from CSD on retirement villages, as their Minister is meeting with the Retirement Villages Residents Association. We think the following should also be included:

- Government hasn't indicated the extent to which it will support this bill;
- There have been issues raised about some of the provisions in the bill;
- The AG and the previous CM have previously met with the Retirement Villages Association and they have been opposed to the exposure draft bill as there is no evidence to justify the additional costs in the bill;
- The bill as currently drafted will have financial impacts on Government and also providers. The costs are currently unfunded.
- It is likely that the Retirement Villages Residents Association will meet with other Ministers about this bill;

Are you happy with this, or do you have any other comments?

Also, Brett is currently looking at when the Retirement Villages Code Administration Committee should meet and their agenda. As part of this, he has asked if you would be willing to come and brief the Committee on the Retirement Villages Bill.

Cheers

Tania

From: McKeon, Gerry
Sent: Tuesday, 10 January 2012 1:01 PM
To: Manuel, Tania
Subject: M-12-7 Barr Brief - Meeting with ACT Retirement Village Residents Association 1 Feb 2012

Tania

Re. meeting of Retirement Village Residents Association with Deputy Chief Minister Barr on 1 Feb – and further to my unsuccessful attempt to drop it in your lap ☺ - I attach my DRAFT brief for your comment. Its due to my ED on 20 Jan.

Not sure about the 'Sensitivities' section – any advice on re-wording would be welcome.

Cheers

Gerry

*Gerry McKeon | Senior Policy Officer
ACT Office for Ageing | Community Services Directorate | ACT Government
Ph: (02) 6205 0749 | Fax: (02) 6207 0592 | Email: gerry.mckeon@act.gov.au
Level 4, 11 Moore Street, Civic | GPO Box 158, CANBERRA ACT 2601
Web: www.ageing.act.gov.au Seniors Information Online - www.seniors.act.gov.au*

Quinton, Peter

From: Manuel, Tania
Sent: Tuesday, 10 January 2012 2:50 PM
To: Quinton, Peter
Subject: FW: M-12-7 Barr Brief - Meeting with ACT Retirement Village Residents Association 1 Feb 2012
Attachments: M-12-7 Barr Brief - Meeting with ACT Retirement Village Residents Association 1 Feb 2012.docx

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Subject: M-12-7 Barr Brief - Meeting with ACT Retirement Village Residents Association 1 Feb 2012

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Gerry

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Date XX January 2012

To Deputy Chief Minister

- Director-General
- Deputy Director-General
- Executive Director, Policy and Organisational Services
- Senior Director, Governance, Advocacy and Community Policy

From Manager, Office for Ageing

File no 08/3022

Subject Meeting with ACT Retirement Village Residents Association
1 February 2012

Critical Date

STANDARD. The meeting is scheduled for 1 February 2012.

Sensitivities

Previous perceived ACT Government reluctance to progress new regulatory legislation may have caused the ACT Retirement Village Residents Association to believe that the Government was more concerned about its relationship with the retirement village industry than with village residents.

Risk

An unwillingness to support the proposed legislation could result in negative media coverage of this issue, which can be easily portrayed in a 'black and white' manner as a clash between business interests and poor pensioners.

Purpose

To brief you for your meeting with the ACT Retirement Village Residents Association on 1 February 2012.

Background/Issues

ACT Retirement Villages Residents Association

The ACT Retirement Villages Residents Association was incorporated in January 2011 following a public meeting in November 2010 where 150 people, mostly residents of the 29 retirement villages in the ACT, met at the Canberra Hellenic Club and accepted the draft constitution and elected a Committee.

On 9 December 2011 [REDACTED] the Association's [REDACTED] and a member of the 2009-11 ACT Ministerial Advisory Council on Ageing, wrote to you seeking a meeting. Her letter is at **Attachment A**.

The Association's latest Newsletter (October 2010) is at **Attachment B**.

The ARVRA submission to the Productivity Commission's Inquiry into Caring for Older Australians, on the issue of regulation of retirement villages, is at **Attachment C**.

The Retirement Villages Industry Code

Retirement villages in the ACT are regulated by the *Retirement Villages Industry Code* (the Code), published by the ACT Office of Fair Trading in November 1999. The Code sits under the *Fair Trading Act 1992* and is administered by the Office of Regulatory Services within the Justice and Community Safety Directorate.

All other Australian jurisdictions have specific retirement village legislation.

The ACT Code includes provisions on:

- Rights and responsibilities of residents and management;
- Disclosure in advertising and sales promotion;
- Content of contracts;
- Dispute resolution, including disputes within the village, termination by management and resolution of budget impasse; and
- Establishment of a Code Administration Committee to monitor compliance with the Code, monitor and administer dispute resolution and advise the Commissioner for Fair Trading on the Code.

The ACT Office of Fair Trading also publishes *The Retirement Villages Handbook*. This handbook is a guide to all those consumers and businesses who have an involvement with retirement villages in the ACT. It explains in simple language the rights and responsibilities of relevant parties under the *Retirement Villages Industry Code of Practice*.

The Retirement Villages Bill 2011

On 5 May 2010 Ms Porter MLA tabled an Exposure Draft of an ACT Retirement Village Bill 2010 in the ACT Legislative Assembly, following a Discussion Paper on Retirement Villages that she tabled in 2008. The Bill aimed to address areas inadequately covered under the current Code and to improve the protection currently offered to the residents and operators of Retirement Villages.

In a letter dated 31 May 2011 from Simon Corbell MLA, Attorney General, to Ms Burch, Minister for Ageing, regarding the progress of legislation, Mr Corbell indicated that the proposed legislation would require the resolution of many complicated legal issues.

██████████ also stated his p ██████████ be delayed pending the Productivity Commission inquiry into aged care titled "Caring for Older Australians". The terms of reference for this inquiry included examining whether the regulation of retirement living options should be more closely aligned with

the aged care sector. The Productivity Commission released a draft report in January 2011 that included the following two recommendations:

- 10.4. The regulation of retirement villages and other retirement specific living options should remain the responsibility of state and territory governments, and should not be aligned with the regulation of aged care.
- 10.5. 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; and
 - have regard to the industry's accreditation process.

The final report to the Australian Government, released in August 2011, maintained the above recommendations (now numbered 12.1 & 12.2). The relevant section is at **Attachment D**.

The Retirement Villages Bill 2010 was revised and refined in response to comments from the various stakeholders and was presented to the Assembly on 16 November 2011 (**Attachment E**). It was adjourned for debate at the next sitting. The main objects of this Act are -

- (a) to promote consumer protection and fair trading practices in relation to operating retirement villages and supplying services to residents by:
 - (i) declaring particular rights and obligations of residents and scheme operators; and
 - (ii) facilitating the disclosure of information to prospective residents of retirement villages to ensure the rights and obligations of residents and scheme operators may be easily understood; and
- (b) to encourage the continued growth and viability of the retirement village industry in the ACT.

The following are also objects of this Act -

- (c) to encourage the adoption of best practice standards by the retirement village industry;
- (d) to provide a clear regulatory framework to ensure certainty for the retirement village industry in planning for future expansion;
- (e) to facilitate participation by residents, who want to be involved, in the affairs of retirement villages;
- (f) to provide for processes for resolving disputes between residents and scheme operators.

Media Issues

None.

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Consultation

This brief was prepared in consultation with the Policy and Community Relations Unit of the Office of Regulatory Services in the Justice and Community Safety Directorate.

Financial Implications

Nil.

311

Recommendation

That you:

- Note the information in the brief for your meeting with [REDACTED] of the ACT Retirement Village Residents Association, on 1 February 2012.

Anna John

A/g Manager, Office for Ageing

Gerry McKeon

x50749

NOTED / PLEASE DISCUSS

1/1/2012
Andrew Barr MLA
Deputy Chief Minister

3/0

[REDACTED]

[REDACTED]

Quinton, Peter

From: Field, Julie
Sent: Friday, 16 December 2011 2:37 PM
To: Playford, Alison
Cc: Ferguson, David; Quinton, Peter; Anderson, Erin
Subject: Retirement villages update

Our proposed approach to Ms Porter's Retirement Villages Bill is to not deal with it within the assigned 3 months.

Our understanding is that the industry has not really engaged with the detail of the bill. The responses to the exposure draft from industry and developers were not generally supportive.

We propose briefing the acting AG and getting him or her to write to Ms Porter and asking for permission to engage with stakeholders ourselves. We had heard that Ms Porter did not expect to debate until mid-year.

We propose consulting industry and the community more generally as in initial discussions it appears that there is very little knowledge of the bill and contents. The bill will have a significant impact on industry and people buying into retirement villages. A negative reaction from developers and managers, perhaps in the form of a pause in the development of villages, may lead to criticism of government.

We would expect to seek Cabinet approval after consultation and development of amendments.

We don't expect to see comments back from industry until February at the earliest. We can't send anything out at before Christmas as industry is in churn approaching Christmas. There will then be shutdown until mid-January. We'll aim to get something to Minister next week before Peter goes on leave, although this is not die in a ditch.

Does this give you enough information to go on with?

Thanks

Julie

Julie Field Executive Director

LL: (02) 6207 0522 Fax.: (02) 6205 0937

mailto: julie.field@act.gov.au

Legislation and Policy | Justice and Community Safety Directorate | **ACT Government**

Level 4, 12 Moore Street Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | www.act.gov.au



White, Stephanie

From: Manuel, Tania
Sent: Monday, 28 November 2011 12:10 PM
To: Quinton, Peter; White, Stephanie
Subject: QTB on retirement villages
Attachments: MIN 2011 001634-006 QTB Retirement Villages.DOC
Importance: High

Hi Peter and Stephanie

We have been asked to update our QTBs. One of the ORS QTBs has been on the number of complaints about retirement villages and the administration of the Retirement Villages Code.

We have updated this QTB to refer to the Bill that has been introduced. Do you already have a QTB on the Bill?

If not we will retain ours, but as the Bill is an LPB responsibility, are you happy with what we have included or would you like to make changes to this?

Cheers

Tania

From: Warren, Prue
Sent: Tuesday, 22 November 2011 12:20 PM
To: Hammond, Greg; Purvis, Alison; Croweller, Mark; McCabe, Mark; McMaster, Baden; Beattie, Liz; Field, Julie; Crowhurst, Moira; Mitcherson, Bernadette; Greenland, Karen; Casimir, Amanda; Krajina, Danielle
Cc: Jansen, Luke; Hanson, Tony; Scanes, Lynda; ESA Ministerial Services; Brodie, Bill; Whittaker, Leone; Neale, Michael; Soria, Jessie; Manuel, Tania; Wahren, Lee-Anne
Subject: RE: Requesting QTBs for December sitting - please action this email
Importance: High

Good Afternoon

As QTBs were prepared 2 weeks ago I'm asking for you to review the index and update QTBs which require amendments. If amendments are made then simply send me an email advising me of the QTB title and I'll replace it. Please amend the TRIM record,

Please see below for your business units TRIM Hearing Folder –

<u>Hearing Folder Number</u>	<u>Business Unit</u>
*2011*169	Legislation and Policy Branch
*2011*1630	Emergency Services Agency
*2011*1634	Office of Regulatory Services
*2011*1638	Security and Emergency Management Branch
*2011*1642	ACT Corrective Services
*2011*1640	ACT Law Courts & Tribunals
*2011*1641	Corporate

An updated index is attached – Please review this index.

Briefings are due to MSU by COB Monday, 28 November 2011.

Please phone me if you require assistance, happy to answer any questions you might have regarding the above.

Thanks Prue

Prue Warren
a/g Assembly Liaison Officer
Ministerial Services Unit (MSU)
Ministerial and Business Information
Governance Branch
Justice and Community Safety Directorate
Tel: 6205 1199

JUSTICE AND COMMUNITY SAFETY

QUESTION TIME BRIEF

Minister: Attorney General

Correct and accurate as at: 24 November 2011

ISSUE: Retirement Villages

Context

The regulation of retirement villages and the number of complaints received.

Talking Points

- Retirement villages are currently regulated by the Retirement Villages Industry Code of Practice (the Code) made under the *Fair Trading (Australian Consumer Law) Act 1992* (the Act). As members would be aware, Ms Porter MLA introduced the tabled an exposure draft of the Retirement Villages Bill 2010¹ (the Bill) in on 16 November May 2010¹.
 - On 8 August 2011 the Productivity Commission released its report *Caring for Older Australians*. This report recommends that State and Territory governments should pursue nationally consistent retirement village legislation under the aegis of the Council of Australian Governments.
 - The Office of Regulatory Services (ORS) receives a low number of complaints about ACT retirement villages. Since January 2008 there have only been five (5) formal complaints to ORS about retirement villages. The complaints are complex and time consuming to resolve.
-

Background

On 5 May 2010 Ms Porter MLA tabled (the Bill) as an exposure draft in the Legislative Assembly. The Bill was available for public comment until 22 September 2010. Ms Porter MLA is expected to table introduced the Retirement Villages Bill 2011 a Bill in the Assembly for this during the on 16 November 2011 sittings.

If introduced and passed, the Bill would replace the existing Code under the *Fair Trading (Australian Consumer Law) Act 1992*. This Code commenced in 1999 and is administered by the ORS. The Code was developed to promote fair dealings in retirement villages and in response to industry and consumer concerns about the way that some villages operated in the past.

The purpose of the Bill is to address identified areas of concern under the current Code and has been designed to improve the protection currently offered to the residents and operators of retirement villages.

Past complaints about retirement villages have related to contracts, budget and fee setting, poor behaviour by residents and bullying of residents by staff.

The ORS was working on a complaint from a resident this year where a village was scheduled for redevelopment and as a consequence residents were to be relocated. The ORS worked with the retirement village and the resident to find suitable alternative accommodation for the resident and to resolve the costs associated with such a move. The resident has accepted the alternative accommodation. It is understood that the resident will not suffer any financial loss with the move to the new accommodation.

Under the Code there is a Code Administration Committee consisting of residents and village management. This Committee met on 24 September 2010 and on 13 May 2011 and discussed a

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range of issues pertinent to the regulation of retirement villages..

The Retirement Villages Residents Association have recently agreed to become part of the Code Administration Committee, after initially believing that there was a conflict of interest in being part of this Committee.

In August the Productivity Commission released its final report which recommended that State and territory governments should pursue nationally consistent retirement village legislation under the aegis of the Council of Australian Governments.

Cleared as accurate and complete as at 25-4 November 2011

Approved by: ~~Mark Brett Phillips~~ McCabe

Ext: 55074

Action officer: Tania Manuel

Ext: 53738

302



UNCLASSIFIED

Submission No B	201101005
Schedule No	2011 AGS00791
Date Rec'd Minister's Office	14/11/11

To: Attorney General

From: A/g Executive Director, Legislation Policy Branch

Subject: Retirement Villages Bill 2010

Critical Date: 15.11.2011

It is anticipated that this Bill may be introduced into the Legislative Assembly in the November sitting week.

- DDG of 11.11.11

Recommendation

1. That you note the contents of this Brief.

Background

2. Ms Porter tabled the Retirement Villages Bill 2010 as an exposure draft in the Legislative Assembly on 5 May 2010.
3. The Bill was available for public comment until 22 September 2010.
4. At the request of your office, LPB has discussed the Bill with PCO. PCO have briefed Ms Porter about options to improve the Bill prior to the anticipated introduction in the November sittings. It is understood that Ms Porter has accepted some of the issues raised with LPB, but is considering others.

Issues

5. The Retirement Villages Bill 2011, if introduced and passed, would replace the *Retirement Villages Industry Code of Practice* under the *Fair Trading (Australian Consumer Law) Act 1992*.
6. The Code of Practice commenced in 1999. It is administered by the Office of Regulatory Services ('ORS') and was developed to promote fair dealings in retirement villages.
7. The ORS receives a low number of complaints about ACT retirement villages.
8. The ORS anticipates that the number of complaints would increase if legislation were introduced.
9. The ACT Retirement Villages Residents' Association (the ACTRVRA), which represents residents, has indicated that it strongly supports legislation being introduced.
10. [REDACTED] of the ACTRVRA, has stated that the legislation would be an 'insurance policy' for when problems arise.
11. The Retirement Villages Association (the RVA), which represents retirement village operators, is opposed to the introduction of legislation.
12. The RVA has stated that legislation is unnecessary, that it could cause confusion among residents and owners and jeopardise the building of new retirement villages.
13. The RVA has also commented that it is inappropriate to consider legislation at a time when national legislative reform is being considered by the Productivity Commission.
14. On 30 April 2010 the Ministerial Council of Consumer Affairs (MCCA) briefly discussed a national approach to regulating retirement villages.
15. MCCA agreed that potential reform would be considered after the Productivity Commission had made its recommendations to the Commonwealth Government in its final report titled "Caring for Older Australians".

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UNCLASSIFIED

- ~~16. The final report was released by the Productivity Commission on 8 August 2011.~~
17. The final report recommends that state and territory governments pursue nationally consistent retirement village legislation under the aegis of the Council of Australian Governments.
 18. One of the reasons for the Productivity Commission's position is that the RVA supports nationally consistent regulation, especially in light of many retirement village operators establishing retirement villages in more than one jurisdiction.
 19. The Retirement Villages Residents' Association ('the RVRA') supports nationally consistent legislation and opposes self-regulation of the industry by the RVA.
 20. It is not known at this stage whether jurisdictions will adopt a national approach.
 21. The exposure draft Bill provided to Ms Porter raises complex legal problems.
 22. LPB has made a series of suggestions about the draft provisions of the Bill to reduce the possibility of the retrospective operation of the law, to ensure that the law does not displace or duplicate the operation of other relevant law (such as the *Agents Act* or the *Unit Titles Act*) and to make other technical changes. It is understood that these changes are being made.
 23. Some of the provisions in the Bill may amount to an acquisition of property otherwise than on just terms (infringing section 23(1)(a) of the *Australian Capital Territory Self-Government Act 1988*). In particular, the draft law provides that on registration of a retirement village, a charge is established on the property for the benefit of residents. The charge takes priority over existing charges (such as a first mortgage). The displacement of the priority of an existing mortgage and other charges amounts to an acquisition of property and is beyond power of the Assembly. Accordingly, following comment from LPB, the application of this provision is being restricted to prospective charges to remove this risk. However, the retention of the provision will mean that a financier of a retirement village is unable to acquire a first mortgage. Because it is not known whether this would have the effect of making ACT village developments unviable, it has been suggested that the commencement of the provision be deferred until after a twelve month review of the legislation. It is not known whether Ms Porter will agree to this position.
 24. The legislation imposes new regulatory functions on the ORS. These new functions would include the licensing of retirement village schemes, commencing action to stop unlicensed operators and administering statutory charges. Additionally, the law provides new remedies through ACAT. No provision is made for any budget support for these functions.
 25. LPB would be willing to discuss these issues with Ms Porter further.

Financial Implications

26. This Bill is likely to impose costs on the retirement village market and ORS and the ACAT.

Internal Consultation

27. There has been officer-level consultation between the [REDACTED] Legislation and Policy Branch, the ORS and PCO.

External Consultation

28. The Bill has been released externally for public consultation. LPB has recently been provided with a copy of the submissions received and Ms Porter has consented to the Directorate discussing the Bill with PCO. That initial briefing with PCO has occurred. Further discussion is occurring between Ms Porter and PCO (with LPB involvement, if necessary).

Benefits/Sensitivities

29. The RVRA and the ACTRVRA support the Bill. The RVA does not support the Bill as it will increase regulatory burdens on retirement village operators.

- 30. The ACT is the only jurisdiction that does not regulate retirement villages in primary legislation.
- 31. The draft Bill has provisions which exceed the legislative power of the ACT.

Media Implications

- 32. It is likely that the introduction of the Bill and the issue of housing for older people will attract media interest.
- 33. The Canberra Times and the Northside Chronicle reported on this issue when the exposure draft of the Bill was tabled in May 2010. There was further media attention given to the issue in August 2010 and again in November 2010 when the ACTRVRA was constituted. There was a more recent Canberra Times article on this issue on 5 September 2011. The media articles are attached (Attachment A).
- 34. The media has generally appeared to be supportive of the Bill, with only one of the articles reporting on the position of the RVA.

Julie Field

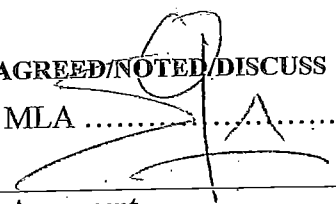
70522

November 2011

Action Officer Stephanie White Phone 77207

AGREED/NOT AGREED/NOTED/DISCUSS

Simon Corbell MLA 15/11/11



Performance Assessment

- Satisfactory
- Unsatisfactory

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White, Stephanie

From: Quinton, Peter
Sent: Friday, 11 November 2011 4:23 PM
To: White, Stephanie
Subject: Brief to Minister
Attachments: Brief to Minister.doc

298





UNCLASSIFIED

Submission No B
Schedule No
Date Rec'd Minister's Office .../.../...

To: Attorney General

From: A/g Executive Director, Legislation Policy Branch

Subject: Retirement Villages Bill 2010

Critical Date: 15.11.2011

It is anticipated that this Bill may be introduced into the Legislative Assembly in the November sitting week.

- DDG .../.../...

Recommendation

1. That you:
 - i) note the contents of this Brief; and
 - ii) sign the attached letter addressed to Ms Mary Porter, MLA.

Background

2. Ms Porter tabled the Retirement Villages Bill 2010 as an exposure draft in the Legislative Assembly on 5 May 2010.
3. The Bill was available for public comment until 22 September 2010.
4. At the request of your office, LPB has discussed the Bill with PCO. PCO have briefed Ms Porter about options to improve the Bill prior to the anticipated introduction in the November sittings. It is understood that Ms Porter has accepted some of the issues raised with LPB, but is considering others.

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UNCLASSIFIED

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Page 1 of 3

15. MCCA agreed that potential reform would be considered after the Productivity Commission had made its recommendations to the Commonwealth Government in its final report titled "Caring for Older Australians".
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17. The final report recommends that state and territory governments pursue nationally consistent retirement village legislation under the aegis of the Council of Australian Governments.
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- 33. The media has generally appeared to be supportive of the Bill, with only one of the articles reporting on the position of the RVA.

Julie Field

70522

October 2011

Action Officer Stephanie White Phone 77207

AGREED/NOT AGREED/NOTED/DISCUSS

Simon Corbell MLA/...../.....

Performance Assessment

- Satisfactory
- Unsatisfactory



White, Stephanie

From: Quinton, Peter
Sent: Tuesday, 8 November 2011 10:22 AM
To: White, Stephanie
Subject: Emailing: Gadens Lawyers 110120
Attachments: Gadens Lawyers 110120.pdf

Your message is ready to be sent with the following file or link attachments:

Gadens Lawyers 110120

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

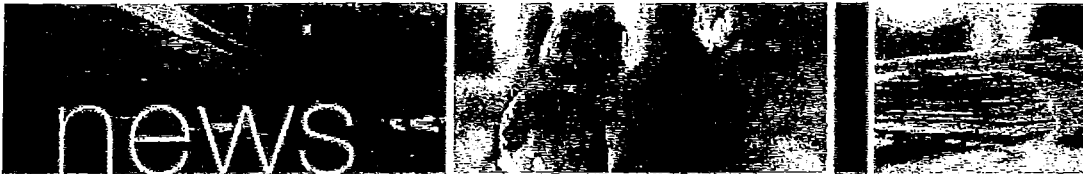
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Australia. This email and any files transmitted with it are intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify National Seniors Australia at general@nationalseniors.com.au or by phone on 1300 76 50 [redacted] ete t [redacted] Thank you.

From: Gadens Lawyers E-Update [mailto:GLawyersE-Update@nsw.gadens.com.au]
Sent: Wednesday, 8 September 2010 3:57 PM
Subject: gadens lawyers aged care and retirement villages update - september 2010



gadens lawyers

september 2010

aged care & retirement villages update in this issue

Exposure Draft of the ACT Retirement Villages Bill 2010

By [redacted] and [redacted] of Gadens Lawyers, Sydney

On 5 May 2010, Labor MP Mary Porter tabled an exposure draft of the proposed Retirement Villages Bill 2010 for the Australian Capital Territory.

The Bill is open for consultation until 22 September 2010, after which time a revised version of the Bill is intended to be tabled - sometime after the February 2011 parliamentary sittings. [read more...](#)

contact us

For more information, please contact:

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Exposure Draft of the ACT Retirement Villages Bill 2010

By [redacted] and [redacted] of Gadens Lawyers, Sydney

On 5 May 2010, Labor MP Mary Porter tabled an exposure draft of the proposed Retirement Villages Bill 2010 for the Australian Capital Territory.

The Bill is open for consultation until 22 September 2010, after which time a revised version of the Bill is intended to be tabled - sometime after the February 2011 parliamentary sittings.

The Bill heavily borrows from the language and concepts of other jurisdictions especially Queensland. However, Queensland's retirement village industry is significantly more mature and larger than the ACT's. There are more than 250 registered retirement village schemes in Queensland as compared to the ACT's 28 retirement villages, and it must be asked whether such a comprehensive regime, which suits an industry the size of Queensland's, is suitable for the much smaller ACT.

The Bill seeks to introduce a 'one size fits all' approach, which in the circumstances could be said to give rise to an unnecessary, excessive, even stifling, 'over regulation' of the industry in the ACT.

Some key proposals in the Bill which can be criticised as being 'over regulation' are:

- forcing operators to 'buy back' residents' premises within 30 days of the resident leaving
- the requirement for a Public Information Document as prescribed
- the extension of the 'cooling off' period to 21 days
- requiring the operator to share liability for recurrent charges for general services with a former resident 90 days after they vacate
- limiting increases in recurrent charges for general services to changes in the Consumer Price Index unless residents have passed a special resolution for a larger increase
- the introduction of [redacted] retirement village [redacted] ACT [redacted]
- the introduction of [redacted] residents' committee meetings [redacted]
- introducing a prescribed method for resolving retirement village disputes.

Any submissions from operators and other stakeholders on the proposed Bill are due by 22 September 2010. Any operators who would like a copy the proposed Bill and Consultation Outline or who need assistance with preparing submissions to MP Mary Porter on the Bill, please contact us using the details above.

Forcing operators to 'buy back' premises within 30 days

Section 46 of the proposed Bill requires operators to 'buy back' residents' premises by refunding their ingoing contribution within 30 days. It applies where a resident terminates their residence contract by giving the operator one month's notice.

Forced 'buy backs' are not uncommon and exist in other jurisdictions. For example, in New South Wales, an operator must refund ingoing contributions paid by residents who are 'non registered interest holders' within six months. However, the 30 day 'buy back' requirements in section 46 of the proposed Bill are more onerous for operators and are unmatched in any other state or territory.

Such a requirement is likely to cause increased pressure on operators' cashflows. Financiers to the ACT retirement village industry are also likely to have difficulty working with such strict 'buy back' obligations.

The Public Information Document

The Bill says that operators must provide prospective residents with a Public Information Document (PID) which is borrowed directly from Queensland's PID. The content of the

PID is prescribed in the Bill and the Bill adopts similar terms to those used in section 74 of the *Retirement Villages Act 1999* (QLD).

When complete with all of the information an operator is required to incorporate in it, the PID will be close to 30 pages long and contain a large amount of generic and general information. Prospective residents are likely to be given this information numerous times if they make enquiries at more than one village. Anecdotal evidence in Queensland is that prospective residents are put off reading the whole PID when deciding whether to move into a particular retirement village.

A PID is said to be necessary in the ACT to address concerns that existing information about retirement villages provided by operators is 'excessive and difficult to understand'. One should question the usefulness of a document as large as the PID if the policy intention is to make information about retirement villages more accessible and understandable for prospective residents.

Extending the 'cooling off' period to 21 days

Under the *Retirement Villages Industry Code of Practice* (1999) prospective residents currently have a five business day 'cooling off' period.

Under the Bill, a 21 day 'cooling off' period is proposed from the date the residence contract is signed or, if the contract is contingent upon a later event, the date the later event occurs. More importantly, the operator is not entitled to receive the ingoing contribution until the end of the 21 day period. During this time, the resident may terminate their residence contract, without penalty and the operator must immediately refund to the resident any money they paid under their residence contract including their ingoing contribution. The 'cooling off' period is not ended by the resident moving into premises in the retirement village.

The 'cooling off' provisions in the Bill attempt to imitate the 'settling in period' which exists in other jurisdictions; however the Bill contains none of the protections for operators which other states have provided. The operator is not given any entitlement to rent while a resident occupies premises in their village and is not able to recover its costs or any other fees in relation to the resident's occupation of premises in the village. The requirements that the operators hold residents ingoing contributions in trust and immediately refund them if a resident terminates during the 'cooling off' period is likely to impact operator's cashflows.

Former resident and operator to share liability for recurrent charges

Operators will become liable for a proportion of recurrent charges for general services after 90 days from the date the resident vacates their premises if the premises are not re-leased or sold. The operator's liability will be in the same proportions in which it shares in capital gain with a resident. After nine months, the operator becomes solely responsible for paying recurrent charges in respect of a vacant unit irrespective of any capital gain share. This is a significant departure from other jurisdictions.

Under the Code, this issue has largely been left to be determined by the resident and the operator under the terms of their residence contract and the provisions of the Bill would override the terms of contracts operators have with existing residents.

The provisions in the Bill appear unnecessary given that operators and residents have been successfully working under the Code for sometime.

Increases in recurrent charges for general services limited to CPI

The Bill proposes to require operators to limit percentage increases in recurrent charges for general services to the change in the Consumer Price Index for Canberra. While residents will be able to approve an increase exceeding CPI, such approval requires a special resolution at a meeting of residents. This is unlike other jurisdictions where budgets are, in the main, passed by a majority vote.

While limiting increases in recurrent charges to CPI is clearly the approach preferred by residents, it fails to have regard to the actual cost increases faced by many operators from year to year, which in most cases exceed CPI.

The only expenditure to which the fixed increase regime will not apply are rates, taxes and levies charged by the Commonwealth or the ACT Government, increases in awards for salaries or wages of village staff, insurance and contributions to the long term maintenance fund or maintenance reserve fund. This mirrors other jurisdictions such as Queensland and New South Wales.

Statutory Charge over retirement village land

The Bill proposes that a statutory charge apply to land used for registered retirement village schemes. As all operators must register their villages as retirement village schemes prior to entering into a residence contract, the statutory charge is intended to apply to all villages in the ACT. This is similar to the statutory charge which applies to Queensland.

While the charge exists over all registered retirement village schemes, the security it provides appears to be limited to those residents who do not own or have a leasehold interest in their premises. The definition provided in the Bill as to which residents 'own' their premises lacks clarity and should be improved.

Religious and charitable organisations may apply to be exempt from the statutory charge, however this must be done prior to registration of a retirement village scheme.

Detailed rules for the conduct of residents' committee meetings

Under the Code, residents are largely free to determine their own procedures for the conduct of resident meetings. The Code requires only that an operator not restrict a resident from participating in a residents' committee.

This simple, streamlined approach to resident meetings is to be replaced under the Bill with an entirely new regime. The new rules detail how decisions at meetings of residents' committees may be made, how votes are cast, how proxies are appointed by residents and the quorums required to transact business at residents' committee meetings.

Resolution of retirement village disputes

A detailed regime for resolving retirement village disputes is set out in the Bill. Importantly, it requires operators and residents to attempt to negotiate a resolution to the dispute prior to applying to the ACT Civil and Administrative Tribunal.

If the dispute cannot be resolved informally, the parties may apply to ACAT which will have powers to make a wide range of orders in relation to the dispute.

A process for resolving disputes informally through a Disputes Committee already exists under the Code. It is questionable whether the proposed provisions in the Bill will achieve a quicker resolution of disputes than the regime that exists under the Code.

One size does not fit all for the ACT

It is suggested that more work needs to be done before a revised version of the Bill is introduced to parliament in February 2011. Recently, discussions with parliamentary members have indicated that the introduction of a new bill may be deferred until late 2011, however operators should not rest on their laurels.

Operators and government must find a workable balance between the two key stated objects of the legislation, namely to provide protection for consumers in the retirement village industry and to encourage continued growth of the industry in the ACT.

Legislation in the form of the proposed Bill will operate contrary to the latter stated object and, as indicated in this article, arguably does so in an unnecessary and severely excessive way. It may have the unintended consequence of discouraging further development in the ACT.

This report does not comprise legal advice and neither Gadens Lawyers nor the authors accept any responsibility for it.

Internal Virus Database is out of date.

Checked by AVG - www.avg.com

Version: 9.0.851 / Virus Database: 271.1.1/3111 - Release Date: 09/03/10 16:34:00

White, Stephanie

From: Quinton, Peter
Sent: Tuesday, 8 November 2011 10:21 AM
To: White, Stephanie
Subject: Emailing: REIACT submission
Attachments: REIACT submission.pdf

Your message is ready to be sent with the following file or link attachments:

REIACT submission

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.



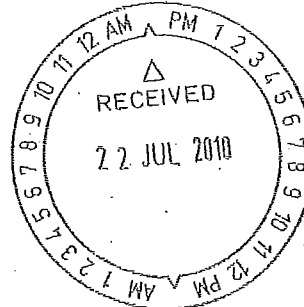


REI ACT

REAL ESTATE INSTITUTE
OF THE AUSTRALIAN CAPITAL TERRITORY

19 July 2010

Mary Porter AM MLA
Member for Ginninderra
C/- ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601



Dear Ms Porter

Following our recent meeting and your request for a comment from me on new legislation being proposed by you, I provide the following. As I understand our meeting, the intended legislation deals with a range of issues in relation to the operation of Retirement Villages. Your request of me was for REI ACT to provide some comment on a specific section of the legislation as covered in Division 6.3 of the proposed Act, being the **Reselling of accommodation units**. I trust you find the following is pertinent.

Background

As noted at our meeting I have been involved in agency practice and the property sector in the Canberra area since 1970. While Retirement Villages have not been an area in which I have been greatly involved, I did do an extensive report on this market segment for a client group some 20 years ago. At that time I visited most of the then Retirement Villages in the ACT, as were operating then. I undertook inspections of the facilities and spoke with the management about their operations and I also visited Villages interstate. Hopefully this affords me some understanding of the basic issues at least, however, I will restrict my comments to the nominated topic.

Given the request is to comment on issue of law I must caution that I am not a lawyer. However, I have been an agent for a long time and I believe that I am reasonably familiar with the legislation governing agency practice in the Territory and over the years I have had involvement with a range of regulatory personnel in regards to the interpretation of the Agents Act, in its various forms.

The Issue

On the issue of the reselling of accommodation units, you stated that you wanted some comment on the practice of the retirement village handling the sale of what are known as "Self Care" on behalf of a resident or past resident. That is the practice where the management of the village management exclusively deal with the buyers and sellers.

I did mention at our meeting that I was aware of the involvement of the management in the sale of property with retirement villages, but it has not come up as an issue in my time on the Council of REI ACT, that is until now. In any event I did say to you that I felt there are questions as to the appropriateness of this practice and I say this for the following reasons:

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- It seems that the village management as opposed to the market imposes its influence over the pricing of the property. However, I am aware that this level of control is at times accepted by the buyers at the time of the initial purchase;
- While the appropriateness of the price control of the village may be a contractual matter, the other issue is the legality of the village management acting outside of the law, in this case the Agents Act, is another topic altogether.

You said that your intention was to see the sale of accommodation units opened up to market forces and that the sale of the accommodation units should be handled by licensed and/or registered real estate agents. You saw that latter in particular offering a greater opportunity for the resident to exercise a greater level of control over the process, especially given the nature of agency practice and the additional responsibilities and transaction requirements that exist under the Agents Act.

Advice & Comment

I have included as an attachment to this correspondence various extracts of the Agents Act 2003 (the Act), which I see as pertinent to the issue. I confirm my advice that I see the sale of accommodation units by the village management could be a breach of the Act, that is unless the people handling the sale are licensed and/or registered agents. I provide the following in support of this view.

- Under Part 1 section 6, there is a list of exceptions to the Act. I am not aware that retirement villages meet the criteria. As such, they may be liable for prosecution as detailed in Part 1 section 5 of the Act, which refers to the **application of the Criminal Code**.
- It is Part 2 section 8 that I see as critical. I cannot see that the actions of village management as being anything other dealing in land as referred to in section 8(2)(a) and section 8(2)(b)(i)&(ii). And for the purpose of clarity I refer you to the definition of land in the Act, which is: -land includes an interest in land. I would suggest that the meaning of this, as I understand the law, is that the sale of property sitting on a piece of land is covered by the Act.

If the view I have expressed is correct of course then the next issue for the village management is that they are in breach of Part 3 Division 3.1 section 18, and in that section I refer to subsection (2), which states: - **An offence against this section is a strict liability offence**. That is, if you are not an agent when you are doing things that require you to be, then there is little that a person can do as the fact of a breach brings the Act into play.

- As detailed in Division 3.2 section 24, it would be possible for retirement villages to become licensed as agents. However if they were to be licensed then they would fall under the provisions of Division 3.4 of the Act, Occupational discipline. While they already may well be required to meet the obligations of the Fair Trading legislation, as agents there are more requirements for specific compliance under the Act which governs agency practice. In particular Division 5.4, **Conflict of interest** would be an area of interest. It seems to be that this may well be one of the provisions of the Act that you are seeking to have employed through the proposed legislation.

D. I have included sections from Division 5.5. In particular section 78 & 79 which have the benefit of ensuring "truth in advertising", while section 88 deals specifically with false representations to sellers or buyers.

E. There are also additional provisions in the Regulations to the Act which provide yet additional protection for consumers. I note two areas:

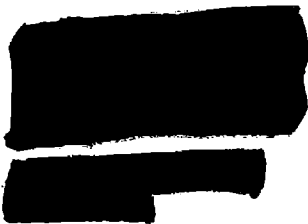
- Nature of agreements that an agent must enter into with a principal.
- **Rules of Conduct**, which places yet further conditions on an agent over and above a normal commercial transaction.

Conclusion

I trust this provides you with the understanding that you require. REIACT would be supportive of any move to ensure that all persons dealing in the sale of property, that are not the owners of that property, are covered by the Act. While I have been advised that such a position is self serving given my position as head of REIACT, my response has always been to agree. I acknowledge that while I am seeking to protect my members interests, in so doing I am also seeking the enforcement of the protection provisions of the Act being available to all. No one has ever successfully argued that there should be different rules for the same activity, irrespective of the people.

I look forward to advice on the progress of the proposed legislation.

Kindest Regards

A large black rectangular redaction covers the signature area, obscuring the name and any handwritten notes or dates.

Extracts from Agents Act 2003 for advice to Mary Porter

Part 1

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct, intention, recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Application of Act

This Act does not apply to the following:

- (a) an executor under a will or an administrator under letters of administration;
- (b) a trustee of a deceased estate;
- (c) the public trustee;
- (d) a trustee company under the *Trustee Companies Act 1947* exercising functions under that Act;
- (e) an administrator, a receiver or a liquidator under the Corporations Act;
- (f) a manager under the *Guardianship and Management of Property Act 1991*;
- (g) a bailiff;
- (h) a sheriff;
- (i) another court officer;
- (j) a lawyer exercising the functions of a lawyer;
- (k) a Minister;
- (l) an entity prescribed by regulation.

Part 2

Key concepts

8 Carrying on business as real estate agent

- (1) A person *carries on business as a real estate agent* if the person provides, or offers to provide, a real estate agent service for a principal for reward.
- (2) Each of the following is a *real estate agent service*:
 - (a) buying, selling, exchanging, leasing, assigning or otherwise disposing of land;
 - (b) negotiating with, or inducing or attempting to induce, a person to—
 - (i) buy, sell, exchange, lease, assign or otherwise dispose of land; or
 - (ii) enter into, or make or accept an offer to enter into, a contract to buy, sell, exchange, lease, assign or otherwise dispose of land;
 - (c) collecting payments under a lease;
 - (d) collecting payments under a mortgage of land or payments under a terms contract for land;
 - (e) acting as manager of an owners corporation for a units plan;
 - (f) any other service prescribed by regulation for this section.

To remove any doubt, a person does not carry on business as a real estate agent only because the person carries on business as a stock and station agent.

Part 3

Licensing of agents

Division 3.1

Agents to be licensed

18 Real estate agents must be licensed

- (1) A person commits an offence if—
 - (a) the person is not a licensed real estate agent; and
 - (b) the person—
 - (i) carries on business as a real estate agent; or
 - (ii) pretends to be a licensed real estate agent.

Maximum penalty: 100 penalty units, imprisonment for 12 months or both.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to the provision of a service by a person if the person is otherwise licensed to provide the service.

Division 3.2 Eligibility, qualifications and disqualification for licences

24 Eligibility for licences

- (1) An individual is eligible to be licensed if the commissioner for fair trading is satisfied that the individual—
 - (a) is an adult; and
 - (b) has the qualifications required under section 25 for the licence; and
 - (c) is not disqualified under section 27 (People disqualified from being licensed) or section 51 (People disqualified from being registered); and
 - (d) for a travel agents licence—the individual is eligible under section 26 (Additional eligibility grounds for travel agents).
- (2) A person in a partnership is eligible to be licensed if the commissioner for fair trading is satisfied that—
 - (a) the person is eligible to be licensed under subsection (1); and
 - (b) no person in the partnership is disqualified under section 27 or section 51.
- (3) A corporation is eligible to be licensed if—
 - (a) the commissioner for fair trading is satisfied that no director of the corporation is disqualified from being licensed under section 27; and
 - (b) at least 1 director of the corporation holds a licence of the same kind.
- (4) However, a corporation is eligible to be licensed as a travel agent if—
 - (a) the commissioner for fair trading is satisfied that no director of the corporation is disqualified from being licensed under section 27; and
 - (b) at least 1 director of the corporation satisfies the eligibility requirements of section 24 (1) (a) to (c); and
 - (c) the corporation satisfies the additional eligibility requirements in section 26 (1) (Additional eligibility grounds for travel agents).
- (5) To remove any doubt, a regulation may provide that a person may be issued with an agents licence with stated conditions if the person does not have stated qualifications.

Division 3.4 Occupational discipline—agents

Note Under the *Fair Trading (Consumer Affairs) Act 1973*, s 7, the commissioner for fair trading may receive and investigate complaints in relation to the supply of goods and services or the acquisition of interests in land.

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Division 5.4 Conflicts of interest

77 Agents must not act for buyer and seller of land

- (1) An agent commits an offence if the agent acts as agent for the buyer and seller of the same land at the same time.

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is a strict liability offence.

Division 5.5 Advertisements and other statements

78 When is a statement *published*?

A statement is *published* if it is—

- (a) included in a newspaper, periodical publication or other publication; or
- (b) publicly exhibited in, on, over or under a building, vehicle or place (whether or not a public place and whether on land or water), or in the air in view of people on a street or in a public place; or
- (c) contained in a document given to someone or left on premises where someone lives or works; or
- (d) broadcast by radio or television; or
- (e) electronically disseminated by other means (for example, by inclusion on a website).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

79 False or misleading advertisements

- (1) An agent commits an offence if—

- (a) the agent publishes an advertisement; and
- (b) the advertisement contains a statement about the agent's business; and
- (c) the agent publishes the advertisement knowing that, or being reckless about whether, the statement—
 - (i) is false or misleading; or
 - (ii) omits anything without which the statement is misleading.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) (c) (i) does not apply if the statement is not false or misleading in a material particular.

- (3) Subsection (1) (c) (ii) does not apply if the omission does not make the statement misleading in a material particular.

88 False representations to sellers or buyers

- (1) An agent commits an offence if the agent—
- (a) acts for a seller of land; and
 - (b) makes a dishonest representation about the agent's estimate of the selling price of the land—
 - (i) to the seller; or
 - (ii) to a buyer; or
 - (iii) in an advertisement or other publication.

Maximum penalty: 100 penalty units.

- (2) A registered salesperson commits an offence if the salesperson—
- (a) is employed by a licensed agent who is acting for a seller of land; and
 - (b) makes a dishonest representation about the salesperson's estimate of the selling price of the land—
 - (i) to the seller; or
 - (ii) to a buyer; or
 - (iii) in an advertisement or other publication.

Maximum penalty: 100 penalty units.

- (3) For this section, a representation is *dishonest* if—
- (a) the representation is dishonest according to the standards of ordinary people; and
 - (b) the maker of the representation knows that the representation is dishonest according to those standards.

White, Stephanie

From: Quinton, Peter
Sent: Tuesday, 8 November 2011 10:19 AM
To: White, Stephanie
Subject: Emailing: [REDACTED] Retirement Villages Bill - Submission - [REDACTED]
Attachments: [REDACTED] Retirement Villages Bill - Submission - [REDACTED]

Your message is ready to be sent with the following file or link attachments:

[REDACTED] Retirement Villages Bill - Submission - [REDACTED]

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Retirement Villages Bill 2010
Exposure Draft**

Personal Submission

1. Retirement Homes need to be required to give residents ongoing tenure despite their need from time to time to undertake modernisation / redevelopment.

About 8 years ago a good friend of mine bought an independent-living retirement unit at a retirement home which includes a hostel and nursing facility in Canberra. This facility was built using funds raised and donated by the community (and supplemented by payments from the government and residents) to provide accommodation for older people of lesser financial means. Soon after, the Board of Management was taken over by people who set about to upgrade and increase occupancy by providing flash facilities for retiring baby-boomers. The existing residents were told that, as the new units were progressively built and their older ones had to be demolished, they could either pay the extra hundreds of thousands of dollars for the new units or sell their units to the management and leave. My friend was so shattered by the loss of her security (there was no way she could buy a new unit) that she became extremely depressed. She got a lawyer to write to management, but the facility's CEO responded by meeting my friend alone and making an arrangement to buy her out. I believe she was grossly underpaid for her unit, as there was no longer a real market. Due to her depression she was unwilling to fight, bought a demountable unit interstate and then, on the edge of crisis, went into hospital care back in the ACT.

The social worker at the hospital found her a unit she could just afford in a church-run retirement village with right-of-entry to an attached nursing home in the ACT. She asked the right questions when buying and was told that although they were to fully redevelop the facility, all existing residents would be accommodated during redevelopment and rehoused in the new units at no additional cost. This assurance was repeated to all residents at a meeting to view the plans for redevelopment. They were also assured of having a guaranteed place in the hostel and nursing home facilities if and when they reached the point of requiring this.

There has been some management turnover, and 6 weeks ago the residents were told that they would be given 12 months notice "to make alternative arrangements" before their units are demolished and replaced by much more expensive ones. Upon leaving they would be refunded the amount they paid, years earlier, to enter. This will be far too little to buy ANY alternative accommodation, but too much for them to be eligible for public housing. They would have to spend their refund on rent until they met public housing criteria, then apply for public housing and hope their money lasted a couple of years until a place became available.

Despite having done everything right in terms of saving for retirement, buying into a suitable retirement facility, and asking the right questions, these residents faced being

discarded by aged care organisations casting off their existing lower-income residents in their quest to attract larger numbers of better-heeled residents.

The residents were appalled. When they confronted the spokesperson for the retirement village with the undertakings they had been given, they were told "Those were made by a previous Manager who wasn't entitled to say that" and "A new national manager is being appointed. I will wait until he is in his position and can give a definitive response. I will report back to you in 6 weeks".

It was a period of extreme stress and anxiety for the residents. One resident was seen walking through Civic in tears on several different days. My friend, despite already being on sleep-causing anti-depressants, found sleeping harder and harder to get as the announcement day approached. I contacted management to alert them to the terrible strain the residents were under. However, nothing was done to shorten the wait or re-assure residents.

Thankfully the organisation decided to largely honour the undertakings its staff had given to residents. Despite this, they all have to be relocated before the redevelopment and none will be rehoused in the new complex. The organisation will pay to relocate them in other retirement villages. Now my friend is torn as to what to seek. Whatever she chooses will require waiting for a vacancy to arise. It is very difficult (expensive and arduous) at her age to travel to check out the options, most of which are interstate. What if she dislikes what she chooses?

She says, "I was very happy where I am. My choice is to stay right where I am in my humble old unit. But I don't have that choice."

She also has her companion, a deaf cat to consider. She had to get special permission to bring her cat when she moved in. She will have to apply for this wherever she goes. What if they won't let her and she has to choose between having her cat killed or hoping another place where she can have her cat will come up?

There is a need for renewal of and new investment in aged care facilities, but at this stage of life existing residents no longer have the financial, physical or psychological capacity to deal with finding another home.

The draft legislation needs to place on registered proprietors of retirement villages a clear obligation to provide suitable accomodation for existing residents if they decide to rebuild a facility.

Section 17 allows an operator to just toss in the towel and give residents a couple of months' notice. In fact, the only time reference is at s17 (iv), allowing residents 60 days to object. No other details of how such an objection will be handled, or the timeframe residents have to find alternative accomodation is defined. Operating a retirement village needs to be a long-term commitment because it involves providing care for people who have limited capacity to find an alternative. This part of the legislation needs to define

minimum protections for residents (and the ACT Government, which may have to respond to the consequences) if operators decide to give residents notice.

The legislation needs to define how matters unanticipated by residents will be handled. Allowing individual appeal requires the aged and infirm to act individually. The Act should set the standards all retirement villages should satisfy in their contracts with residents. For example, what rights of tenure residents have; how they will be looked after in the event of redevelopment, change of management ownership, or closure; what happens if, due to management decisions, there is no real market for residents to sell their unit; a minimum period from management notifying residents of a decision to redevelop/ sell/ close/ etc and when residents have to relocate; how residents' money is held and released in such circumstances; etc. **Section 48** does not apply to this type of notice.

2. Pets.

Companion animals are very important to many elderly people. The strict rules of many retirement villages impose a cruel decision on both prospective residents and animals. The decision a prospective resident has to take to kill or abandon their pet in order to accept a rare place in a retirement village can precipitate depression that continues until their own death. The anxiety when facing a retirement village meeting decision about whether to allow a pet is similarly stressful.

Retirement villages should be required or encouraged to be designed to enable certain companion animals to be permissible. Then people can plan to have an appropriate companion animal by the time they are needing a place in a retirement village.

This should be encouraged by the government giving dispensations to those retirement villages that are designed to accommodate appropriate companion animals.

I'm certain the RSPCA could provide advice on how this could best be

3. Miscellaneous Comments

s26 (1) (b) (ii) & (iii)

Surely the public information document and unsigned ancillary contract should be provided PRIOR to entering into a contract, so people can see what they are signing up to. I have heard of strata title companies having two versions of this documentation so people don't realise that what they signed up to differs from what they THOUGHT they were signing up to (and even what they got their solicitor to check).

s35

Residents of retirement villages are the last people to be able to pursue payers in order to recover debts. The crown penalty in 33 and 34 should be higher as a disincentive.

s61

Why does a resident have to wait at least 7 days to see a requested document? This would be a huge chunk of 14 days' notice to vacate if a relevant document was held by management.

s70

There needs to be an exception stated where units are coming up for demolition or interior refurbishment, as it would be ridiculous for occupants to pay to make good a unit only for it to be flattened, when they are already facing eviction.

s73-4 and 190 (4)

These need to anticipate the eventual circumstance that there will be no market when the place is being closed or redeveloped.

s75

21 days after SALE is a long delay for the operator to tell a resident the contract is void. A prospective resident is likely to have incurred packing, removal, utility and considerable other charges. The sale of their previous property is likely to have been signed and they may have moved into the retirement village. This needs much more detailed consideration.

sS215 (2) (c) and (4)

Management needs to be required to provide and retain **all previous versions** as well as the current one in the Register, as many residents will have entered under terms described in the earlier versions, which may need to be verified. Records should be kept for at least 35 years, as many residents may survive that long in a retirement village.

Happy to discuss.



0266/12



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Labor Member for Ginninderra

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*Deputy Speaker ACT Legislative Assembly
Chair of the Standing Committee on Planning, Public Works and Territory and Municipal Services
Deputy Chair of the Standing Committee on Climate Change, Environment and Water
Member of the Standing Committee on Education, Training and Youth Affairs*

13 February 2012



Ms Katy Gallagher MLA
Chief Minister
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Ms Gallagher *Katy*

I am writing to you regarding the Retirement Villages Bill 2011 (the Bill), particularly the concerns expressed by Hindmarsh Living in relation to the Bill.

As you may remember, I have previously written to you on 9 December 2011 regarding this same issue. In my letter to you, I made an undertaking to contact Hindmarsh Living and discuss with them their concerns.

I can advise you that I met with representatives of Hindmarsh Living, along with representatives of the Retirement Villages Association, Goodwin Aged Care Services and the Illawarra Retirement Trust, to discuss their concerns about the Bill.

During the course of the meeting I was informed that Hindmarsh Living's unease about the Bill arises from the cost of organising their operations in a manner consistent with that set out in the Bill. Hindmarsh Living also expressed some concern about the period for the refund of ingoing contributions; however, it appears that this anxiety arose largely as a result of a misreading of the relevant clause of the Bill.

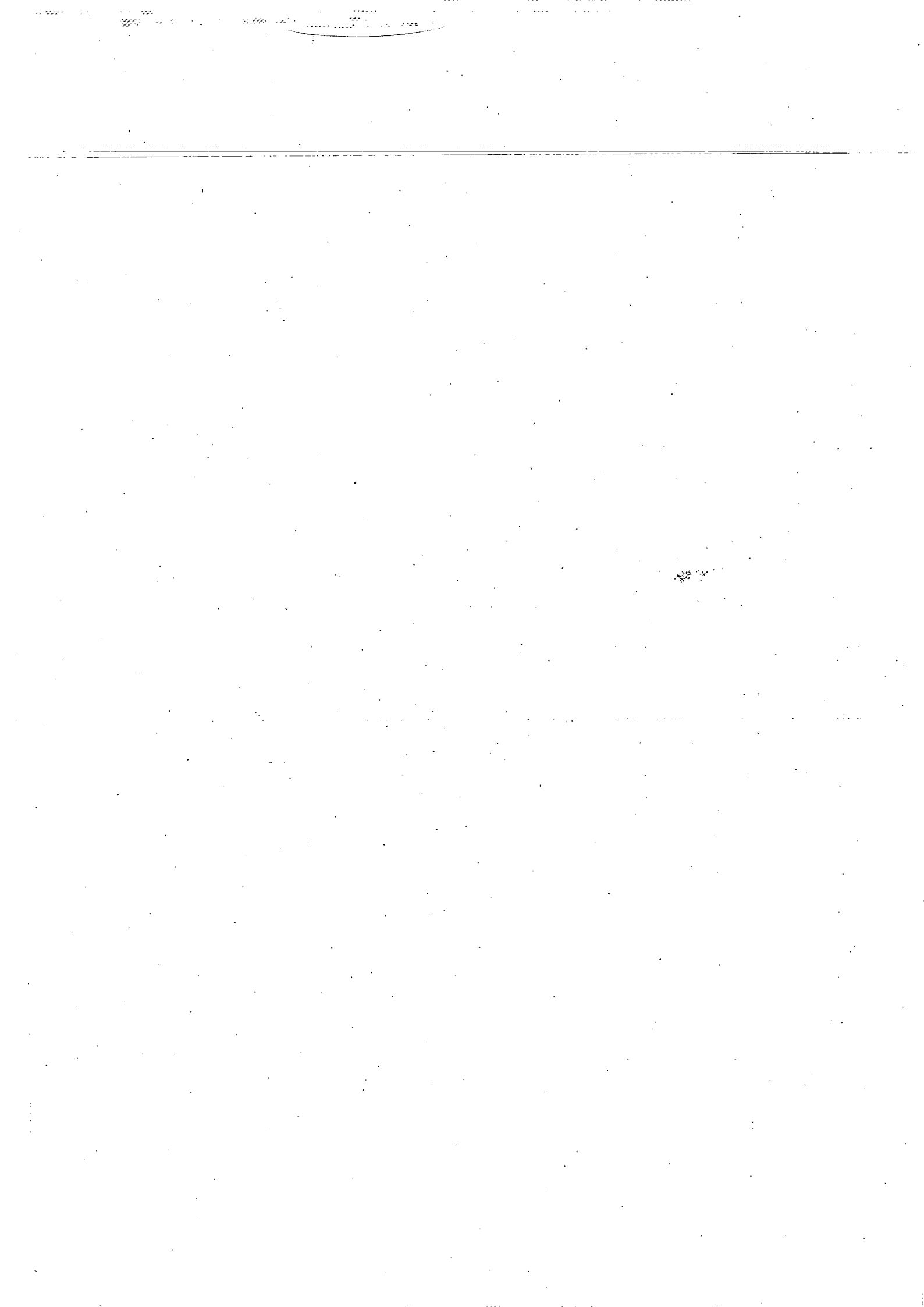
During the meeting I also made an undertaking to speak to the Attorney-General, Mr Simon Corbell MLA, about the feasibility of carrying out a Regulatory Impact Statement in relation to the Bill.

I will continue to keep you informed about my work on the Bill. If you have any further questions about the Bill please do not hesitate to contact me.

Yours sincerely

Mary Porter AM MLA
Member for Ginninderra

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C26112



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*Deputy Speaker ACT Legislative Assembly
Chair of the Standing Committee on Planning, Public Works and Territory and Municipal Services
Deputy Chair of the Standing Committee on Climate Change, Environment and Water
Member of the Standing Committee on Education, Training and Youth Affairs*

13 February 2012

Ms Katy Gallagher MLA
Chief Minister
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

14 FEB 2012
LEGISLATIVE ASSEMBLY
OFFICE

Dear Ms Gallagher

I am writing to you regarding the Retirement Villages Bill 2011 (the Bill) and issues raised by peak bodies representing parties in the retirement villages sector.

As you will recall, the Retirement Village Association (the RVA) wrote to you on 17 January 2012 expressing their concern about elements of the Bill. Following on from my meeting with the RVA on 6 February 2012, I wrote to the RVA on 8 February 2012 in relation to a number of issues that were raised by the RVA in their letter to you. I have enclosed a copy of my letter to the RVA for your information.

You may also remember that the ACT Retirement Village Residents Association (the ACT RVRA) copied you into a letter addressed to me on 27 January 2012 regarding their concerns about the Bill. I responded to the ACT RVRA's letter on 3 February 2012 and I have enclosed a copy of this letter for your information.

I hope that this information is of assistance to you. If I can provide any further information about the Bill please do not hesitate to contact me.

Yours sincerely

Mary Porter AM MLA
Member for Ginninderra

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C201/12



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Deputy Speaker ACT Legislative Assembly
Chair of the Standing Committee on Planning, Public Works and Territory and Municipal Services
Deputy Chair of the Standing Committee on Climate Change, Environment and Water
Member of the Standing Committee on Education, Training and Youth Affairs

8 February 2012

[Redacted]

Retirement Village Association
350 Collins Street
MELBOURNE VIC 3000

Dear [Redacted]

I am writing to thank you for meeting with me on 6 February 2012 to discuss the Retirement Villages Bill 2011 (the Bill) and to provide some additional information in relation to matters we discussed in our meeting.

I would firstly like to advise that my office has now spoken to the office of the Minister for Health and Ageing, the Hon Mark Butler MP, regarding his response to the recent Productivity Commission Report, "Caring for Older Australians". The Minister's adviser confirmed what I have been told by the Minister responsible for retirement villages in Queensland and the by the office of the Minister responsible for retirement villages in New South Wales, that is, that there are no plans for federal legislation to be enacted to regulate retirement villages.

As you will recall, during the course of the meeting you raised with me your interest in a Regulatory Impact Statement being completed prior to the Bill being debated in the detail stage. I can confirm that this is an issue that I will raise with the Attorney-General, Mr Simon Corbell MLA, in the future and I will relay to you the outcome of that conversation when it occurs.

You may also remember that you expressed concern about the period within which a scheme operator must repay a retirement village resident's ingoing contribution. I will continue to investigate the appropriateness of this time period and, as in the case of the Regulatory Impact Statement, I will inform you of the outcome of those investigations.

During our meeting I also made mention of the joint submission from the Retirement Village Association and Aged and Community Services Australia and the work I have done to ensure that industry concerns were taken into account to make sure the Bill meets the needs of all parties involved in the retirement villages sector.

(362)



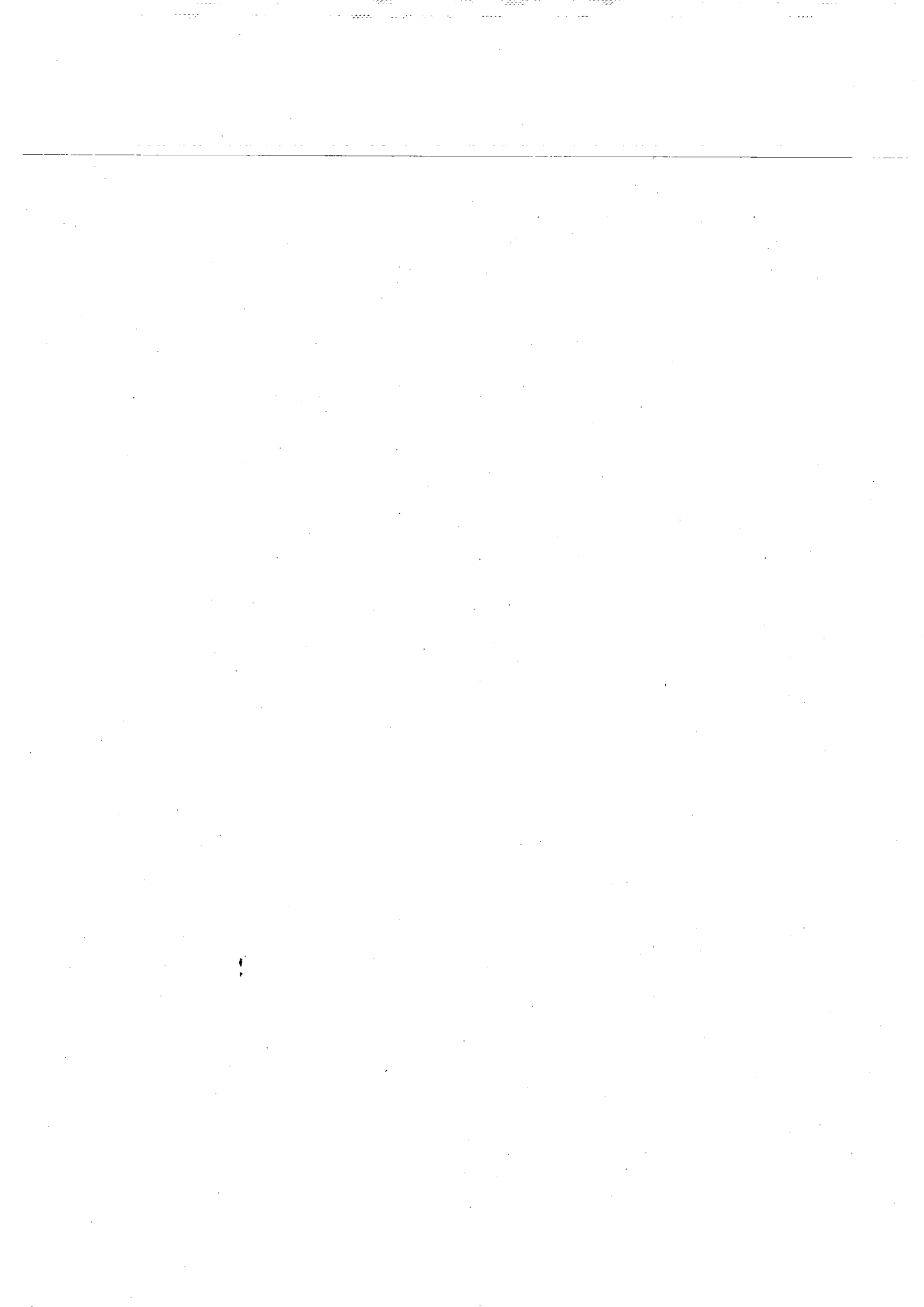
~~Upon consideration, I believe it will be possible to provide advice in relation to some of~~
the key issues raised by the submission. While I would like to respond to each individual suggestion, given the limited resources of my office I do not believe this is possible at this time. However, if you there are particular components of your submission that I do not address that you would like me to address, please let me know and I would be happy to do so. I will provide you with a copy of this document as soon as it has been prepared.

I would like to thank you again for coming to visit me in relation to the Bill and for providing me with additional feedback. If there is anything further I can do to assist you, either in relation to the Bill or in relation to any other matter, please do not hesitate to contact me once more.

Yours sincerely



Mary Porter AM MLA
Member for Ginninderra



22/1/12



Mary Porter AM MLA
Labor Member for Ginninderra

ph: +61 2 6205 0100
fax: +61 2 6205 0040
web: www.maryporter.net
e-mail: porter@parliament.act.gov.au

Deputy Speaker ACT Legislative Assembly
Chair of the Standing Committee on Planning, Public Works and Territory and Municipal Services
Deputy Chair of the Standing Committee on Climate Change, Environment and Water
Member of the Standing Committee on Education, Training and Youth Affairs

3 February 2012

[Redacted]

ACT Retirement Villages Residents Association Inc

[Redacted]

Dear [Redacted]

Thank you for your letter of 27 January 2012 on behalf of the ACT RVRA regarding the Retirement Villages Bill 2011 (the Bill). I would also like to thank the ACT RVRA for its assistance with the development of the Bill, particularly through its considered comments and suggestions to date.

With respect to the first issue you raise in your letter, relating to the opportunity for retirement village residents to have input into the Annual Budget for their retirement village, I can advise that a similar, but not identical, process is created in the Bill. This process is created through the combined operation of clause 73, which deals with access to documents by residents, clauses 160 to 166 (inclusive), which deal with the preparation and provision of financial statements, and clauses 183 and 184, which deal with the participation of residents in the operation of the retirement village in which they live. I understand that there is some difference between the process created by Division 2 of Part 2 of the Retirement Villages Industry Code of Practice and the process contained in the Bill and would be happy to discuss this with you, should you so wish.

In relation to the second and third issues you raise, regarding Village Rules and charges over retirement village land, I can advise that each of these matters are subject to ongoing consideration and discussion. I am also currently investigating whether Village Rules might be covered in a regulation.

I will continue to discuss the matters above with my colleagues in the government, particularly the Attorney-General, Mr Simon Corbell MLA, the Minister for Ageing, Ms Joy Burch MLA and the Chief Minister, Ms Katy Gallagher MLA.



Thank you for your comments and suggestions, I look forward to continuing to work with you and the ACT RVRA in the future.

Yours Sincerely

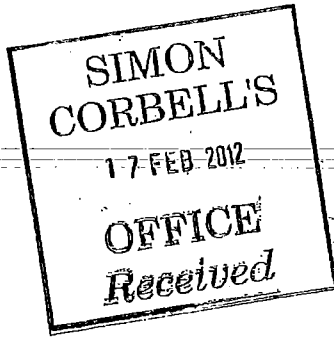


Mary Porter AM MLA
Member for Ginninderra





2012/0099



GOODWIN

THE BETTER LIFE CHOICE

Minister

Chief of Staff

Senior Adviser

Media Adviser

Adviser

CO

DLO

8 February 2012

Mr Simon Corbell MLA
Attorney General
ACT Legislative Assembly
GPO BOX 1020
CANBERRA ACT 2601

USE

Reply

Advise

Noted

File

.....

Arrange meeting

Information

Refer to

Action

Dear Attorney General,

COMMENT

I am writing to you in your capacity as Minister responsible for the administration of the Retirement Villages Industry Code of Practice and more specifically the Retirement Villages Bill (the Bill) introduced to the Assembly late 2011.

Goodwin has a number of serious concerns with the Bill. The Bill in its current form imposes a complex and costly regulatory burden that may result in a significant additional yearly financial cost for residents living in retirement villages; the majority of these residents rely on a fixed pension.

We are also concerned that the Bill may reduce investment in aged care and housing for Canberra's ageing population at a time when it is desperately needed.

Penalty provisions for breaches identified in the Bill range from \$5,500.00 to \$300,000.00. Many of the proposed penalties are not only extreme they are proposed to apply to a range of minor issues and if imposed may force a number of the smaller retirement village operators out of business.

Goodwin believes that the administration and operation of the current Retirement Villages Industry Code of Practice has been highly effective. The Code combined with the new "unfair contracts" provisions of the Competition and Consumer Act provides comprehensive consumer protection and a highly effective mechanism for resolving disputes.

Given the success of the Code and current protection mechanisms in place, Goodwin believes there would be value in promoting the Code more actively, highlighting existing mechanisms for residents to raise concerns and the process for dispute resolution.

However, if the ACT Government is of a mind to pursue a regulatory approach we strongly recommend that the approach as recommended by the Productivity Commission in the Report, *Caring for Older Australians*, January 2011 be adopted.

State and territory government should pursue nationally consistent retirement village legislation under the aegis of the Council of Australian Governments.

GOODWINLIFESTYLE
ACTIVE INDEPENDENT LIVING

GOODWINCARE
NURSING CARE ACCOMMODATION

GOODWINCOMMUNITY
HELP AND SUPPORT AT HOME

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Goodwin Aged Care Services Limited as you are aware is Canberra's longest standing and largest provider of retirement living in the ACT. Our organisation has enjoyed a constructive relationship with the ACT Government and you over many years. While the concerns raised above are extremely serious we believe we can assist the ACT Government in delivering an outcome that will provide the necessary certainty, checks and balances while ensuring a value for money outcome for Canberra's ageing population.

We would appreciate an opportunity to discuss our concerns and potential solutions in further detail with you at your earliest convenience.

Yours sincerely

Goodwin Aged Care Services Limited

[Redacted signature]

[Redacted contact information]

Cc. Chief Minister Katy Gallagher MLA

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White, Stephanie

From: White, Stephanie
Sent: Monday, 6 February 2012 5:47 PM
To: [REDACTED]
Subject: Retirement Villages Bill 2011
Attachments: Letter to Property Council.pdf

Dear [REDACTED]

RE: Retirement Villages Bill 2011

Ms Porter, MLA introduced the above private member's bill on 16 November 2011.

The ACT Government is interested in knowing your views in relation to the Bill.

Please see attached letter from Ms Alison Playford, Deputy Director-General (Justice) of the ACT Justice and Community Safety Directorate, welcoming your submissions about the Bill.

Please do not hesitate to contact myself on (02) 6207 7207, or Mr Peter Quinton on (02) 6207 0546 if you have any queries in relation to this email or the attached letter.

Thank you.

Yours faithfully,

Stephanie White

Stephanie White | Legal Policy Officer
Phone **02 6207 7207** | Fax 02 6205 0937
Legislation and Policy | Justice and Community Safety Directorate | **ACT Government**
Level 4, 12 Moore Street Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | www.act.gov.au





ACT
Government

Justice and Community Safety

[REDACTED]
Property Council of Australia (ACT)
Level 1, AMP Building
1 Hobart Place
CANBERRA ACT 2600

Dear [REDACTED],

Retirement Villages Bill 2011

The Retirement Villages Bill 2011 is a private members bill that was introduced by Ms Mary Porter MLA on 16 November 2011. The bill is available on the ACT legislation register at www.legislation.act.gov.au.

Ms Porter's Bill had been tabled as an exposure draft on 5 May 2010, and Ms Porter had invited submissions from the general public until 22 September 2010.

Retirement villages are currently regulated by the Retirement Villages Industry Code of Practice under the *Fair Trading (Australian Consumer Law) Act 1992*.

The ACT Government is interested in knowing your position in relation to the Bill.

Any submission you may be able to provide would be most welcome. It would be appreciated if you could provide any submissions by close of business on **24 February 2012** to the following address:

Legislation and Policy Branch
GPO Box 158
CANBERRA ACT 2601
Attention: Mr Peter Quinton

If you have any information about this matter, please contact Mr Peter Quinton on (02) 6207 0546.

Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate
3 February 2012

354



White, Stephanie

From: White, Stephanie
Sent: Monday, 6 February 2012 5:35 PM
To: [REDACTED]
Subject: Retirement Villages Bill 2011
Attachments: Letter to RVA.pdf

Dear [REDACTED]

RE: Retirement Villages Bill 2011

Ms Porter, MLA introduced the above private member's bill on 16 November 2011.

The ACT Government is interested in knowing your views in relation to the Bill.

Please see attached letter from Ms Alison Playford, Deputy Director-General (Justice) of the ACT Justice and Community Safety Directorate, welcoming your submissions about the Bill.

Please do not hesitate to contact myself on (02) 6207 7207, or Mr Peter Quinton on (02) 6207 0546 if you have any queries in relation to this email or the attached letter.

Thank you.

Yours faithfully,

Stéphanie White

Stephanie White | Legal Policy Officer
Phone 02 6207 7207 | Fax 02 6205 0937
Legislation and Policy | Justice and Community Safety Directorate | ACT Government
Level 4, 12 Moore Street Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

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.....



ACT
Government

Justice and Community Safety

[REDACTED]
Retirement Villages Association
Level 8, 418A Elizabeth Street
SURRY HILLS NSW 2010

Dear [REDACTED],

Retirement Villages Bill 2011

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The ACT Government is interested in knowing your position in relation to the Bill.

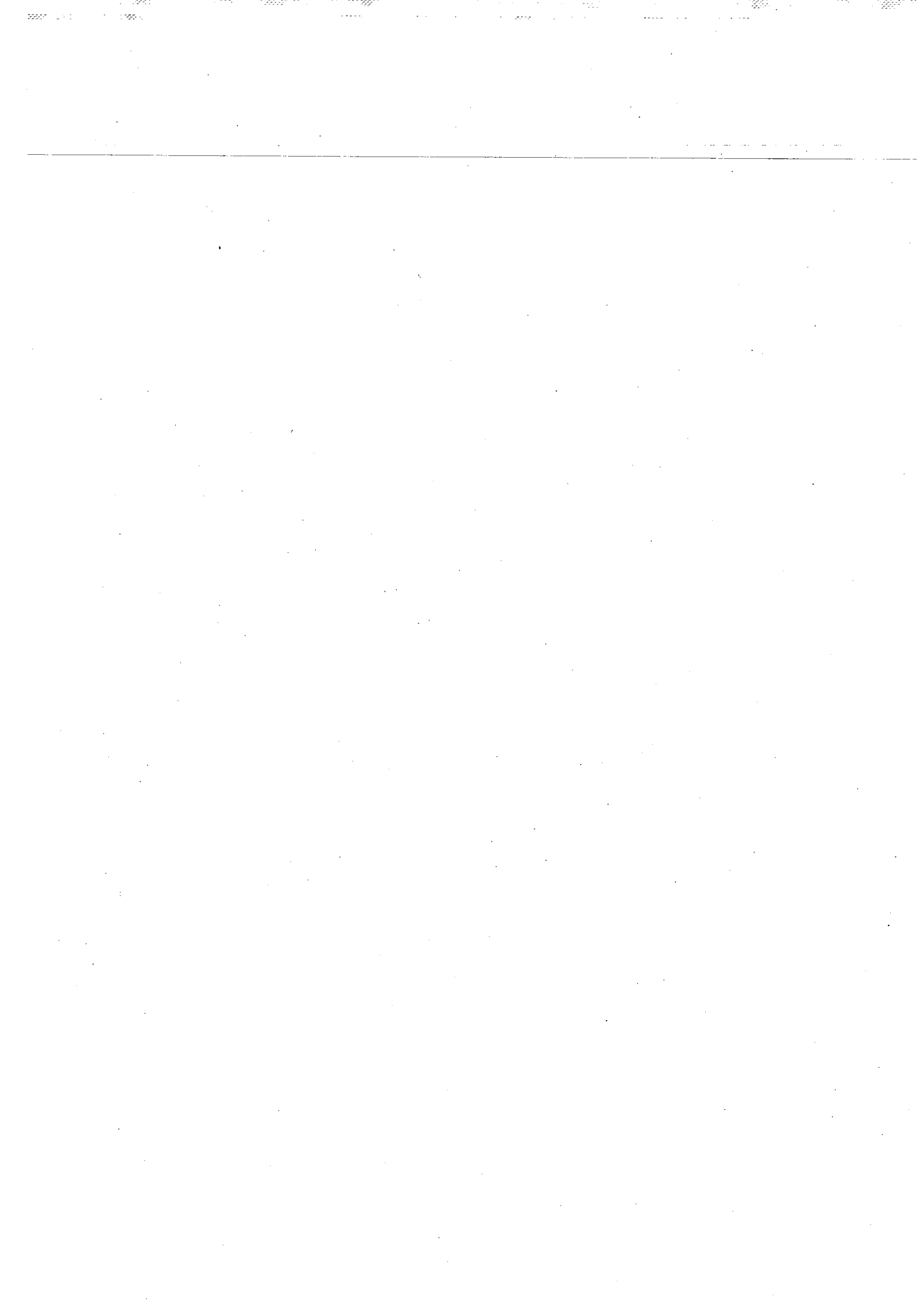
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Legislation and Policy Branch
GPO Box 158
CANBERRA ACT 2601
Attention: Mr Peter Quinton

If you have any information about this matter, please contact Mr Peter Quinton on (02) 6207 0546.

Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate

3 February 2012



White, Stephanie

From: White, Stephanie
Sent: Monday, 6 February 2012 5:24 PM
To: [REDACTED]
Subject: Retirement Villages Bill 2011
Attachments: Letter to Law Society.pdf

Dear [REDACTED]

RE: Retirement Villages Bill 2011

Ms Porter, MLA introduced the above private member's bill on 16 November 2011.

The ACT Government is interested in knowing the views of the ACT Law Society's Property Law Committee in relation to the Bill.

Please see attached letter from Ms Alison Playford, Deputy Director-General (Justice) of the ACT Justice and Community Safety Directorate, welcoming your submissions about the Bill.

Please do not hesitate to contact myself on (02) 6207 7207, or Mr Peter Quinton on (02) 6207 0546 if you have any queries in relation to this email or the attached letter.

Thank you.

Yours faithfully,

Stephanie White

Stephanie White | Legal Policy Officer
Phone 02 6207 7207 | Fax 02 6205 0937
Legislation and Policy | Justice and Community Safety Directorate | ACT Government
Level 4, 12 Moore Street Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

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ACT
Government

Justice and Community Safety

[REDACTED]
ACT Law Society
GPO Box 1562
CANBERRA ACT 2601

Dev [REDACTED]

Retirement Villages Bill 2011

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Retirement villages are currently regulated by the Retirement Villages Industry Code of Practice under the *Fair Trading (Australian Consumer Law) Act 1992*.

The ACT Government is interested in knowing your position in relation to the Bill.

Any submission you may be able to provide would be most welcome. It would be appreciated if you could provide any submissions by close of business on **24 February 2012** to the following address:

Legislation and Policy Branch
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CANBERRA ACT 2601
Attention: Mr Peter Quinton

If you have any information about this matter, please contact Mr Peter Quinton on (02) 6207 0546.

Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate

3 February 2012



White, Stephanie

From: White, Stephanie
Sent: Monday, 6 February 2012 4:51 PM
To: Manuel, Tania
Subject: Retirement Villages Bill 2011
Attachments: Letter to Committee.pdf

Dear Tania,

RE: Retirement Villages Bill 2011

Please see attached letter from Mr Peter Quinton of the ACT Justice and Community Safety Directorate, welcoming the Retirement Villages Code Administration Committee's submissions in relation to the above private member's bill.

As discussed, would you be able to please forward the letter to the relevant officer in the Committee?

Please do not hesitate to contact myself on (02) 6207 7207, or Mr Peter Quinton on (02) 6207 0546 if you have any queries in relation to this email or the attached letter.

Thank you.

Yours faithfully,

Stephanie White

Stephanie White | Legal Policy Officer
Phone 02 6207 7207 | Fax 02 6205 0937
Legislation and Policy | Justice and Community Safety Directorate | ACT Government
Level 4, 12 Moore Street Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | www.act.gov.au





ACT
Government

Justice and Community Safety

Retirement Villages Code Administration Committee
c/- Office of Regulatory Services

Dear Sir/Madam,

Retirement Villages Bill 2011

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The ACT Government is interested in knowing your position in relation to the Bill.

Any submission you may be able to provide would be most welcome. It would be appreciated if you could provide any submissions by close of business on **24 February 2012** to the following address:

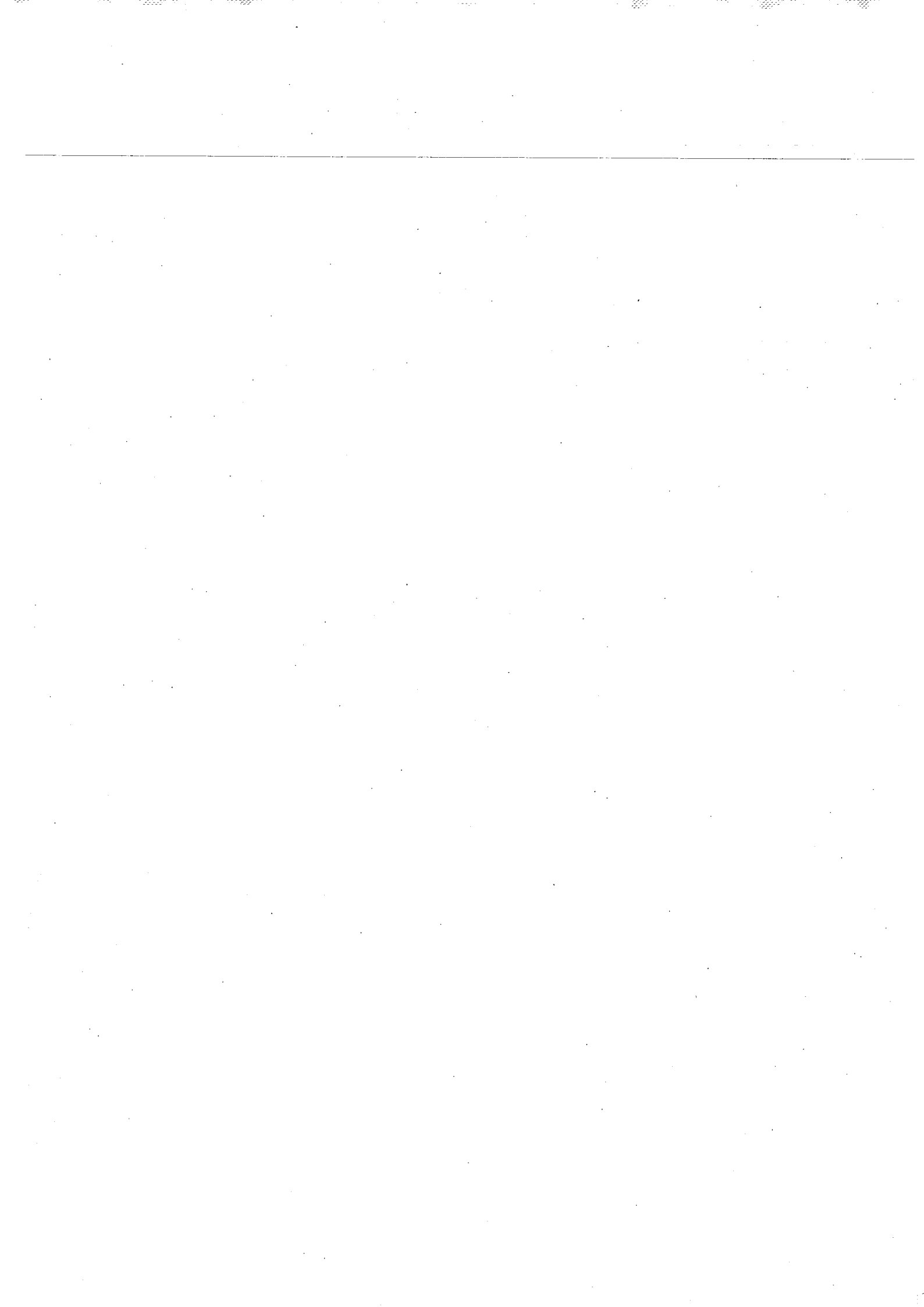
Legislation and Policy Branch
GPO Box 158
CANBERRA ACT 2601
Attention: Mr Peter Quinton

If you have any information about this matter, please contact me on (02) 6207 0546.

Peter Quinton
Justice and Community Safety Directorate

6 February 2012

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ACT
Government

Justice and Community Safety

Emailed
6-2-12

[REDACTED]
ACT Retirement Villages Residents' Association
[REDACTED]

Dear [REDACTED]

Retirement Villages Bill 2011

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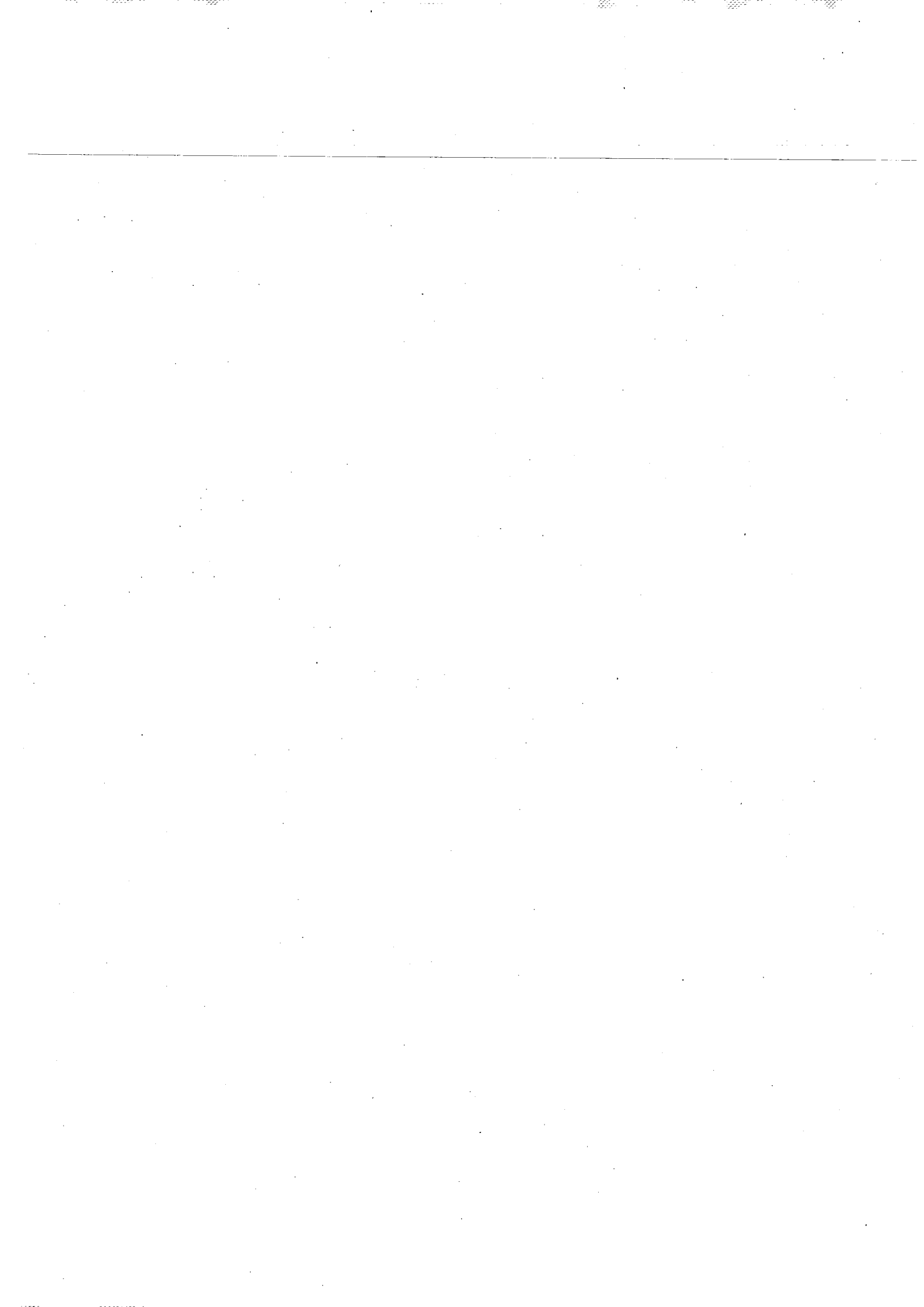
Any submission you may be able to provide would be most welcome. It would be appreciated if you could provide any submissions by close of business on 24 February 2012 to the following address:

Legislation and Policy Branch
GPO Box 158
CANBERRA ACT 2601
Attention: Mr Peter Quinton

If you have any information about this matter, please contact Mr Peter Quinton on (02) 6207 0546.

Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate

3 February 2012



White, Stephanie

From: Manuel, Tania
Sent: Monday, 6 February 2012 2:01 PM
To: White, Stephanie
Subject: RE: Retirement Villages Bill 2011

Thanks Stephanie. Is there a letter to the Retirement Villages Code Administration Committee??

From: White, Stephanie
Sent: Monday, 6 February 2012 1:53 PM
To: Manuel, Tania
Subject: Retirement Villages Bill 2011

Dear Tania,

RE: Retirement Villages Bill 2011

The Minister has signed a brief prepared by Peter Quinton, in which the Minister agreed to:

- a. write to Ms Porter and the Chief Minister noting the need for further consultation by Government about the above Bill; and
- b. JACS writing to key stakeholders, seeking their views to inform the Government's response.

For your information, letters have been signed by the Deputy Director-General and are being dispatched today (including by email) to key stakeholders. These include the RVRA, NSW RVRA, RVA, Law Society, Property Council, OCN, Master Builders Association, as well as to people and organisations who provided submissions to Ms Porter MLA that we had available the contact information for.

Below is the text of the email that is to be sent to [REDACTED] and attached is a copy of the letter to the ACT RVRA.

I am informing you of this as your office may be contacted by these stakeholders as a result of them receiving the email and letter.

Thank you,

Stephanie

Dear [REDACTED]

RE: Retirement Villages Bill 2011.

Ms Porter, MLA introduced the above private member's bill on 16 November 2011.

The ACT Government is interested in knowing your views in relation to the Bill.

Please see attached letter from Ms Alison Playford, Deputy Director-General (Justice) of the ACT Justice and Community Safety Directorate, welcoming your submissions about the Bill.

Please do not hesitate to contact myself on (02) 6207 7207, or Mr Peter Quinton on (02) 6207 0546 if you have any queries in relation to this email or the attached letter.

Thank you.

Yours faithfully,

Stephanie White

Stephanie White | Legal Policy Officer

Phone **02 6207 7207** | Fax 02 6205 0937

Legislation and Policy | Justice and Community Safety Directorate | **ACT Government**

Level 4, 12 Moore Street Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | www.act.gov.au



ACT
Government

Justice and Community Safety

[REDACTED]
Master Builders Association of the ACT
PO Box 1211
FYSHWICK ACT 2609

Dear [REDACTED]

Retirement Villages Bill 2011

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Any submission you may be able to provide would be most welcome. It would be appreciated if you could provide any submissions by close of business on 24 February 2012 to the following address:

Legislation and Policy Branch
GPO Box 158
CANBERRA ACT 2601
Attention: Mr Peter Quinton

If you have any information about this matter, please contact Mr Peter Quinton on (02) 6207 0546.

[REDACTED]

Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate

3 February 2012





ACT
Government

Justice and Community Safety

[REDACTED]
Real Estate Institute of the ACT
PO Box 22
DEAKIN WEST ACT 2600

Dear [REDACTED]

Retirement Villages Bill 2011

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Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate

3 February 2012





ACT
Government

Justice and Community Safety

[REDACTED]
Members Corporation Network (ACT)

PO Box 6035
KINGSTON ACT 2604

Dear [REDACTED]

Retirement Villages Bill 2011

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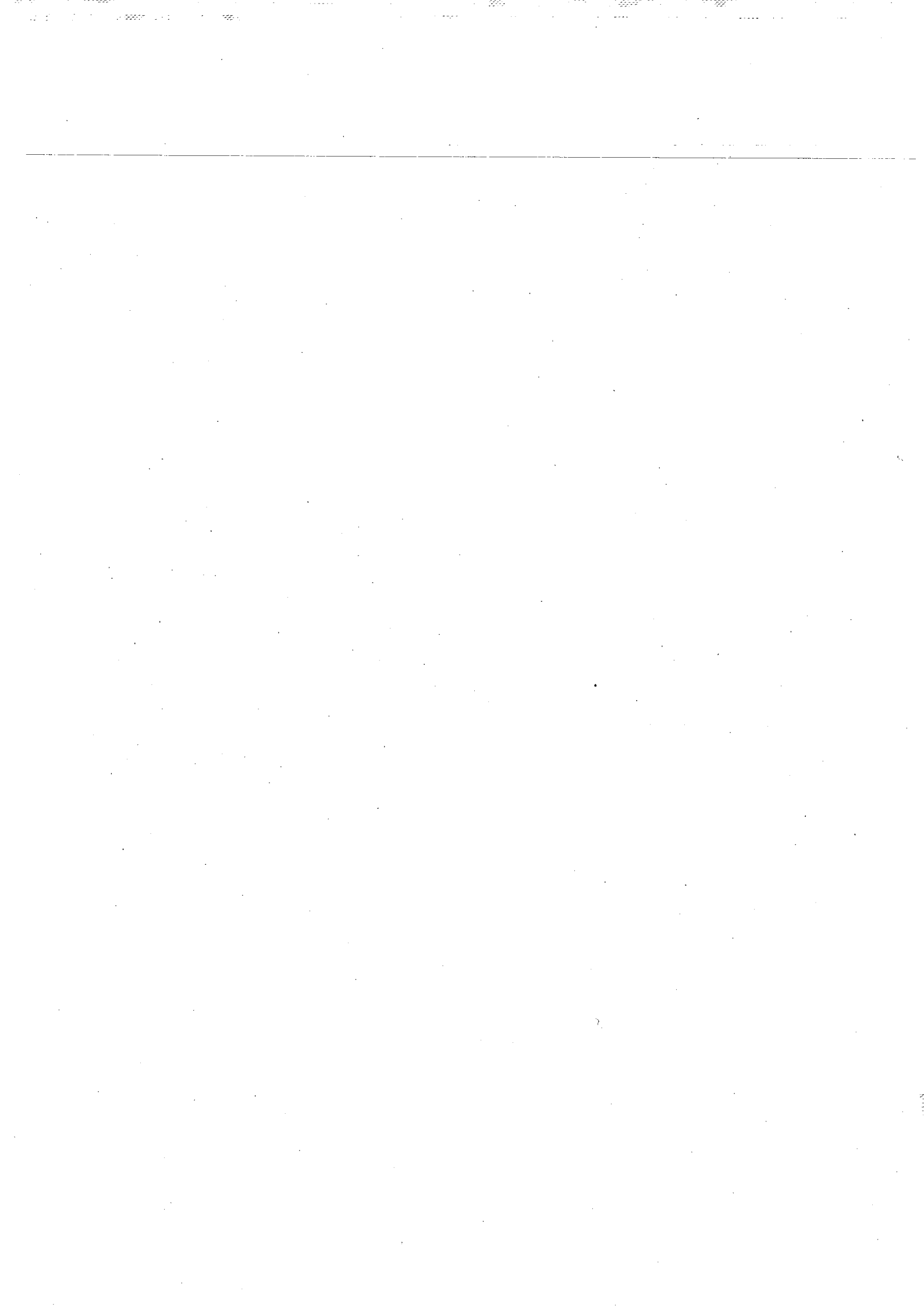
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CANBERRA ACT 2601
Attention: Mr Peter Quinton

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Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate

3 February 2012





ACT
Government

Justice and Community Safety

[REDACTED]
KJB Law
PO Box 105
WODEN ACT 2606

Dear [REDACTED]

Retirement Villages Bill 2011

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CANBERRA ACT 2601
Attention: Mr Peter Quinton

If you have any information about this matter, please contact Mr Peter Quinton on (02) 6207 0546.

Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate

3 February 2012

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ACT
Government

Justice and Community Safety

[REDACTED]
National Seniors Australia
PO Box 78
DEAKIN WEST ACT. 2600

Dear [REDACTED]

Retirement Villages Bill 2011

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CANBERRA ACT 2601
Attention: Mr Peter Quinton

If you have any information about this matter, please contact Mr Peter Quinton on (02) 6207 0546.

Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate

3 February 2012

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ACT
Government

Justice and Community Safety

[REDACTED] Community Services Association of NSW & ACT Inc

PO Box 3124
RHODES NSW 2138

Dear [REDACTED]

Retirement Villages Bill 2011

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Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate

3 February 2012





ACT
Government

Justice and Community Safety

[REDACTED]
St Andrew's Townhouse Residents' Committee

Dear [REDACTED]

Retirement Villages Bill 2011

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If you have any information about this matter, please contact Mr Peter Quinton on (02) 6207 0546.

Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate

3 February 2012





ACT
Government

Justice and Community Safety

[REDACTED]
Villaggio Sant'Antonio Self Care Residents' Committee
[REDACTED]

Dear [REDACTED]

Retirement Villages Bill 2011

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If you have any information about this matter, please contact Mr Peter Quinton on (02) 6207 0546.

Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate

3 February 2012





ACT
Government

Justice and Community Safety



Dear [REDACTED]

Retirement Villages Bill 2011

The Retirement Villages Bill 2011 is a private members bill that was introduced by Ms Mary Porter MLA on 16 November 2011. The bill is available on the ACT legislation register at www.legislation.act.gov.au.

Ms Porter's Bill had been tabled as an exposure draft on 5 May 2010, and Ms Porter had invited submissions from the general public until 22 September 2010.

Retirement villages are currently regulated by the Retirement Villages Industry Code of Practice under the *Fair Trading (Australian Consumer Law) Act 1992*.

The ACT Government is interested in knowing your position in relation to the Bill.

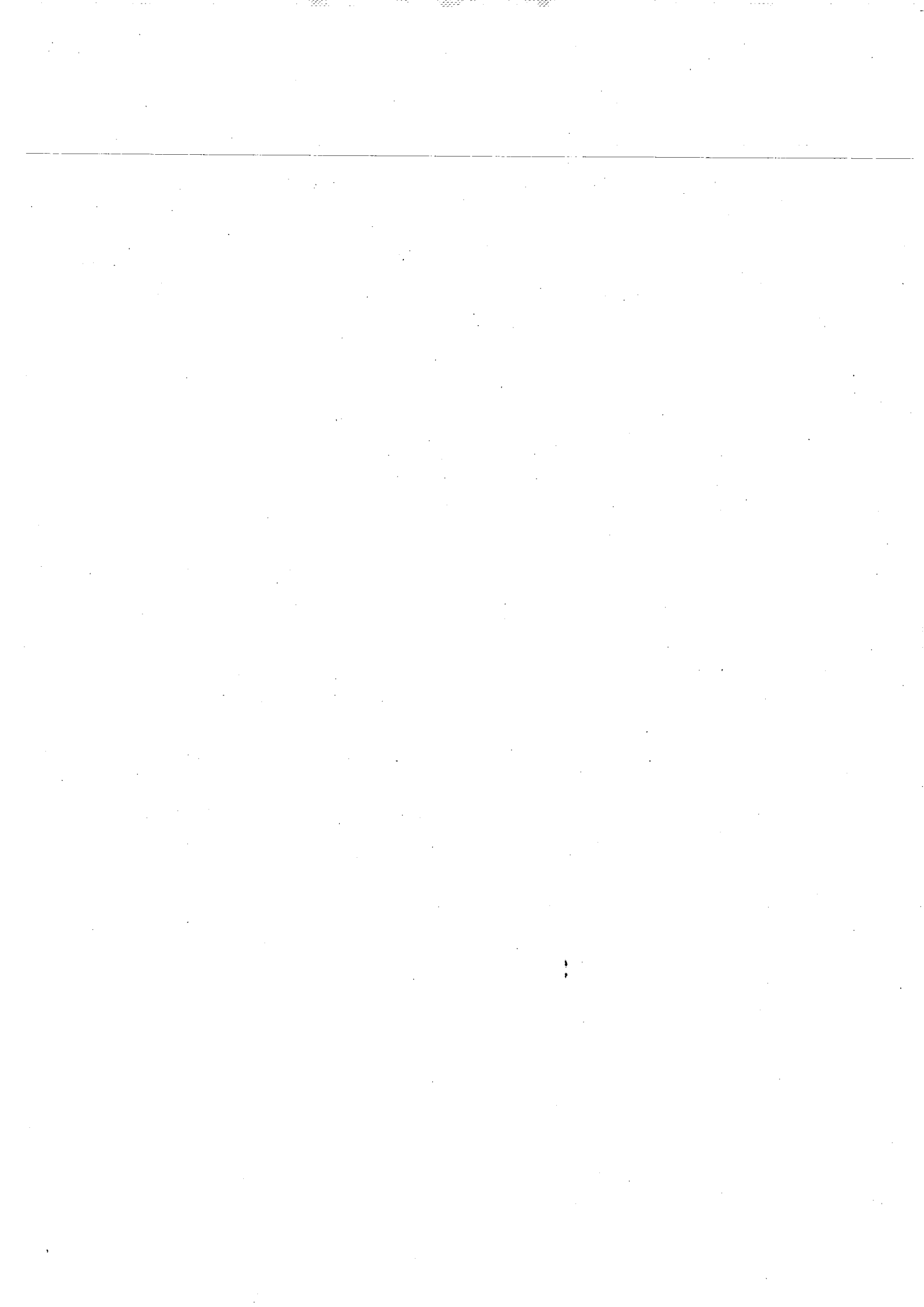
Any submission you may be able to provide would be most welcome. It would be appreciated if you could provide any submissions by close of business on **24 February 2012** to the following address:

Legislation and Policy Branch
GPO Box 158
CANBERRA ACT 2601
Attention: Mr Peter Quinton

If you have any information about this matter, please contact Mr Peter Quinton on (02) 6207 0546.

Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate

3 February 2012





ACT
Government

Justice and Community Safety

[REDACTED]
Murrumbidgee Retirement Trust
Level 3, 77 Market Street
WOLLONGONG NSW 2500
[REDACTED]

Retirement Villages Bill 2011

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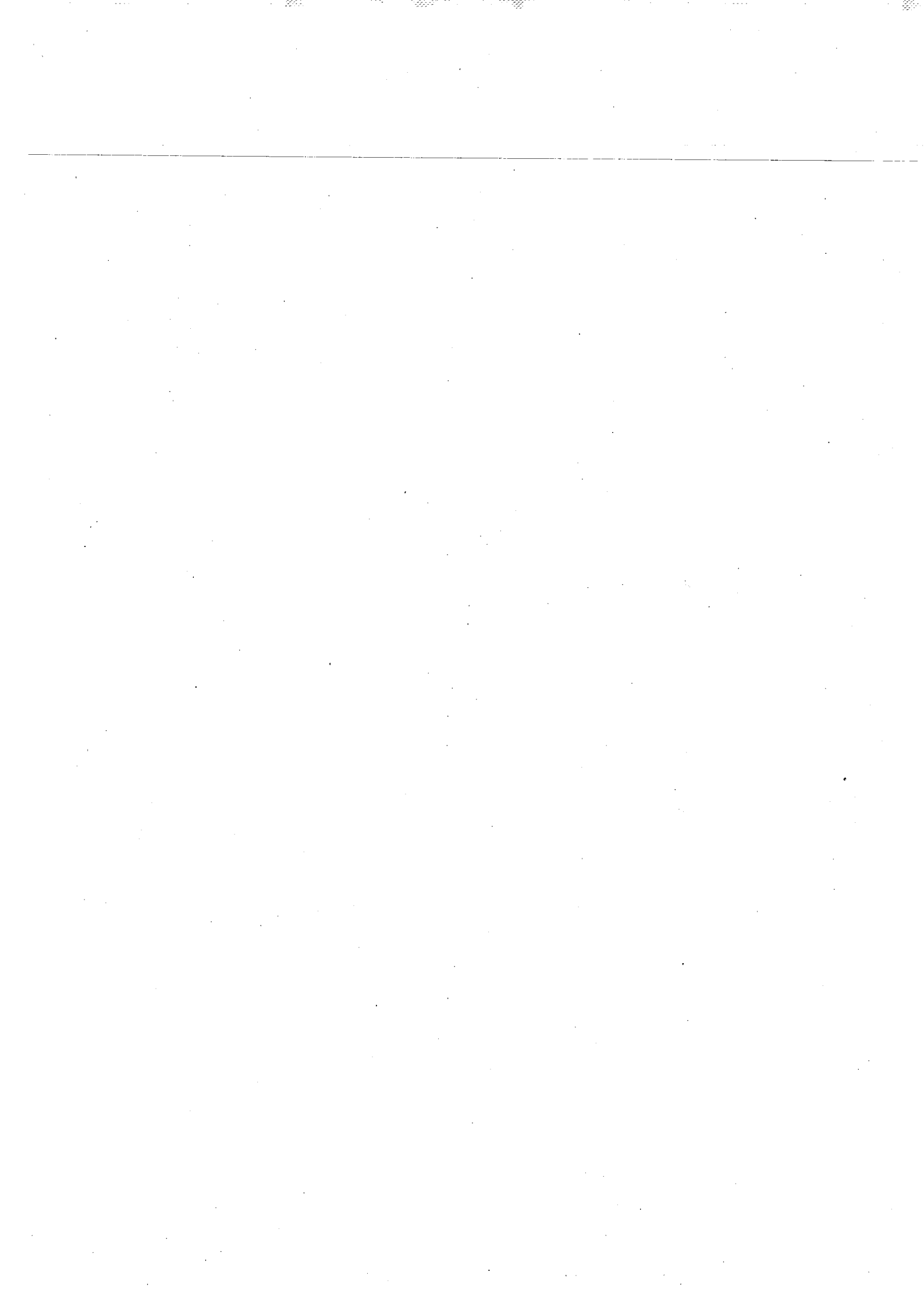
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Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate

3 February 2012





ACT
Government

Justice and Community Safety

[REDACTED]

Dear [REDACTED]

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Justice and Community Safety Directorate

3 February 2012



ACT
Government

Justice and Community Safety

[REDACTED]

Dear [REDACTED]

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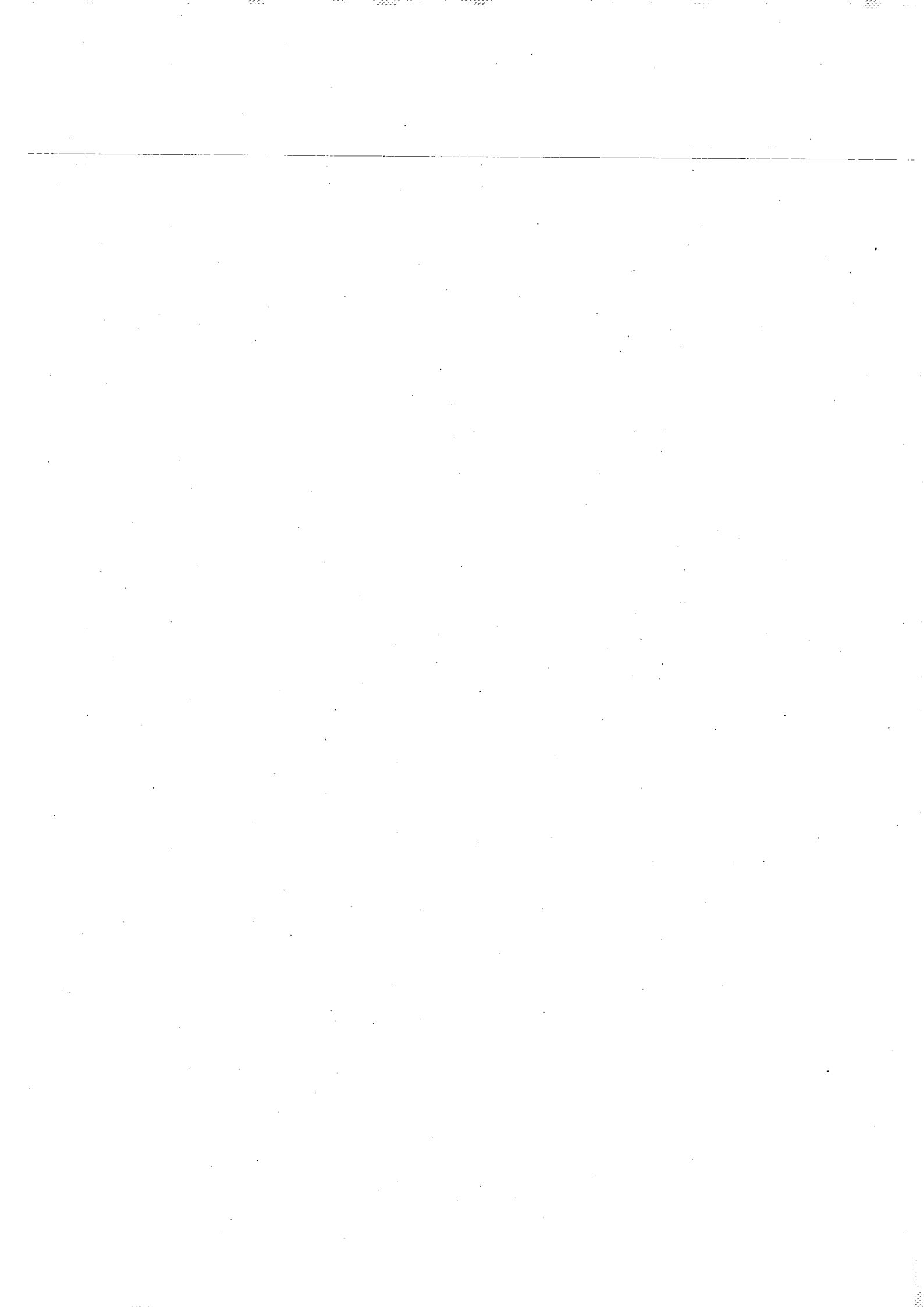
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Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate

3 February 2012





ACT

Government

Justice and Community Safety

[REDACTED]

Dear [REDACTED]

Retirement Villages Bill 2011

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If you have any information about this matter, please contact Mr Peter Quinton on (02) 6207 0546.

Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate

3 February 2012





ACT
Government

Justice and Community Safety

[REDACTED]
NSW Retirement Villages Residents' Association Inc

[REDACTED]
Dear [REDACTED]

Retirement Villages Bill 2011

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Attention: Mr Peter Quinton

If you have any information about this matter, please contact Mr Peter Quinton on (02) 6207 0546.

Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate

3 February 2012



White, Stephanie

From: White, Stephanie
Sent: Friday, 3 February 2012 4:10 PM
To: Playford, Alison
Subject: Retirement Villages Bill

Dear Alison,

You asked whether the Retirement Villages Bill brief had been signed by the Minister. In the brief we recommended that external stakeholders be written to, to seek their views in relation to the bill.

I have just been advised by Josh that the Minister has signed the brief.

Thank you.

Kind Regards,

Stephanie

Stephanie White | Legal Policy Officer
Phone 02 6207 7207 | Fax 02 6205 0937
Legislation and Policy | Justice and Community Safety Directorate | ACT Government
Level 4, 12 Moore Street Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

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MINISTERIAL-IN-CONFIDENCE

Submission No B201101232
Schedule No 2012AG300004
Date Rec'd Minister's Office 6.11.12

To: Attorney-General

From: A/g Executive Director, Legislation Policy Branch

Subject: Retirement Villages Bill 2011

Critical Date: 10.2.12 It is anticipated that this Bill will come on for debate mid 2012, but significant consultation will be necessary prior to that time to inform the Government's position.

- DDG/.../...

Recommendation

- That you agree:
 - to write to Ms Porter and the Chief Minister noting the need for further consultation by Government about the Retirement Villages Bill 2011 (a private members Bill introduced by Ms Porter); and
 - JACS write to key stakeholders, seeking their views to inform the Government response to Ms Porter's Bill.

Background

Legislative history and code of conduct

- Ms Porter tabled the Retirement Villages Bill 2011 in the Legislative Assembly on 16 November 2011. The Bill was based on an earlier exposure draft published by Ms Porter and which had been available for public comment until 22 September 2010.
- At the request of the Attorney-General's Office, the Legislation and Legal Policy Branch ('LPB') discussed the exposure Bill with PCO immediately before it was presented. PCO briefed Ms Porter about a range of measures to improve the Bill. Ms Porter accepted some of the issues raised with LPB in her final presentation Bill.
- The Retirement Villages Bill 2011, if passed, would replace the *Retirement Villages Industry Code of Practice* under the *Fair Trading (Australian Consumer Law) Act 1992*.
- The Code of Practice commenced in 1999. It is administered by the Office of Regulatory Services ('ORS') and was developed to promote fair dealings in retirement villages.
- The ORS currently receives a low number of complaints about ACT retirement villages, but anticipates that the number of complaints would increase if legislation were introduced.

Stakeholder views

- The ACT Retirement Villages Residents' Association (the ACTRVRA), which represents residents, has indicated that it strongly supports legislation being introduced. [REDACTED] of the ACTRVRA, has stated that the legislation would be an 'insurance policy' for when problems arise.
- The Retirement Villages Association (the RVA), which represents retirement village operators, is opposed to the exposure draft of the bill. The RVA has stated that legislation is unnecessary, that it could cause confusion among residents and owners and jeopardise the building of new retirement villages. The RVA has also commented that it is inappropriate to consider legislation at a time when national legislative reform is being considered by the Productivity Commission.

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National reform

9. On 30 April 2010 the Ministerial Council of Consumer Affairs (MCCA, now the Ministerial Council for Consumer Affairs, CAF) briefly discussed a national approach to regulating retirement villages.
10. MCCA agreed that potential reform would be considered after the Productivity Commission had made its recommendations to the Commonwealth Government in its final report titled "Caring for Older Australians".
11. The final report was released by the Productivity Commission on 8 August 2011. The final report recommends that state and territory governments pursue nationally consistent retirement village legislation under the aegis of the Council of Australian Governments.
12. One of the reasons for the Productivity Commission's position is that the RVA supports nationally consistent regulation, especially in light of many retirement village operators establishing retirement villages in more than one jurisdiction.
13. The Retirement Villages Residents' Association ('the RVRA') supports nationally consistent legislation and opposes self-regulation of the industry by the RVA.
14. It is not known at this stage whether jurisdictions will adopt a national approach.

Issues with the Private Member's Bill

15. The Bill prepared by Ms Porter raised a number of complex legal problems which may impact adversely on retirement villages in the ACT.
16. Prior to introduction, LPB made a series of suggestions about the draft Bill to reduce the possibility of the retrospective operation of the law, to ensure that the law does not displace or duplicate the operation of other relevant law (such as the *Agents Act* or the *Unit Titles Act*) and to make other technical changes. Many of the suggested changes were made.
17. A number of the provisions in the draft Bill may amount to an acquisition of property otherwise than on just terms (infringing section 23(1)(a) of the *Australian Capital Territory Self-Government Act 1988*). In particular, the draft law provided that on registration of a retirement village, a charge is established on the property for the benefit of residents. The charge takes priority over existing charges (such as a first mortgage). The displacement of the priority of an existing mortgage and other charges appears to be an acquisition of property and is beyond power of the Assembly. Following comment from LPB, the application of this provision was deferred to allow further consideration of this issue. However, while deferral allows the issue to be examined in greater detail, the mere inclusion of the provision may create significant uncertainty in the development of future retirement villages in the ACT (as financiers of a retirement village may consider the provisions would prevent them from acquiring a first mortgage).
18. The legislation imposes new regulatory functions on the ORS. These new functions would include the licensing of retirement village schemes, commencing action to stop unlicensed operators and administering statutory charges. Additionally, the law provides new remedies through ACAT. No provision is made for any budget support for these functions.

Issues

19. Ms Porter has advised the Attorney-General's Office that it is not proposed to bring the Bill on for debate until mid year. The attached letter to Ms Porter confirms this understanding, and advises Ms Porter that, in considering whether to support the Bill, Government will be consulting stakeholders.
20. It is proposed that LPB will raise the Bill with legal professionals and business/community investors in this sector with a view to determining whether the Bill needs further change to

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avoid a downturn of investment in this sector. Further, discussions will be undertaken with proponents of the Bill to determine whether the provisions sufficiently meet the aspirations of the sector.

Financial Implications

21. This Bill is likely to impose costs on the retirement village market, the ORS and the ACAT.

Internal Consultation

22. There has been officer-level consultation between the Legislation and Policy Branch, the ORS and PCO.

External Consultation

23. The Bill did not receive extensive media coverage on presentation, and informal polling of legal professionals suggest that the legal sector has a low level of understanding about the content of the Bill. The RVRA and the ACTRVRA supported the exposure draft Bill. The RVA did not support it as it will increase regulatory burdens on retirement village operators. It is not known whether these stakeholders hold the same view about the final Bill.

JACS
is
writing
etc

24. ~~With your agreement,~~ JACS proposes to write to key stakeholders to seek their view on the Bill. It is proposed to write to the ACT Law Society Property Law Sub-Committee, the Property Council, the RVA, the ACTRVRA and the Owners Corporation Network (as many retirement villages are unit titled, the OCN has increased involvement in this area).

Benefits/Sensitivities

25. The ACT is the only jurisdiction that does not regulate retirement villages in primary legislation.

Media Implications

26. The media has generally appeared to be supportive of the legislative change in this area.

Pam Jenkins

Pam Jenkins

70595

January 2012

Action Officer Peter Quinton Phone 70546

AGREED / NOT AGREED / NOTED / DISCUSS

Simon Corbell MLA

22/12

Performance Assessment

- Satisfactory
- Unsatisfactory

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COPY

Simon Corbell MLA

ATTORNEY-GENERAL
MINISTER FOR POLICE AND EMERGENCY SERVICES
MINISTER FOR THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

MEMBER FOR MOLONGLO

Ms Mary Porter AM MLA
Member for Ginninderra
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Ms Porter *Mary*

I write regarding the Retirement Villages Bill 2011 a private member's Bill you introduced on 16 November 2011.

The Bill will have a significant impact on industry and people buying into retirement villages. Accordingly, the Justice and Community Safety Directorate will be consulting with stakeholders in the process of considering the Government response to the Bill.

Given the complexity of the legislation, and the low level of market knowledge about the significant changes to market practice proposed by the Bill, it is not expected to see comments back from stakeholders until February 2012 at the earliest.

I have asked my directorate to keep me informed of any significant development during consultation, and my office will provide information to you about such matters.

Yours sincerely

Simon Corbell MLA
Attorney-General

2.2.12

Mary happy to discuss

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0000 Fax: (02) 6205 0535 Email corbell@act.gov.au

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RECEIVED
 - 3 FEB 2012
 in Chief Minister's Office

Simon Corbell MLA

ATTORNEY-GENERAL
 MINISTER FOR POLICE AND EMERGENCY SERVICES
 MINISTER FOR THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

MEMBER FOR MOLONGLO

COPY

Ms Katy Gallagher MLA
 Chief Minister
 ACT Legislative Assembly
 GPO Box 1020
 CANBERRA ACT 2601

Dear Chief Minister *Katy*

I write regarding the Retirement Villages Bill 2011, the private member's Bill introduced by Ms Mary Porter MLA on 16 November 2011.

The Bill will have a significant impact on industry and people buying into retirement villages. Even though this is a private member's Bill, a negative reaction from developers and managers, perhaps in the form of a pause in the development of villages, may lead to criticism of government.

I attach correspondence with Ms Porter advising that the Justice and Community Safety Directorate will be consulting with a number of stakeholders in the process of considering the Government response to the Bill.

Given the complexity of the legislation, and the low level of market knowledge about the significant changes to market practice proposed by the Bill, it is not expected to see comments back from stakeholders until February 2012 at the earliest.

[Redacted] Ms Porter has advised my Office that it is not proposed to bring the Bill on for debate until mid year. *[Redacted]*

[Redacted] amendments.

Yours sincerely

[Handwritten signature of Simon Corbell]

*agreed
 as per*

Simon Corbell MLA
 Attorney-General

2.2.12

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
 Phone (02) 6205 0000 Fax (02) 6205 0535 Email corbell@act.gov.au

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31-01-12

C191/12

Andrew Barr MLA

DEPUTY CHIEF MINISTER

TREASURER

MINISTER FOR ECONOMIC DEVELOPMENT

MINISTER FOR TOURISM, SPORT AND RECREATION

MEMBER FOR MOLONGLO

[REDACTED]

ACT Retirement Village Residents Association Inc

[REDACTED]

Dear [REDACTED]

Thank you for your email of 27 January 2012, to the Chief Minister, Katy Gallagher MLA, regarding the Retirement Villages Bill 2011. As the Chief Minister is currently on leave I am responding on her behalf.

I appreciate you taking the time to write to the ACT Government and advise that your comments have been noted. As this matter falls within the portfolio responsibilities of the Minister for Ageing, Ms Joy Burch MLA, I have referred your email to Ms Burch for her attention and consideration.

Once again, thank you for taking the time to write to the Chief Minister.

Yours sincerely

Andrew Barr MLA
Acting Chief Minister
31 JAN 2012

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0011 Fax: (02) 6205 0157 Email barr@act.gov.au

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[REDACTED]
[REDACTED]
[REDACTED]

Quinton, Peter

From: Hosking, Kim
Sent: Wednesday, 19 October 2011 4:42 PM
To: Quinton, Peter
Subject: FW: Submissions on Retirement Villages Bill 2011 (Part 1)
Attachments: ACT Legislation Submission (RVA and ACS).pdf; ACTRVBILL2010commentsMk2.pdf; ACTRVRA submission.pdf; Aged care services assoc Submission - Supplementary final.pdf; [REDACTED] submission.pdf; [REDACTED] Retirement Villages Bill - Submission - Notepad.pdf; [REDACTED] Comment - Retirement Village Proposal - [REDACTED] comments EXPOSURE DRAFT RETIREMENT VILLAGES BILL 2010.pdf; [REDACTED] to Porter 100804.pdf; file _G_Porter_DATA Retirement Village Legislation Comments - F.pdf; Gadens Lawyers 110120.pdf; [REDACTED] to Porter 100628.pdf; [REDACTED] 100920.pdf; [REDACTED] submission 100872.pdf; [REDACTED] comments.pdf; [REDACTED] submission.pdf; [REDACTED] to Porter 100804.pdf; NSA comments on Draft ACT Retirement Villages Bill.pdf; [REDACTED] s submissdion-re Draft Bill.pdf

Hey Peter

I won't block up Julie's email but do you mind letting her know you've received the submissions? A few more shortly...

Thanks!

kim

From: Simpson, Jack
Sent: Wednesday, 19 October 2011 4:40 PM
To: Hosking, Kim
Subject: Submissions on Retirement Villages Bill 2011 (Part 1)

Hi Kim

Unfortunately all the submissions won't fit in a single email. This is the first lot of submissions. I will send the rest through in another email.

Cheers

Jack Simpson | Adviser | Office of Mary Porter AM MLA
T: 02 6205 0100 | E: jack.simpson@parliament.act.gov.au

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Quinton, Peter

From: Hosking, Kim
Sent: Wednesday, 19 October 2011 4:42 PM
To: Quinton, Peter
Subject: FW: Submissions on Retirement Villages Bill 2011 (Part 2)
Attachments: REIACT submission.pdf; Retirement village consultation _Belconnen Labor Club_ 100805.pdf; Retirement village consultation _with RV operators_ 100617.pdf; Retirement Villages Bill 2011 Assurance Draft Submission Mary Porter.pdf; Retirement Villages Consultation Peak End's meeting_ 101129.pdf; Retirement Villages Consultation _with COTA ACT_ .pdf; Statement from resident of advice from lawyer re RV owner going bankrupt 100625.pdf; Summary of concerns 100628.pdf; The Grange 101001.pdf; University of the Third Age Retirement Villages Legislation consultation.pdf; Villagio submission.pdf; Mary Porter.pdf

Rest of submissions...

From: Simpson, Jack
Sent: Wednesday, 19 October 2011 4:40 PM
To: Hosking, Kim
Subject: Submissions on Retirement Villages Bill 2011 (Part 2)

Hi Kim

Here are the rest of the submissions as promised.

Let me know if you need anything further.

Cheers

Jack Simpson | Adviser | Office of Mary Porter AM MLA
T: 02 6205 0100 | E: jack.simpson@parliament.act.gov.au

July | 2010



Retirement Village Association Ltd



Aged & Community Services
Association of NSW & ACT

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

Retirement Village Association Ltd &
Aged and Community Services Association of NSW & ACT

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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 and that all other States and the Northern Territory have introduced legislation which governs retirement village living and management.

It is our view that this does not place a direct correlation for the ACT to have an Act and Regulation which does not guarantee any further certainty for residents and operators that cannot be achieved through the 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 has allowed sound management practices in the operation of retirement villages in the ACT.

The report submitted herewith deals primarily with the options available as an alternative to introducing prescriptive legislation when having consideration for other government initiatives such as Harmonisation of Retirement Village Legislation; the Productivity Commission's Report into accommodation for the aged and exploring further 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
Number of Retirement Villages	600	262	393	192	356	38	28	1	1,870
Number of Serviced Apartments	2,910	1,495	1,071	282	1,672	53	22	0	7,505
Number of Independent Living Units	33,682	21,400	14,199	13,026	21,841	1,390	1407	64	107,009
Total Number of Units	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 socioeconomics of retirement village accommodation is becoming increasingly recognized 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 recognize 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 and equitable dispute resolution process for any issues that may arise. Further to this RVA and ACS encourage 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 there are requirements for amendments to 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. By introducing prescriptive legislation does not guarantee any further certainty for operators and residents that 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 is required.

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.

ACT EXPOSURE DRAFT

RETIREMENT VILLAGES BILL 2010

Comments by [redacted] and [redacted] for the KVRA Inc. of NSW

Page No.	Part	Section & S Sect.No.	Subject	Explanation	Our Comment
4	2	6 (2)©	Facilitate participation by residents	Innovative inclusion, not in NSW Legislation	Excellent inclusion!
12	3	17	Cancelling registration and Enforcing charges	Problem for residents, if scheme operator has financial difficulties, insolvency etc.	Only partial protection at best for residents But what is possible anyway? Answer-Sell to another operator!
42	5	Div.5.1	Form and Content Public Information	Equivalent of NSW Disclosure Statement We suggest the addition as indicated, which has only just been added in NSW. It is an added protection for intending residents.	Add unsuccessful tribunal appearances or penalties suffered
44	5	Div.5.1	59 (2) & (3)	Simply a duplication of Subsection(1)	Subsections (2) & (3) duplicate (1)
69	8	Div.8.1	94	Quotations for capital improvement	Extremely concern-would let operators contract preferred providers, frequently more expensive Require definition of 'reasonable grounds'
75	8	Div.8.2	105 (2)	Quantity Surveyor	Cost should not be borne by residents
82	8	Div.8.3	118 (2)	Maint. Reserve-Quantity Surveyor	Cost can be borne by residents
84	8	Div.8.3	120 (4)	Maintenance reserve	Operator to pay deficit from his own funds

Page No.	Part	Section & S Sect.No.	Subject	Explanation	Our Comment
86	8 Div.8.4	124(3)	General Services Charge (GSC) budget	Residents should have the budget earlier than 14 days. It should be at least 30 days to allow residents to inspect, and negotiate with the operator if necessary.	14 days is insufficient time before start of financial year
87	8 Div.8.4	124 (6)	as above	While carrying forward surpluses, can be an advantage to residents, carrying forward a deficit allows the operator to become slack! He should bear it from his own funds!	Providing to carry forward deficits allows slack budgeting! (Another recent change in NSW)
89	8 Div.8.4	127 (2) (b)	GSC for former residents	Many contracts do not allow for a GSC cap! This becomes extremely onerous on beneficiaries etc. Will be strongly opposed!	Excellent provision, but operators will battle hard to revoke
92	8 Div.8.4	131(3)	Offence-increase.gsc by more than cpi	Determination of when the CPI statistic is available, should be better defined. For example, the CPI for March quarter until the last week in April!	Is quarter immediately before financial year March Quarter or June quarter?
95	8 Div.8.4	135(3)	Quotations for new services	Same explanation as in Section 94 (p.69)	Again-open to manipulation for preferred suppliers
97	8 Div.8.5	139	Offence-failure to take out bldg. Insurance	While this is a legal responsibility of the scheme operator, it could be included in the GSC, I would imagine.	Regretfully, this would be at residents' expense, would it not? By inference vide Section 140 (2) on next page
102	8 Div.8.6	148(5) (a) (b) & (c)	Classification of expenditure	This item through its omission in NSW, will be a constant source of frustration, and tribunal hearings, no doubt!	Very keen to see the model classification rules!

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Steering Committee for proposed Retirement Villages Residents Association.

The proposed Retirement Village Residents Association will be applying for Incorporation in the Australian Capital Territory.

The Aim of the proposed body will be to represent the interests of residents currently living in Retirement Villages in the ACT.

We suggest that the current Retirement Villages Industry Code of Practice does not offer a legislative framework which is easily enforceable and which offers clarity and certainty for both management and residents.

With the objective of supporting the proposed Retirement Villages Bill 2010, the proposed Association wishes to submit the following comments relating to the Exposure Draft of the Bill.

Retirement Villages Bill 2010.

Could this be re-titled as **Retirement Villages (Independent Living Units) Bill 2010.**

- Part 1 Preliminary.
Part 2 Objects and Important Concepts.
Section 6. Objects of Act.
(2) The following are also objects of this Act:

After (d) insert: as (e) to (i)

From The Retirement Villages Industry Code of Practice
Division 2 (6) General Principles:

- (e) *the freedom of decision and action of each resident must be recognised and given due consideration in the relationship between a resident and the management of a retirement village*
- (f) *the relationship of a resident with his or her family and past and present community is important and must be recognised. This recognition must take account of the cultural, religious and linguistic background of the resident*
- (g) *a resident must be treated fairly, and not be subjected to abuse or exploitation*
- (h) *a resident has the right to autonomy over his or her, personal and financial affairs, including his or her own property; and*
- (i) *management must not engage in any harsh or oppressive conduct.*

Part 3 Division 3.2 Ending registration.

Sections 16 & 17 Cancelling registration.

There is no indication in either of these sections as to how residents or former residents will receive the exit entitlements which are due to them. There is no mention of consequences for management/owners/operators if there are no funds to pay these entitlements.

AND:

Part 9 Division 9.3 Enforcing statutory charges.

Both of these Divisions relate to ending registration or closing down a retirement village or the sale of the land under a court order.

Under: Section 157 (1) (b) it is not contrary to the interests of any resident of the retirement village that the land be sold

And: Section 158 (3) (d) paying exit entitlements payable to residents if, because of a court order, the retirement village scheme stops operating or the residence contracts under the scheme end;

Exit entitlements will only be paid to residents and former residents from the sale proceeds after:

- (a) sale costs and applicants cost are paid
- (b) amounts payable under securities are paid
- (c) satisfying the original order

There are no specific details as to how residents or former residents exit entitlements will be paid, either in full or in part. Residents and former residents require these exit entitlements to pay for either, further accommodation in another retirement village, or, ongoing care in a residential aged care facility.

If there is insolvency or maladministration involved there will be little or no exit entitlement paid. Usually the ingoing contribution a resident pays when entering a retirement village is either the whole, or the greater part, of a person's available finance.

Therefore there is a very real risk of older persons being left without a home and without the finance available to buy another one. There is either no capital gain or only part capital gain to be paid in the exit entitlement. Given that a resident may have lived in the village for a number of years, market values will have increased considerably and they will be unable to pay for appropriate accommodation. There is also the distress that will be caused by the loss of their home.

Part 4 Sections 20, 21, 22 Residence contracts generally.
These sections give specific requirements for content of residence contracts. These appear to be suitable and of sufficient detail. However, the statement "Subject to Harmonisation Project with NSW and Victoria", in the ACT Retirement Villages Bill – Workshop papers, needs to be clearly explained in detail as this project is unknown.

Part 4 Section 28. Meaning of Trustee.
Agree to (a) (b) and (d). We do not agree with (c) as a Real Estate Agent could be considered to be an interested party in the development/sale/leasing of residences in a Retirement Village and the term Real Estate Agent is not included in Section 37, Definitions.

Part 4 Section 35 Unpaid amounts recoverable as debts.
What guarantee is there that residents will not lose their ingoing contribution if insolvency or criminal acts are involved?

Part 4 Section 43. Scheme operator to compensate assignor in certain circumstances.
This is an important and positive section for proposed residents.

Part 4 Section 47. Recovery of ingoing contribution as debt.
The time factor is a concern in recovering the contribution as a debt because in many cases the ingoing contribution was either all, or the major portion, of a resident's finances. This means that they could be severely disadvantaged in sourcing future living conditions or residential aged care.

Part 4 Section 48 Ending residence contracts – scheme operators
This section enables the scheme operator to evict a resident largely at the discretion of the operator, with the exception of (3) (c).

Apart from the provision of 14 days or 2 months written notice to the resident, there is no reference to the right of the resident to appeal against the operator's intention to evict.

There is a need in the legislation to set out a resident's right of appeal against eviction. The legislation should nominate an independent third party to hear any appeal.

Part 4 Section 48 (6) If the scheme operator does not know the resident's current address, the scheme operator may give the notice by publishing it in

- (a) a daily newspaper and
- (b) a newspaper circulating throughout Australia.

This part of section 48 should be omitted. Scheme operators should be obliged to have the contact details of next-of-kin, solicitors, or other suitable persons and also should be obliged to regularly update that information. Circulating a notice in a newspaper, regardless of whether this is considered sufficient for other legal matters, presupposes that everyone has a current newspaper available, wherever they may be and will read the notice.

Part 4. Section 49.
Not required, refer to comments re Section 48 (6).

Part 5. Division 5.1. Public information documents.
Sections 55 to 60 inclusive and
Division 5.2 Other matters .
Sections 61 & 62.

These sections are of great importance for residents or prospective residents and will aid the proper administration of retirement villages and give certainty to residents.

Part 6. Section 70. This makes the condition report a vital piece of information for both resident and management.

Part 6 Section 73 Appointing scheme operators as selling agents.
Need not appoint a scheme operator as a selling agent.
This is an important provision.

Part 7 Division 7.3 Exercise of powers of attorney by scheme operators.
Section 88 Offence – exercising powers of attorney,
(1) Another important provision.

Part 8 Division 8.1 Capital Improvement.
Section 93 Responsibility of former residents for capital improvement.

Refer to comments on Division 8.4 Section 127: The payment for 9 months rule could apply and ex-residents could be liable for capital improvement payments.

It must be made clear that a former resident should not be liable for any capital improvements, approved by residents, after the date on which the former resident exits the village.

Part 8 Section 94 Quotations for capital improvement.
(3) Scheme operators need not get 2 quotations.....

Two quotations should always be the minimum requirement. The scheme operator and the provider(s) of the capital improvement need to demonstrate that there is no collusion between them in the matter of costings and/or the quality of the work and the materials provided.

Part 8 Section 95 Payment of capital improvement.

- (2) The scheme operator may, as a condition of agreeing to make the capital improvement require the resident or residents to pay the cost of the improvement before the improvement is made.

The capital improvement may not be satisfactory or completed. We suggest payment of half of proposed cost is more reasonable.

Part 8 Section 97 - 98 - 99. Capital Replacement fund.

Capital replacement fund contribution, for a retirement village, means the proportion of the ingoing contribution of a new resident of the retirement village that is payable into the retirement village's capital replacement fund.

As proof of the scheme operator's accountability, residents should have written statements presented annually, which indicate the current amounts, which are being held in the retirement Village's capital replacement fund, and the annual income and expenditure related to the fund.

Part 8 Sections 103 to 107 inclusive.

These appear to be suitable protection for residents who otherwise may be required to pay for repairs.

Part 8 Section 108.

- (3) Capital replacement fund budgets.

A copy of the draft capital replacement fund budget for the financial year should be presented to all residents annually without a request being required.

Part 8 Sections 110 - 120. Maintenance reserve fund.

Maintenance reserve fund contribution means the proportion of the ingoing contribution of a new resident of a retirement village that is payable into the retirement village's maintenance reserve fund.

Part 8 Section 121. Maintenance reserve fund budgets.

- (3) A copy of the draft maintenance reserve fund budget should be presented to all residents annually, without needing a request.

Part 8 Section 124. General services charge budget.

(3) As the funds for these services charges are levied on all residents annually, the draft budget for the coming financial year should be presented to all residents 30 days prior to an annual meeting.

This would allow residents to have the opportunity, at this meeting of all residents and management representatives, to discuss and comment on the draft budget.

Part 8 Section 125. Offences - working out and paying general services charge.

- (4) & (5). Payment of GST.

up to now

Not-for-profit service providers reclaim GST and this should be returned to the General Services Charge Account.

Part 8 Section 126. Responsibility of residents for general services charge.

(1) For the period that the resident lives in the resident's accommodation unit.

This section is negated by Section 127.

Part 8. Section 127.

We regard the whole of Section 127 as a totally inappropriate requirement.

Part 8 Section 127. Working out and paying general services charge for former residents

(1) (b) a period of 90 days elapses.

In The Code of Practice See Part 4. Division 4.5 Section 46.

This section states that the scheme operator must refund the full amount of the resident's ingoing contribution to the resident within 30 days after the day the residence contract ends.

Section 127

(1) (c) requires the resident to apply to the ACAT (after a period of 90 days) for the scheme operator of the retirement village to pay the former resident's exit entitlement.

This requires time and money to be expended by the former resident, who may not have the mental or physical or financial capacity to do so.

(2) (a) as, in most cases, the resident receives a greater proportion of the ingoing contribution when exiting the village, the ex-resident will be paying a greater proportion of the services charge than the operator.

(2) (b) The 9 month period is totally inequitable. It can reasonably be assumed that a resident will be proceeding to Residential Aged Care. This requires significant payments in the form of Accommodation Bonds or Charges. Under Federal Legislation, Residential Aged Care facilities are allowed to demand these funds within short time frames and charge significant interest rates until they are paid.

Given that the Retirement Village Ingoing Contribution is usually the greater proportion of a resident's total financial resource, this would have the effect of preventing a resident from accessing Residential Aged Care. This, in effect, leaves them with nowhere to go and an erosion of their limited financial resources. The exit entitlement of the ingoing contribution will not be paid to the ex-resident until the 9 months have passed.

It also means that they are being charged double contributions for the same time period, to the Retirement Village and to a Residential Aged Care facility where they are living.

If death occurs, thus causing a resident to leave an accommodation unit, this also means that the estate of the ex-resident will not have the exit entitlement, minus the extra charges, paid for 9 months.

Therefore Section 127 should be deleted in its entirety. It appears to be an onerous and unfair imposition on former residents following their vacation of the residence. It would also be a major deterrent to new residents joining a village if they were made aware of this impost.

Note: Section 127 will also influence Part 8 Section 93 and Part 9 Section 154.

Part 8 Section 131. Offence – increasing general services charge by more than CPI.
(2) & (3).

Residents should be provided with sufficient information regarding the Services Charges, so that they can make an educated decision regarding the increase in charges by more than the CPI.

Part 8 Section 135 Quotations for new services.
(3). However, the scheme operator need not get 2 quotations ...

At least two quotations should be essential. Therefore Section 135 (3) should be deleted.

Part 8 Sections 136 & 137. Charging residents for personal services during temporary absences.

(1). This 28 day period of a charge for personal services is again a completely inequitable impost. The Home & Community Care Services, which provide personal services in homes and/or accommodation units, do not charge for the days when the services are not required. The charge ceases when the service ceases.

This also means that, following the death of a resident, the estate can be charged for personal services for the next 28 days.

Part 8 Division 8.5. Insurance.
Section 138 Insert a new subsection:
(3) The scheme operator must provide residents with details of insurance taken out for the village.
(4) Previous subsection 3.

Part 8 Division 8.6. Financial Accounts and Statements.
 Section 144. Scheme operator must keep separate accounts for
 Capital Replacement Fund and Maintenance Reserve Fund.
This is a positive provision and goes to the accountability of the scheme
operator.

Part 8 Section 145 Offences – failure to give quarterly financial
 statements.

The scheme operator for a retirement village should be required to supply
financial statements in a form that can be audited each quarter without these
statements being requested.

Quarterly statements give residents a reasonable insight into the financial
viability or otherwise of the retirement village in which they have a significant and
ongoing financial interest.

Maximum penalty: 540 penalty units.

Part 8 Section 146. Preparing annual financial statements.
Annual financial statements should be audited statements presented to all
residents and should not have to be requested.

Section 146 (a) insert: (vii) Insurance taken out and maintained in relation to
events described in Section 138 (1) where applicable.

The Annual Financial Statements should also include details of items of
expenditure and not just headings such as Repairs so that residents have
enough information to reconcile charges with what they see being done in the
village.

Prudential Statements should also be issued with the Audited Accounts so that
residents can be assured that the operator will be able to return the component
of the ingoing contribution to which they are entitled when they exit. Currently
there is no requirement for a managing body to be open and accountable in this
way.

*In The Code of Practice,
Division 2, Resident Input into Management.
Section 13. Structures for Resident Input.*

*(1) & (2), (a) & (b), state that there should be an annual meeting of residents
at which residents shall be given the opportunity to consider and agree
upon the budget for the following financial year and may discuss and
decide the matters in subclause 15 (2) of the Code, (The Village Rules).*

(2) (c) (d), (e) & (f), add very important details to this section of the Code.

Section 14. Resident Input into Budget

(1), (2), (3) & (4), add details of resident information and input.

There is no such requirement or opportunity for any consultations between management and residents in the proposed ACT Retirement Villages Bill 2010.

Part 9. Statutory charges over retirement village land.
This is an administrative section.

Part 10. Residents participation.
Section 164. Operating residents committees.

Add subsection (1) (d) Convene an Annual General Meeting of residents.

Part 10. Section 168. Retirement villages without residents committees.
(2) A meeting must be held in or near the retirement village.
This is important for small villages with no communal facilities.

Part 10. Section 170. Ordinary resolutions.
Section 171. Special resolutions
Section 172. Who may vote.

Delete section 172. (1)

(a) If the residents have, by special resolution, agreed that each resident of the retirement village should be entitled to vote - each resident of the retirement village.

Entitlement to vote, even on special resolutions, should be restricted to one vote per unit. This is important so as to ensure that units with single residents are not disadvantaged by units with multiple residents.

Part 10. Sections 173 and 174. Proxy and Postal Votes.
Very important sections as residents may be ill or unable to attend meetings.

Part 10. Section 176. Quorum at meetings.
Suggest that (1) (a) the Standard quorum of 1/2 of the accommodation units is too great and (2) Two or more people present who are entitled to vote are too few as they may not properly reflect the view of the majority of residents.

Part 10. Insert Section 179. Agendas and Minutes.

- (1) Prior to any meeting, whether proposed by the operator, resident or Residents Committee, a written agenda should be provided at least 3 days prior to the meeting. It should be itemised and include General Business.**
- (2) Minutes of all meetings should be provided where appropriate and within a suitable time frame.**

Part 10. Insert Section 180. Village rules.

- (1) A retirement Village shall have a set of village rules.**
- (2) Residents must have input into and agree to the content of village rules and any subsequent amendment of or addition to the village rules.**
- (3) The village rules must accord with the objects and important concepts stated in Section 6 and with the rights and obligations provided for under the Act.**

The Steering Committee of the Australian Capital Territory Retirement Villages Residents Association, (ACT RVRA).

September 2010



Aged & Community Services
Association of NSW & ACT
Incorporated

Retirement Villages Bill 2010 (ACT):
Exposure Draft
Submission to Mary Porter - Supplementary#

Retirement Village Association Ltd &
Aged & Community Services Association of NSW & ACT Inc.

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The RVA and ACS would like to once again thank you for the opportunity to provide a submission in relation to the Retirement Villages Bill 2010 (ACT): Exposure Draft. We agree with your commitment for an outcome which will offer certainty to both operators and residents in terms of their respective responsibilities.

This submission is supplementary to the initial submission dated July 2010 which was emailed to you on 10 August 2010. While we continue in our position put forward in our July submission, this report deals primarily with those clauses in the Exposure Draft which are of primary concern to us. We support provisions that work for the ongoing viability and growth of the industry and in particular the impact the industry has on the overall ACT economy.

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. We note this is reflected in Section 6 of the Exposure Draft and we fully support the objectives outlined in Section 6.

Item	Section	Issue / Recommendation
1.	S7 Meaning of retirement village	<p>Issue:</p> <p>There is no age definition only "older members of the community" whereas Section 57 (b) allows for the "age limits" of residents to be specified in the public information document.</p> <p>It is argued that the above definition is too vague and the flexibility for each village to set their own age limits means that there will be no consistency across the industry, creating confusion when prospective residents are researching their options for retirement living.</p> <p>The "age limits" also implies that there could be an upper limit stipulated by an operator.</p> <p>Recommendation:</p> <p>Use the same definition used in Section 5 of the Retirement Villages Act 1999 (NSW)</p>
2.	S11 Meaning of scheme operator	<p>Issue:</p> <p>This section does not make it clear that a scheme operator can be an organisation or business.</p> <p>Recommendation:</p> <p>State that a scheme operator can be an organisation or a business.</p>
3.	S12(1) Registration of retirement village scheme	<p>Issue:</p> <p>The section states that a person <i>may</i> apply to register a scheme ie it is not compulsory. Yet later in the Draft, it states that it is an offence to enter into residence contracts if a scheme is not registered (section 24 and 85).</p> <p>Recommendation:</p> <p>Reword this section to read that if a person is to operate a retirement village, a person must first register a retirement village scheme.</p>

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4.	S12(3) Registration of retirement village scheme	<p>Issue:</p> <p>It is uncertain as to what impact the requirement to register the retirement village scheme will have on operators. What are the costs involved? How often is renewal of registration required?</p> <p>The required information to be supplied is overly prescriptive. Does this mean that a scheme must be re-registered for example every time there are changes to terms offered under contracts or communal facilities?</p> <p>Recommendations:</p> <p>Restrict information required to items which won't change over time.</p> <p>Provide details of costs involved.</p> <p>Perusal of Section 24A of Retirement Villages Act 1999 (NSW) may also assist.</p>
5.	S26(1)(b) Offence—failure to give copies of residence contracts to other parties	<p>Issue:</p> <p>"As soon as practicable" is not specific enough.</p> <p>Recommendation:</p> <p>Provide a specific timeframe of 10 working days.</p>
6.	S34(c) Offence—failure to repay amounts after residence contracts rescinded	<p>Issue:</p> <p>"Immediately" is not specific enough.</p> <p>Recommendation:</p> <p>Provide a specific timeframe, say 7 days.</p>
7.	S36 Cooling off period	<p>Issue:</p> <p>We support the changes regarding the cooling off period. However, there is no provision in the event that retirement units are sold off the plan.</p> <p>Recommendation:</p> <p>Also apply the cooling off period to a Deed of Agreement.</p>
8.	S34 and S36 Trustee must repay amount if contract rescinded during cooling-off period	<p>Issue:</p> <p>If the contract is rescinded during the cooling-off period, the operator receives no financial compensation. The Draft cooling-off period is 21 days which is too long. The NSW legislation provides for 7 business days.</p> <p>Recommendations:</p> <p>Reduce the cooling-off period to 7 business days.</p> <p>Add "the cooling-off period is waived if the resident commences to live in the residential premises".</p>

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<p>9.</p>	<p>S46 Ingoing contribution -operator must refund full amount within 30 days after contract ends</p>	<p>Issue:</p> <p>We do not support the timing of the refund of the ingoing contribution within 30 days. This would be more onerous for operators, result in serious cash-flow issues for operators and would seriously affect the industry. This is not required in any other jurisdiction.</p> <p>We fail to understand that there is a buy-back clause at all. No other property asset exists whereby the vendor is guaranteed payment before the asset is sold. Why should the operator take all the risk in the transaction?</p> <p>In the directory a reference is made to "own". If the resident would "own" the retirement unit, then surely this clause should not apply but the sales process and obligation to pay the general services charges until the unit is sold should be handled similar to ordinary real estate sales.</p> <p>In the event there would be a buy-back clause this could prove onerous to the operator. Operators may be required additional equity to be contributed upfront to allow facilities to be maintained within proposed LVR ratios.</p> <p>Additionally we fear that it may delay projects moving to the next stage as bank covenants may be breached (i.e. no more than say 6 vacant ILU's prior to moving to the next stage however with the buyback clause this may then mean that the covenant is not met, - becomes 7 vacant ILU's) and as such this cannot be beneficial for the existing residents either.</p> <p>The proposed amendment takes no account of prevailing market conditions. An older village will be more dated than newer competitive offerings. The operator may have to spend additional capital making the ILUs somewhat more comparable to new alternative stock. The possibly dated/out-dated nature of the older village entices more residents to depart, as they see the re-sale of vacant units not occurring, so an oversupply begins to develop, potentially impacting the lifestyle of residual residents, as general services fee income reduces in line with vacancies. Such a scenario does not even need to be reflective of stock obsolescence. Look at the situation over the past two years, where residential property sales slowed markedly, thereby restricted the ability of potential residents to sell their own properties in order to fund the purchase of an ILU in a retirement village.</p>
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		<p>If the vendor of the ILU can still exit the village without being impacted by prevailing market conditions, it establishes a scenario where fair trading is not occurring ie. there may not be a willing buyer for a willing seller. If enough residents were to vacate, immune from the realities of the prevailing market, this could not but have a detrimental impact on the resultant "present value" of all other residents dwellings, and therefore their piece of mind, which is of paramount importance in a village scenario.</p> <p>We believe that for a contract to be valid in law, we understand it can't place one of the parties at a significant disadvantage to the other, or it is considered unconscionable. We believe that a situation where the purchaser of an ILU gets their money back within 30 days of the end of their contract, regardless of the fact that the property hasn't sold and value hasn't been established, is an unfair and unequal agreement. On the basis of this amendment as proposed, financiers may be reluctant to advance money to older villages which may be most in need of refurbishment, as they run the risk of being left with an oversupply of old stock. This would be counter productive to an overriding industry rationale of providing an ongoing lifestyle proposition in a secure environment. The need to update older stock benefits all residents in a village via enhancing the value of the individual ILUs and the village offering, expanding its appeal to new residents. The inherent value in the service offering that the resident bought into, resides in the goodwill made manifest via an occupied village that is a desirable place to live.</p> <p>Recommendation:</p> <p>Provide for the refund, less fees, to be due within 30 days after the unit, or the right to reside in the unit, is sold.</p>
10.	S56 Definitions - ACAT	<p>Issue:</p> <p>This is the first reference to the ACT Civil and Administrative Tribunal (ACAT). Using the Acronym ACAT is very confusing as ACAT referring to the Aged Care Assessment Team throughout Australia is known by this acronym to both providers and residents.</p> <p>Recommendation:</p> <p>Include a definition of ACAT.</p>
11.	S69(2) and S69(3) Condition reports	<p>Issue:</p> <p>By waiting for up to 2 weeks after occupation for the resident to complete the condition report provides an environment for potential dispute</p> <p>Recommendation:</p> <p>Set condition reports to be completed by the operator and resident prior to occupation.</p>

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12.	S72 and S73 Resident may set the sale price of the unit and appoint a selling agent	<p>Issue: We do not see the need for scheme operators to be licensed agents as we are selling our "own" real estate.</p> <p>Recommendation: Remove the provision for the need for a selling agent.</p> <p>Issue: We do not support the option for residents setting the sale price.</p> <p>Recommendation: Set the sale price to be agreed by both the resident and the operator as the result affects both. If no agreement can be reached on the sale price, the parties are to go to a registered valuer who will set the price.</p>
13.	S78(2) Definition of long term resident	<p>Issue: There needs to be clear distinction between owner and non-owner arrangements throughout the Draft. Of particular conflict is the definition of <i>long term resident</i>. The definition of 'own' in the dictionary in the Draft refers to the person who has a leasehold interest. Yet S78(2) defines a long term resident as a person who does not own an accommodation unit but whose contract is in the form of a long term lease. The confusion follows through in S71, S72 and S73.</p> <p>Recommendation: Correct S78(2) definition of <i>long term resident</i> to clear up the conflict. Review and revise the Exposure Draft to make a clear distinction for owner and non-owner arrangements as applicable.</p>
14.	S99(2) Capital replacement fund	<p>Issue: It is misleading to say "the scheme operator is solely responsible for contributing to the capital replacement fund" when Section 97 states that contributions come from new resident ingoing contributions. In the case of the maintenance reserve fund, Section 110 and 112(2) similarly describes how residents are solely responsible for contributing to this fund.</p> <p>Recommendation: In S99(2), replace "scheme operator" with "residents of the retirement village".</p>
15.	S103(1)(c) Tax on amounts paid	<p>Issue: Drafting error.</p> <p>Recommendation: This should read "under section 101(1)(d)" referring to tax on interest.</p>
16.	S105 & S118 Capital replacement reserve and maintenance reserve reports	<p>Issue: To engage a quantity surveyor may represent a high relative cost burden for small villages (annual total recurrent charges not exceeding \$50,000).</p> <p>Recommendation: For small villages (annual total recurrent charges not exceeding \$50,000) allow "or other qualified personnel" in S105(2)(a) and S118(2)(a) by resident consent</p>

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17.	S110 Meaning of maintenance reserve fund contribution	<p>Issue:</p> <p>The definition that contributions to the fund are from a proportion of ingoing contributions may be incorrect. We believe that the intention is that contributions to the fund are made by residents out of general service charges.</p> <p>Recommendation:</p> <p>Change the definition to indicate that contributions to the fund are made by residents out of general service charges.</p>
18.	S124 General services charge budget	<p>Issue:</p> <p>Dealing with what to do with any deficit or surplus should be left to the residents and management. Carrying forward surpluses could have serious consequences in years to come.</p> <p>Recommendation:</p> <p>Allow for resident consent on what to do with surpluses including options to carry forward or put them into the maintenance reserve fund.</p>
19.	S127 Working out and paying general services charges	<p>Issue:</p> <p>If a resident is deemed an owner, then we believe that they should remain liable for the general services charges until the unit is sold.</p> <p>Recommendation:</p> <p>Add a sub-section which deals with residents who are owners of units stating that they are liable for general services charges until the unit is sold. Section 152 of the Retirement Villages Act 1999 (NSW) provides a good model.</p>
20.	S130 Scheme operators paying general services charge	<p>Issue:</p> <p>The impact of this section would mean that there is a potential shortfall to the general services operating budget.</p> <p>Recommendation:</p> <p>Any general services charges to be paid by the operator should be paid into the general services operating account and not the maintenance reserve fund.</p>
21.	S131 Increasing general services charge by more than CPI	<p>Issue:</p> <p>There is no provision to allow variation to general services charges to be based on a fixed formula such as the pension rates. The NSW legislation allows three options - variation by fixed formula, up to CPI variation with resident consent not required, above CPI which requires resident consent.</p> <p>Recommendation:</p> <p>To streamline the process for operators and provide greater certainty for residents, adopt the NSW Retirement Villages Act 1999 Part 7 Division 4 for recurrent charges.</p>

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22.	S131(3) CPI percentage increase - definition	<p>Issue:</p> <p>The CPI percentage increase definition will need to change as the timing doesn't fit in with the timing of the budget preparation and presentation.</p> <p>Recommendation:</p> <p>Define CPI published dates early enough to fit the timing of the budget preparation and presentation.</p> <p>Issue:</p> <p>CPI percentage increase is defined as the movement of CPI from only one quarter to another which is not adequate.</p> <p>Recommendation:</p> <p>Define CPI percentage increase to be the movement of CPI from the end of a quarter from one 12-month period to another.</p>
23.	S145 Quarterly financial statement	<p>Issue:</p> <p>This is a high relative cost burden for small villages. The NSW retirement villages legislation allows small villages (annual total recurrent charges not exceeding \$50,000), if residents agree to not provide quarterly accounts.</p> <p>Recommendation:</p> <p>Adapt Section 119B from the NSW Retirement Villages Act 1999 for inclusion in the Draft.</p>
24.	S146 Have annual financial statement audited	<p>Issue:</p> <p>This is a high relative cost burden for small villages. The NSW retirement villages legislation allows small villages (annual total recurrent charges not exceeding \$50,000), if residents agree to not have the annual accounts audited.</p> <p>Recommendation:</p> <p>Adapt Section 119A from the NSW Retirement Villages Act 1999 for inclusion in the Draft.</p>
25.	S146(b) Have annual financial statement audited	<p>Issue:</p> <p>There needs to be clarification of what audit means.</p> <p>Recommendation:</p> <p>Adopt the NSW legislation description ie that the accounts for the village are audited annually by a person qualified to audit accounts for the purposes of the <i>Corporations Act 2001</i> of the Commonwealth S118(1).</p>
26.	S147(1) Copy of the annual financial statement to Chief Executive	<p>Issue:</p> <p>Giving a copy of the annual financial statement to the Chief Executive (of the public sector administrative unit, per Legislation Act 2001 S163) is unnecessary. The Exposure Draft does not refer to any financial oversight role by the Chief Executive.</p> <p>Recommendation:</p> <p>Remove section 147 (1).</p>

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27.	S149 Statutory charge	<p>Issue:</p> <p>This is not clearly described.</p> <p>Recommendation:</p> <p>Clearly describe the implications are on operations or valuations.</p>
28.	S151(1)(5) Statutory charges - exemptions	<p>Issue:</p> <p>The sections state that the chief executive can decide that a statutory charge should not apply because of specified circumstances. We believe that organisations that are religious, charitable or community purposes ie those with not-for-profit status should be automatically exempt.</p> <p>Recommendation:</p> <p>Reword section 151(5) to make not-for-profit status organisations automatically exempt from statutory charges.</p>
29.	S163 to S178 Resident committees and resident meetings	<p>Issue:</p> <p>These sections are too prescriptive and require clarification.</p> <p>There is no clear distinction between the formation and operation of the resident committee and that of the meetings of the residents. For example, 163(1) provides for the election of a residents committee. Yet S169 to S172 refer to meeting of the residents. For example, resolutions according to S171 and S172 are made by "a meeting of the residents" – ie what is the role of the residents committee?</p> <p>Recommendation:</p> <p>Review references to residents committees and meeting of residents throughout the Exposure Draft. Rework them into a coherent and cohesive use of these terms. The current Code provides a simple and streamlined approach.</p>
30.	S164 to S178 The operation of residents committees	<p>Issue:</p> <p>We support the establishment and operation of a residents committee.</p> <p>However, resident decisions can "take effect" on matters including S164(1)(c)(ii) "any other matter affecting the management or operation of the retirement village" without operator consent. This level of management control by residents is not workable.</p> <p>Recommendation:</p> <p>Add Section 74(2) from the NSW Retirement Villages Act 1999 – "A vote of the residents on a matter referred to in subsection [(1)(c)(ii)] does not bind the operator of the village".</p>
31.	S168(1)(b)(ii) Retirement villages without residents committees – formula for number of residents	<p>Issue:</p> <p>The formula for determining the number of residents that may give a written request to the operator for a meeting has a drafting error.</p> <p>Recommendation:</p> <p>Before the term "a majority of the occupied units" insert "residents from".</p>

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32.	S171 Special resolutions	<p>Issue:</p> <p>The description of how to calculate the number of votes to pass a special resolution is unnecessarily complex.</p> <p>Recommendation:</p> <p>Adopt the wording of Schedule 1 Part 3 Number 6 of the NSW <i>Retirement Villages Act 1999</i> "A special resolution is carried only if it is passed by at least [two-thirds] of the number of residents who participate in the ballot".</p>
33.	S175 Offences - postal votes	<p>Issue:</p> <p>The process for managing postal votes is overly prescriptive and comes with penalty points for getting any one of the very specific requirements wrong.</p> <p>Recommendation:</p> <p>Adopt Schedule 7 Provisions relating to consent of residents (3 Postal votes) of the NSW <i>Retirement Villages Regulation 2009</i>.</p>
34.	S176 to S178 Quorums and meetings adjourned	<p>Issue:</p> <p>The process for determining quorums and meetings adjourned is overly prescriptive and complex. NSW has quorum provisions for only special resolutions.</p> <p>Recommendation:</p> <p>Apply quorum requirements to special resolutions only and not ordinary resolutions and simplify these provisions. Consider using Schedule 7 Provisions relating to consent of residents (4 Quorum required for special resolution) from the NSW <i>Retirement Villages Regulation 2009</i>.</p>
35.	S182 Dispute resolution – referral to mediation	<p>Issue:</p> <p>It appears that the Dispute Resolution mechanism from the Code of Practice has disappeared. This mechanism included a Disputes Resolution Committee, and does not involve ACAT or the ORS until a later stage in the process. It avoids early applications to ACAT.</p> <p>Recommendation:</p> <p>Adopt an interim step for dispute resolution between tier one – the resident and operator meets to discuss, and tier two – application to ACAT.</p> <p>The Code Administration Committee made up of representatives from residents and operators and chaired by a representative of the ORS, seems a cost effective alternative to dealing with disputes, keeping the costs to residents, operators and government to a minimum.</p>

Disclaimer

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[REDACTED]

26 August 2010

Ms Mary Porter AM MLA
Member for Ginninderra
GPO Box 1020
CANBERRA ACT 2605

Dear Mary

Retirement Villages Bill 2010

Herewith the response of the Townhouse residents of St Andrew's Village to the Exposure Draft of your Retirement Villages Bill. It has been prepared following our study of the Draft, with the discussions held at the Hughes Community Centre on 2 August 2010 also taken into consideration. Before making some detailed comments, we would like to express our appreciation to you and your staff for the considerable time and effort put into producing the document, including the wide-ranging discussions held to obtain the views of those associated in one way or another with Retirement Villages. We further appreciate that it will be impossible to accommodate in the final Bill all the suggestions and views put forward.

Many of the measures proposed in the Act accord with the present practice in St Andrew's Village, with residents encouraged to participate in the management of the Village through the establishment of a Residents' Committee [Division 10.1]. However, we suggest that you might consider the following changes:-

(i) Title of the Bill

The present title is misleading. It suggests that the Bill covers all residents of Retirement Villages, a conclusion confirmed by both the attendance and some of the questions and comments at the above Hughes Community Centre meeting. A more appropriate title would be **Retirement Villages Bill 2010 (Independent Living)**.

(ii) Length and Form of Exposure Draft

We found the Draft very lengthy and not always easy to interpret. Our experience of **Acts of Parliament** is one of relatively short and self-contained documents, with all relevant definitions included. They are usually accompanied by longer **Regulations** developed to interpret and implement the Acts. This arrangement allows changes to be made in the Regulations without the need to go through Parliament, a process required to change the Act. May we suggest the above practice (namely an Act with accompanying Regulations) be adopted for the **Retirement Villages Bill**, and that the legislation be as user-friendly as possible.

(iii) Prescription

Parts of the Exposure Draft appear excessively prescriptive. This is typified, for example, by the way that the question of a quorum at meetings is considered [Sections 176, 177 and 178]. Whilst Townhouse residents at St Andrew's Village have never faced the difficulty of achieving the quorum proposed in the Exposure Draft, it was clear from comments made at the 2 August meeting that some other Retirement Villages have. May we suggest that the responsibility for determining a quorum, and how and when to deal with the consequences of a reduced quorum, be devolved to residents of individual Retirement Villages.

(iv) Information and Accountability

We particularly applaud the need for full information to be supplied both before any residential contract is signed and for people in residence. The provision of annual financial statements and quarterly budget information to residents [Division 8.6] is an essential element in achieving both accountability and transparency.

(v) Safeguards for residents

There are insufficient safeguards in the Draft to ensure the appropriate rehousing of residents of any Retirement Village that, for whatever reason, ceases to exist [sub-clause 17 (2) iii]. This uncertainty is a particular worry for many residents. Per

(vi) Mediation

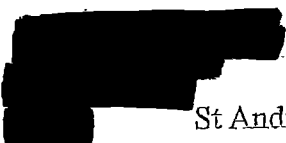
The Bill should emphasise the need for any dispute between operators and residents to be resolved if at all possible within the Village before resorting to external mediation, with the involvement of ACAT being the last resort [Division 11.2]. (*Information provided at the meeting on 2 August indicated that this requirement may have been included in a section inadvertently left out of the Exposure Draft*).

(vii) Membership of the Governing Body

We feel that it is important for the Governing Body to hear the views of residents directly, especially on matters affecting them. We strongly believe that at least one resident [of the Village as a whole] should be a member of this Body, a principle accepted by St Andrew's Village Board. No such proposition is contained in the Exposure Draft and we urge you to remedy this.

We hope that the above comments are helpful to you.

Kind regards



St Andrew's Townhouse Residents' Committee




**Retirement Villages Bill 2010
Exposure Draft**

Personal Submission

1. Retirement Homes need to be required to give residents ongoing tenure despite their need from time to time to undertake modernisation / redevelopment.

About 8 years ago a good friend of mine bought an independent-living retirement unit at a retirement home which includes a hostel and nursing facility in Canberra. This facility was built using funds raised and donated by the community (and supplemented by payments from the government and residents) to provide accommodation for older people of lesser financial means. Soon after, the Board of Management was taken over by people who set about to upgrade and increase occupancy by providing flash facilities for retiring baby-boomers. The existing residents were told that, as the new units were progressively built and their older ones had to be demolished, they could either pay the extra hundreds of thousands of dollars for the new units or sell their units to the management and leave. My friend was so shattered by the loss of her security (there was no way she could buy a new unit) that she became extremely depressed. She got a lawyer to write to management, but the facility's CEO responded by meeting my friend alone and making an arrangement to buy her out. I believe she was grossly underpaid for her unit, as there was no longer a real market. Due to her depression she was unwilling to fight, bought a demountable unit interstate and then, on the edge of crisis, went into hospital care back in the ACT.

The social worker at the hospital found her a unit she could just afford in a church-run retirement village with right-of-entry to an attached nursing home in the ACT. She asked the right questions when buying and was told that although they were to fully redevelop the facility, all existing residents would be accommodated during redevelopment and rehoused in the new units at no additional cost. This assurance was repeated to all residents at a meeting to view the plans for redevelopment. They were also assured of having a guaranteed place in the hostel and nursing home facilities if and when they reached the point of requiring this.

There has been some management turnover, and 6 weeks ago the residents were told that they would be given 12 months notice "to make alternative arrangements" before their units are demolished and replaced by much more expensive ones. Upon leaving they would be refunded the amount they paid, years earlier, to enter. This will be far too little to buy ANY alternative accommodation, but too much for them to be eligible for public housing. They would have to spend their refund on rent until they met public housing criteria, then apply for public housing and hope their money lasted a couple of years until a place became available.

Despite having done everything right in terms of saving for retirement, buying into a suitable retirement facility, and asking the right questions, these residents faced being

discarded by aged care organisations casting off their existing lower-income residents in their quest to attract larger numbers of better-heeled residents.

The residents were appalled. When they confronted the spokesperson for the retirement village with the undertakings they had been given, they were told "Those were made by a previous Manager who wasn't entitled to say that" and "A new national manager is being appointed. I will wait until he is in his position and can give a definitive response. I will report back to you in 6 weeks".

It was a period of extreme stress and anxiety for the residents. One resident was seen walking through Civic in tears on several different days. My friend, despite already being on sleep-causing anti-depressants, found sleeping harder and harder to get as the announcement day approached. I contacted management to alert them to the terrible strain the residents were under. However, nothing was done to shorten the wait or re-assure residents.

Thankfully the organisation decided to largely honour the undertakings its staff had given to residents. Despite this, they all have to be relocated before the redevelopment and none will be rehoused in the new complex. The organisation will pay to relocate them in other retirement villages. Now my friend is torn as to what to seek. Whatever she chooses will require waiting for a vacancy to arise. It is very difficult (expensive and arduous) at her age to travel to check out the options, most of which are interstate. What if she dislikes what she chooses?

She says, "I was very happy where I am. My choice is to stay right where I am in my humble old unit. But I don't have that choice."

She also has her companion, a deaf cat to consider. She had to get special permission to bring her cat when she moved in. She will have to apply for this wherever she goes. What if they won't let her and she has to choose between having her cat killed or hoping another place where she can have her cat will come up?

There is a need for renewal of and new investment in aged care facilities, but at this stage of life existing residents no longer have the financial, physical or psychological capacity to deal with finding another home.

The draft legislation needs to place on registered proprietors of retirement villages a clear obligation to provide suitable accommodation for existing residents if they decide to rebuild a facility.

Section 17 allows an operator to just toss in the towel and give residents a couple of months' notice. In fact, the only time reference is at s17 (iv), allowing residents 60 days to object. No other details of how such an objection will be handled, or the timeframe residents have to find alternative accommodation is defined. Operating a retirement village needs to be a long-term commitment because it involves providing care for people who have limited capacity to find an alternative. This part of the legislation needs to define

minimum protections for residents (and the ACT Government, which may have to respond to the consequences) if operators decide to give residents notice.

The legislation needs to define how matters unanticipated by residents will be handled. Allowing individual appeal requires the aged and infirm to act individually. The Act should set the standards all retirement villages should satisfy in their contracts with residents. For example, what rights of tenure residents have; how they will be looked after in the event of redevelopment, change of management ownership, or closure; what happens if, due to management decisions, there is no real market for residents to sell their unit; a minimum period from management notifying residents of a decision to redevelop/sell/close/etc and when residents have to relocate; how residents' money is held and released in such circumstances; etc. **Section 48** does not apply to this type of notice.

2. Pets.

Companion animals are very important to many elderly people. The strict rules of many retirement villages impose a cruel decision on both prospective residents and animals. The decision a prospective resident has to take to kill or abandon their pet in order to accept a rare place in a retirement village can precipitate depression that continues until their own death. The anxiety when facing a retirement village meeting decision about whether to allow a pet is similarly stressful.

Retirement villages should be required or encouraged to be designed to enable certain companion animals to be permissible. Then people can plan to have an appropriate companion animal by the time they are needing a place in a retirement village.

This should be encouraged by the government giving dispensations to those retirement villages that are designed to accommodate appropriate companion animals.

I'm certain the RSPCA could provide advice on how this could best be achieved.

3. Miscellaneous Comments

s26 (1) (b) (ii) & (iii)

Surely the public information document and unsigned ancillary contract should be provided PRIOR to entering into a contract, so people can see what they are signing up to. I have heard of strata title companies having two versions of this documentation so people don't realise that what they signed up to differs from what they THOUGHT they were signing up to (and even what they got their solicitor to check).

s35

Residents of retirement villages are the last people to be able to pursue payers in order to recover debts. The crown penalty in 33 and 34 should be higher as a disincentive.

s61

Why does a resident have to wait at least 7 days to see a requested document? This would be a huge chunk of 14 days' notice to vacate if a relevant document was held by management.

s70

There needs to be an exception stated where units are coming up for demolition or interior refurbishment, as it would be ridiculous for occupants to pay to make good a unit only for it to be flattened, when they are already facing eviction.

s73-4 and 190 (4)

These need to anticipate the eventual circumstance that there will be no market when the place is being closed or redeveloped.

s75

21 days after SALE is a long delay for the operator to tell a resident the contract is void. A prospective resident is likely to have incurred packing, removal, utility and considerable other charges. The sale of their previous property is likely to have been signed and they may have moved into the retirement village. This needs much more detailed consideration.

sS215 (2) (c) and (4)

Management needs to be required to provide and retain **all previous versions** as well as the current one in the Register, as many residents will have entered under terms described in the earlier versions, which may need to be verified. Records should be kept for at least 35 years, as many residents may survive that long in a retirement village.

Happy to discuss.


m 

*sensitive
person
info*

[REDACTED] Comment - Retirement Village Proposal

From: website@maryporter.net
Sent: Monday, 9 August 2010 8:11 PM
To: site.submissions@maryporter.net
Subject: Form submission from: Invitation To Comment - Retirement Village Proposal

Submitted on Aug 9 2010 - 20:10
Submitted by anonymous user: [203.129.36.115]

Submitted values are:
hidden_email from: website@maryporter.net
Your name: [REDACTED]
Your email address: [REDACTED]
Your phone: [REDACTED]
Your comment or submission:

Energy efficient RVs
My interest is in the Energy efficiency of Independent Living villas in Retirement Villages. There is nothing in the legislation about attempting to make RVs environmentally friendly and more energy efficient. There is a need to educate developers of RVs on building energy efficient RVs.

With the exception of Calvary and to a lesser extent, Kangara, there seems to be little attempt to orientate the units correctly to gain free energy from the sun in winter and to ensure that the solar energy is kept out during the summer. I raised this issue at the [REDACTED] public meeting a few years ago and was told "the village was designed by a Melbourne architect and met EER requirements". Meeting EER5 does not mean it is energy efficient, it simply means it is less energy efficient than an EER3 unit. I was appalled when [REDACTED] was finished to find that the independent villas faced every which way, with some facing south and they would be very depressingly dark to live in. I was hoping that the latest [REDACTED] development would be an improvement but in fact it is actually worse. [REDACTED] a retired architect, was at the [REDACTED] meeting today and has in the past taken land development plans in Gungharin and shown how more houses could be placed on the available land with all of the houses correctly orientated. There ought to be more attempt to use such design talent. The Commonwealth Government's own website at: <http://www.yourhome.gov.au/technical/fs41.html> provides all the information about building an energy efficient home - if only builders would follow these guidelines we would all be cutting our carbon footprint without spending any extra dollars in the process. It is even more important to ensure that retirement villas are energy efficient because (a) a sunny, light and warm house is nice to live in; (b) retirees don't have that much money to waste on energy bills; (c) global warming will inevitably lead to increase in temperatures and need for air-conditioning. Last summer, in Melbourne's heat wave there were an estimated extra 300 elderly people who died from heat stress in old houses with no air conditioning - this should not happen in 2010.

Capital gains

There is a lot of difference between RVs. Some you pay a large amount for a villa or apartment and if you live there for 10-15 yrs you or your estate gets no more, and in some cases less, than the original purchase price. All the gains go to the developers and none go to your estate. I find this unacceptable. In most cases the developers get the land at a discount price because they are providing housing for retirees. The villas and units should not cost much more than an ordinary house - there would be extras for grab handles, wheelchair access, help alarms etc but these would not add dramatically to the cost. The retirement villa/apartment should then be treated in a similar manner to a normal homeowner - the developer should not be taking a large amount of the capital gain. They are simply taking advantage of the elderly who are not in a position to go further afield or hope there are more honest developers in the market.

[REDACTED]
9 Aug 2010

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From: Gadens Lawyers E-Update [mailto:GLawyersE-Update@nsw.gadens.com.au]
Sent: Wednesday, 8 September 2010 3:57 PM
Subject: gadens lawyers aged care and retirement villages update - september 2010



gadens lawyers

september 2010

aged care & retirement villages update in this issue

Exposure Draft of the ACT Retirement Villages Bill 2010

By [redacted] and [redacted] of Gadens Lawyers, Sydney

On 5 May 2010, Labor MP Mary Porter tabled an exposure draft of the proposed Retirement Villages Bill 2010 for the Australian Capital Territory.

The Bill is open for consultation until 22 September 2010, after which time a revised version of the Bill is intended to be tabled - sometime after the February 2011 parliamentary sittings. [read more...](#)

contact us

For more information, please contact:

Sydney



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Exposure Draft of the ACT Retirement Villages Bill 2010

By [redacted] and [redacted] of Gadens Lawyers, Sydney

On 5 May 2010, Labor MP Mary Porter tabled an exposure draft of the proposed Retirement Villages Bill 2010 for the Australian Capital Territory.

The Bill is open for consultation until 22 September 2010, after which time a revised version of the Bill is intended to be tabled - sometime after the February 2011 parliamentary sittings.

The Bill heavily borrows from the language and concepts of other jurisdictions especially Queensland. However, Queensland's retirement village industry is significantly more mature and larger than the ACT's. There are more than 250 registered retirement village schemes in Queensland as compared to the ACT's 28 retirement villages, and it must be asked whether such a comprehensive regime, which suits an industry the size of Queensland's, is suitable for the much smaller ACT.

• The Bill seeks to introduce a 'one size fits all' approach, which in the circumstances could be said to give rise to an unnecessary, excessive, even stifling, 'over regulation' of the industry in the ACT.

• Some key proposals in the Bill which can be criticised as being 'over regulation' are:

- forcing operators to 'buy back' residents' premises within 30 days of the resident leaving
- the requirement for a Public Information Document as prescribed
- the extension of the 'cooling off' period to 21 days
- requiring the operator to share liability for recurrent charges for general services with a former resident 90 days after they vacate
- limiting increases in recurrent charges for general services to changes in the Consumer Price Index unless residents have passed a special resolution for a larger increase
- the introduction of the statutory charge on all retirement village land in the ACT
- the introduction of detailed rules for the conduct of residents' committee meetings
- introducing a prescribed method for resolving retirement village disputes.

Any submissions from operators and other stakeholders on the proposed Bill are due by 22 September 2010. Any operators who would like a copy the proposed Bill and Consultation Outline or who need assistance with preparing submissions to MP Mary Porter on the Bill, please contact us using the details above.

Forcing operators to 'buy back' premises within 30 days

Section 46 of the proposed Bill requires operators to 'buy back' residents' premises by refunding their ingoing contribution within 30 days. It applies where a resident terminates their residence contract by giving the operator one month's notice. Forced 'buy backs' are not uncommon and exist in other jurisdictions. For example, in New South Wales, an operator must refund ingoing contributions paid by residents who are 'non registered interest holders' within six months. However, the 30 day 'buy back' requirements in section 46 of the proposed Bill are more onerous for operators and are unmatched in any other state or territory.

Such a requirement is likely to cause increased pressure on operators' cashflows. Financiers to the ACT retirement village industry are also likely to have difficulty working with such strict 'buy back' obligations.

The Public Information Document

The Bill says that operators must provide prospective residents with a Public Information Document (PID) which is borrowed directly from Queensland's PID. The content of the

PID is prescribed in the Bill and the Bill adopts similar terms to those used in section 74 of the *Retirement Villages Act 1999* (QLD).

When complete with all of the information an operator is required to incorporate in it, the PID will be close to 30 pages long and contain a large amount of generic and general information. Prospective residents are likely to be given this information numerous times if they make enquiries at more than one village. Anecdotal evidence in Queensland is that prospective residents are put off reading the whole PID when deciding whether to move into a particular retirement village.

A PID is said to be necessary in the ACT to address concerns that existing information about retirement villages provided by operators is 'excessive and difficult to understand'. One should question the usefulness of a document as large as the PID if the policy intention is to make information about retirement villages more accessible and understandable for prospective residents.

Extending the 'cooling off' period to 21 days

Under the *Retirement Villages Industry Code of Practice* (1999) prospective residents currently have a five business day 'cooling off' period.

Under the Bill, a 21 day 'cooling off' period is proposed from the date the residence contract is signed or, if the contract is contingent upon a later event, the date the later event occurs. More importantly, the operator is not entitled to receive the ingoing contribution until the end of the 21 day period. During this time, the resident may terminate their residence contract, without penalty and the operator must immediately refund to the resident any money they paid under their residence contract including their ingoing contribution. The 'cooling off' period is not ended by the resident moving into premises in the retirement village.

The 'cooling off' provisions in the Bill attempt to imitate the 'settling in period' which exists in other jurisdictions; however the Bill contains none of the protections for operators which other states have provided. The operator is not given any entitlement to rent while a resident occupies premises in their village and is not able to recover its costs or any other fees in relation to the resident's occupation of premises in the village. The requirements that the operators hold residents ingoing contributions in trust and immediately refund them if a resident terminates during the 'cooling off' period is likely to impact operator's cashflows.

Former resident and operator to share liability for recurrent charges

Operators will become liable for a proportion of recurrent charges for general services after 90 days from the date the resident vacates their premises if the premises are not re-leased or sold. The operator's liability will be in the same proportions in which it shares in capital gain with a resident. After nine months, the operator becomes solely responsible for paying recurrent charges in respect of a vacant unit irrespective of any capital gain share. This is a significant departure from other jurisdictions.

Under the Code, this issue has largely been left to be determined by the resident and the operator under the terms of their residence contract and the provisions of the Bill would override the terms of contracts operators have with existing residents.

The provisions in the Bill appear unnecessary given that operators and residents have been successfully working under the Code for sometime.

Increases in recurrent charges for general services limited to CPI

The Bill proposes to require operators to limit percentage increases in recurrent charges for general services to the change in the Consumer Price Index for Canberra. While residents will be able to approve an increase exceeding CPI, such approval requires a special resolution at a meeting of residents. This is unlike other jurisdictions where budgets are, in the main, passed by a majority vote.

While limiting increases in recurrent charges to CPI is clearly the approach preferred by residents, it fails to have regard to the actual cost increases faced by many operators from year to year, which in most cases exceed CPI.

The only expenditure to which the fixed increase regime will not apply are rates, taxes and levies charged by the Commonwealth or the ACT Government, increases in awards for salaries or wages of village staff, insurance and contributions to the long term maintenance fund or maintenance reserve fund. This mirrors other jurisdictions such as Queensland and New South Wales.

Statutory Charge over retirement village land

The Bill proposes that a statutory charge apply to land used for registered retirement village schemes. As all operators must register their villages as retirement village schemes prior to entering into a residence contract, the statutory charge is intended to apply to all villages in the ACT. This is similar to the statutory charge which applies to Queensland.

While the charge exists over all registered retirement village schemes, the security it provides appears to be limited to those residents who do not own or have a leasehold interest in their premises. The definition provided in the Bill as to which residents 'own' their premises lacks clarity and should be improved.

Religious and charitable organisations may apply to be exempt from the statutory charge, however this must be done prior to registration of a retirement village scheme.

Detailed rules for the conduct of residents' committee meetings

Under the Code, residents are largely free to determine their own procedures for the conduct of resident meetings. The Code requires only that an operator not restrict a resident from participating in a residents' committee.

This simple, streamlined approach to resident meetings is to be replaced under the Bill with an entirely new regime. The new rules detail how decisions at meetings of residents' committees may be made, how votes are cast, how proxies are appointed by residents and the quorums required to transact business at residents' committee meetings.

Resolution of retirement village disputes

A detailed regime for resolving retirement village disputes is set out in the Bill.

Importantly, it requires operators and residents to attempt to negotiate a resolution to the dispute prior to applying to the ACT Civil and Administrative Tribunal.

If the dispute cannot be resolved informally, the parties may apply to ACAT which will have powers to make a wide range of orders in relation to the dispute.

A process for resolving disputes informally through a Disputes Committee already exists under the Code. It is questionable whether the proposed provisions in the Bill will achieve a quicker resolution of disputes than the regime that exists under the Code.

One size does not fit all for the ACT

It is suggested that more work needs to be done before a revised version of the Bill is introduced to parliament in February 2011. Recently, discussions with parliamentary members have indicated that the introduction of a new bill may be deferred until late 2011, however operators should not rest on their laurels.

Operators and government must find a workable balance between the two key stated objects of the legislation, namely to provide protection for consumers in the retirement village industry and to encourage continued growth of the industry in the ACT.

Legislation in the form of the proposed Bill will operate contrary to the latter stated object and, as indicated in this article, arguably does so in an unnecessary and severely excessive way. It may have the unintended consequence of discouraging further development in the ACT.

This report does not comprise legal advice and neither Gadens Lawyers nor the authors accept any responsibility for it.

EXPOSURE DRAFT RETIREMENT VILLAGES BILL 2010

The proposed Bill is clearly meant to make legally binding many of the practices that have been in use since 1999 as delineated in two documents, namely.

- Fair Trading Act 1992, Retirement Villages Industry Code of Practice, published by the Director of Consumer Affairs for the Australian Capital Territory, November 1999, and
- The Retirement Villages Handbook authorized by the Director of Fair Trading under Clause 47 of the 'Retirement Villages Industry Code of Practice' and published in April 2004.

Experience over the last decade has shown that the proposed Bill is necessary. The documents referred to above, have provided clear guidelines for both scheme operators and residents over that time. While these guidelines have been generally followed there has always been the view (and sometimes threat by scheme operators) that they are not legally binding and thus, when the occasion suits can or will be disregarded.

As a resident of a retirement village for the last 14 years and as one who has taken part in most of the interactions that have taken place between the scheme operators and the resident body, I wish to submit the following comments on the Exposure Draft.

The following comments refer only to resident participation in the management of a retirement village, and are thus restricted to Divisions 8 and 10 of the Exposure Draft.

1. The 'Retirement Villages Handbook' is clear on these issues at pp17-21. It clearly indicates that there are areas where proposals by management, including the maintenance services budget (refer p.20), *require* the agreement of residents. An examination of the Exposure Draft has failed to find any reference to a requirement for the approval of residents except in special cases and when the maintenance budget increases exceed certain specified parameters (refer p.91 at #131). With respect to the maintenance budget the only requirement is that the scheme operators must provide copies of the budget on request to the Village Residents' Committee. *It is absolutely essential that the maintenance services budget be developed jointly by the scheme operator and representatives of the residents and once completed be presented to a meeting of the residents for agreement.* Processes for achieving this have been in action for some years and are outlined at pp. 17-21 of the 'Retirement Villages Handbook'. Procedures are also given of action to take if a residents meeting rejects a budget. *It is essential that these processes are included in the Act in an unambiguous way.*
2. At Division 8.4 # 124(6) on p.87 the Exposure Draft refers to the carry over of gains or losses. While this is a realistic approach it implies that the scheme operator should make reasonable efforts to keep within the prescribed budget. However, there appears to be no penalty if a scheme operator fails to show due diligence in putting the budget into practice. Without some guideline, there is always the possibility that a scheme operator could take the view that an overrun is alright as it can be made up in the following year. This attitude could have significant cumulative effects. Some attention should be given to this issue in amending the Exposure Draft.

3. In following procedures in which residents' approvals are required, it is necessary to precisely define voting rights and voting procedures. These are outlined in the 'Retirement Villages Handbook' but are quite inadequate and inappropriate. The Exposure Draft addresses these matters at Division 10.2., with a positive outcome. The only problem of concern relates to the definition of a reduced quorum of two and the resulting powers of decision that the quorum of two would have. Although there is provision for any decisions by such a quorum to be rescinded, it is felt that this number should be increased. Surely, the size of the quorum should be determined by the overall size of the voting electorate of a particular village i.e. two could apply to a village with up to 10 accommodation units, three for 10 to 20, four for 20 to 50 etc. or some similar arrangement.
4. A positive step has been taken in the Exposure Draft to define an eligible voting electorate (Division 10.2 # 172, p. 117). By allowing residents to vote, by special resolution, for every resident of a village to become an eligible voter has been a significant step forward. Opposition to the concept of multiple votes per accommodation unit is raised regularly (often by the scheme provider) and often leads to considerable argument. If the Act becomes law then decisions on this matter rest solely on the agreement by a special meeting of residents.
5. Several retirement village residents with whom I have regular contact have expressed concern with respect to the security of their equity in their village should their scheme provider find itself in financial difficulty. This could occur in many ways as a result of, for example, changing world economies, bad financial management and/or development excesses by scheme operators. This is an extremely important issue for residents of retirement villages as the equity in their accommodation unit may be the only equity they have and any uncertainty in this regard can cause continuing distress and its unacceptable consequences.


3 August 2010

Pen

[redacted] St Andrew's Village Townhouses, here with [redacted]
[redacted] of our Townhouse Residents' Committee

Person
info

I preface my comments by expressing our appreciation for your initiative and subsequent hard work in bringing this badly needed Retirement Villages Bill to the point of an exposure draft enabling meaningful public consultation.

And may I acknowledge that in a matter as complex as this and with competing interests, it will not be possible to satisfy everybody, be they Residents of Aged Persons Villages like me, an independent liver or a Hostel or Nursing Home Residents, Village Operators, for profit or non-profit, Charitable Organizations etc. All of us need to be both realistic and work in a cooperative way in the best interests of the community at large.

The first point of substance I want to make is that the Exposure Draft seems to me to be overlong and somewhat over prescriptive. I think that less should be in the Bill and interpretation and implementation should be covered by Regulations. Above all, both should be user friendly.

There are numerous references to a CEO, presumably the administrator of the legislation. I would hope that this does not foreshadow a new public service organization. I think there could be ~~much merit in~~ having an independent Statutory Officer.

From a Village Resident viewpoint, Clause 17 Cancellation of Registration falls well short of what is one of our greatest worries - what happens to Village Residents if an Operator goes "Belly Up"? Are we to be left homeless and perhaps most of our finances in the hands of a Receiver? I want to see this issue addressed in the legislation with adequate protection for Village Residents.

I also have some concerns in relation to that part of Part 8 that deals with Capital Improvement, Capital Replacement Fund and Maintenance Reserve Fund. For St Andrew's Townhouses, Management holds our Incoming Payment in return for providing a License to occupy the townhouse until departure. Management is responsible, using income generated by those funds, for maintaining the townhouse in reasonable condition. That would include repair to the structure caused by normal deterioration. Additionally, residents

pay a monthly Maintenance and Management Fee, approved annually by residents - which covers maintenance, gardening, pest control, insurance, depreciation of internal capital items, utilities, administrative apportionment and paging system.

Thus Management is responsible for what you call the Capital Replacement Fund with support from residents through depreciation charged for internal capital items, and residents cover what you call the Maintenance Reserve Fund. So far as Capital Improvements are concerned, we expect these to put to residents for approval, including the extent to which residents are asked to pay.

I should like to be sure that our present satisfactory arrangements are maintained.

Finally, I want to ask that the Mediation procedures be reviewed with greater emphasis on internal review. ACAT should, I think, be a last resort.

██████ has some other matters he wishes to raise. May I hand over to him?

From: [REDACTED]

Sent: Saturday, 26 June 2010 11:36 AM

To: PORTER

Subject: First Exposure Draft of New Legislation for ACT Retirement Villages

Dear Mary

Some more thoughts on the Proposed Legislation for Retirement Villages in the ACT.

Where a retirement village has a Board of Directors:-

1. There should be one mandatory position for a resident of the village. This would ensure transparency of policy and decisions, without direct influence on policy by only one member. That member would however be able to state the position of residents at the time of decision making so that Board Members are fully cognisant of all possible issues, thus enabling appropriate outcomes. This person to be elected at a special general meeting of residents.
2. Any other resident, or resident representative, should be eligible to stand for election to a Board of Directors.

With regard to the Capital Replacement and Capital Maintenance Funds:-

Money should be allowed to be transferred between funds when one fund does not have sufficient money for necessary expenditure and the other fund is underused with excess money available. Such transfer to be agreed between residents and management, after appropriate notice to allow proper consideration by residents, at a special general meeting

The existing Code of Practice for Retirement Villages in the ACT is largely satisfactory and could be used as the basis of new legislation with the addition of new issues such as, Capital Funds, Discrimination, Retrospectivity etc. Some of the legislation from other States should be left out as it is detrimental to retirement village residents, particularly in the areas of resident involvement in management and the weekly service levy.

Best Regards

[REDACTED]

[REDACTED]

Ph: 02 [REDACTED]
M: [REDACTED]

Per
info

Part 3 Registering retirement village schemes

Division 3.1 Registration

Who is chief exec?

12 Application for registration

- (1) A person (the *applicant*) may apply to the chief executive to register a retirement village scheme.

Note 1 If a form is approved under s 221 for the application, the form must be used.

Note 2 A fee may be determined under s 222 for this provision.

- (2) The applicant must be the proposed scheme operator for the retirement village scheme.

- (3) The application must be accompanied by—

(a) details of—

- (i) the land on which the retirement village buildings and facilities are, or are to be, constructed; and
- (ii) the accommodation units and communal facilities that the scheme operator undertakes are, or are to be, available for the retirement village when the scheme is registered; and
- (iii) the accommodation units and communal facilities that the scheme operator intends to make available for the retirement village after the scheme is registered, depending on the sales activity, finance availability, or market conditions for the village; and

68

What protection to Residents?

- (iv) that the resident may object to the cancellation within 60 days after receiving the notice by giving written notice of the objection to the chief executive; and
 - (b) give the chief executive—
 - (i) a statutory declaration made by the scheme operator stating the facts of the scheme operator's compliance with paragraph (a); and
 - (ii) a copy of the notice given to residents under paragraph (a).
 - (3) The chief executive may—
 - (a) cancel the registration of the retirement village scheme; or
 - (b) refuse to cancel the registration of the retirement village scheme.
- Note* A decision to refuse to cancel the registration of a retirement village scheme is a reviewable decision (see pt 14).
- (4) The chief executive may cancel the registration of a retirement village scheme only if—
 - (a) if there is a statutory charge over the retirement village land—
the chief executive has released the charge; and
 - (b) the chief executive is satisfied that—
 - (i) the scheme operator for the retirement village has complied with subsection (2); and
 - (ii) cancelling the registration of the scheme is appropriate, having regard to the objections, if any, made under subsection (2).

67

Part 4 Residence contracts

Division 4.1 Residence contracts generally

18 Purpose—pt 4

- (1) The purpose of this part is to state minimum requirements for residence contracts.
- (2) However, this part is not intended to prevent a scheme operator for a retirement village and a resident of the retirement village agreeing (in a residence contract or otherwise) to conditions that are more beneficial to the resident than the provisions in this part.

19 Meaning of *residence contract*—Act

- (1) For this Act, a *residence contract*, in relation to a retirement village—
 - (a) means 1 or more written contracts entered into, or to be entered into, between a person and the scheme operator for the retirement village about the matters mentioned in subsection (2); and
 - (b) includes any other contract (an *ancillary contract*) between the person and the scheme operator if the ancillary contract depends on, or arises out of, the making of the residence contract or another ancillary contract.
- (2) For subsection (1), a residence contract in relation to a retirement village must—
 - (a) either—

66

22 Residence contracts—guidelines

- (1) The chief executive may issue guidelines (*terminology guidelines*) setting out terminology to be used in residence contracts.
- (2) A scheme operator must take all reasonable steps to ensure that the residence contract is drafted using terminology that is—
 - (a) consistent with the guidelines; and
 - (b) otherwise simple and consistent with the public information document.
- (3) A terminology guideline is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

23 Dealing with inconsistencies between Act, residence contracts and public information documents

- (1) A provision of a residence contract has no effect to the extent that it is inconsistent with this Act, or purports to restrict or exclude the operation of a provision of this Act.
- (2) Also, a provision of a residence contract has no effect to the extent that it purports to restrict or exclude the operation of a public information document, or a provision of a public information document, taken to form part of the contract under section 20 (2) (Form and content of residence contracts).

Put
what
about
Section
18(2)
in this
document

47 Recovery of ingoing contribution as debt

A resident of a retirement village may recover an amount owing under section 46 as a debt owed by the scheme operator of the retirement village.

48 Ending residence contracts—scheme operators

See out 22.1

- (1) A scheme operator for a retirement village may end a residence contract for the retirement village by giving written notice to the resident under the residence contract in accordance with subsection (2) or (3).
- (2) The scheme operator must give the resident 14 days written notice if the residence contract is to be ended because the scheme operator believes on reasonable grounds that—
 - (a) the resident has intentionally or recklessly—
 - (i) injured a person while the person is in the retirement village; or
 - (ii) seriously damaged the resident's accommodation unit; or
 - (iii) seriously damaged property of another person in the retirement village; or
 - (b) the resident is likely, intentionally or recklessly, to do something mentioned in paragraph (a).
- (3) The scheme operator must give the resident 2 months written notice if the residence contract is to be ended on 1 of the following grounds:
 - (a) the resident has committed a material breach of the residence contract;

- (b) the scheme operator believes on reasonable grounds that the resident has abandoned the resident's right to live in the retirement village;
- (c) the scheme operator and a person who has assessed the resident's care needs under the *Aged Care Act 1997* (Cwlth), section 22-4 (Assessments of care needs) believes on reasonable grounds the resident's type of accommodation is now unsuitable for the resident.

organisation
or persons
(

Examples—par (c)

- 1 the resident lives in an independent living unit and now needs help with personal care not normally provided by the scheme operator
- 2 the resident's increased care needs cannot be met by a relative who lives with the resident

and this can be provided by the scheme operator or another person's

Note 1 A relative of a resident who is living in an accommodation unit when the resident's residence contract ends under s 52 may have a right to continue to live in the accommodation unit (see div 6.4).

Our 22/1 with

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

puts on us on GP or

- (4) However, the scheme operator must not give effect to a notice given under subsection (3) (c) unless satisfied on reasonable grounds that suitable accommodation is available for the resident.

other doctor + right to return to self-care

- (5) The notice must state—

- (a) the grounds on which the residence contract is being ended; and
- (b) the day by which the resident must vacate the retirement village.

**91 Responsibility of residents for capital improvement—
accommodation units**

- (1) This section applies if—
- (a) a resident for a retirement village gives the scheme operator for the retirement village a written request for a stated capital improvement to the resident's accommodation unit; and
 - (b) the scheme operator makes or agrees to make the capital improvement.
- (2) The resident is solely responsible for the cost of the capital improvement.

**92 Responsibility of residents for capital improvement—
retirement villages**

- (1) This section applies if—
- (a) residents of a retirement village, by special resolution at a residents meeting, vote to give the scheme operator for the retirement village a written request for a stated capital improvement to the retirement village; and
 - (b) the scheme operator makes or agrees to make the capital improvement.
- (2) All residents of the retirement village when the vote was taken are jointly responsible for the cost of the capital improvement.

??
How does
this affect us.
Currently covered
by our recurrent
fees

104 Statutory charges over capital replacement funds

- (1) On the establishment of a capital replacement fund in relation to a retirement village, a statutory charge is created over the fund for the benefit of the residents of the village to ensure that the balance of the fund is available for a purpose mentioned in section 103 (1).
- (2) The charge has priority over any other charge over the capital replacement fund given by the scheme operator for the retirement village, other than a charge created and given priority over other charges under a Commonwealth law or another territory law.
- (3) The charge is irrevocable, regardless of whether the scheme operator for the retirement village changes, and continues until the later of—
 - (a) the day the retirement village stops operating as a retirement village scheme; and
 - (b) the day the last former resident to whom an exit entitlement is payable has been paid the exit entitlement.

105 Capital replacement reserve—reports

- (1) Before a scheme operator for a retirement village decides a budget for the retirement village, the scheme operator must get a written report that complies with this section.
- (2) The report must—
 - (a) be from an independent quantity surveyor; and
 - (b) be about the expected costs for replacing the retirement village's capital items for the period of 10 years following the date of the report.

Note Capital item, in relation to a retirement village—see the dictionary.

Does IRF
do this

61

- (4) The notice must be given at least 30 days before the beginning of the financial year to which the draft general services charge budget relates.
- (5) The scheme operator must comply with the notice.
- (6) If, at the end of a financial year for which a general services charge budget is adopted, there is a surplus or deficit for the general services charge, the surplus or deficit must be carried forward and taken into account in adopting the general services charge budget for the next financial year.

125 Offences—working out and paying general services charge

- (1) A scheme operator for a retirement village commits an offence if the scheme operator charges a resident of the retirement village an amount for a general services charge worked out other than in the way stated in the public information document for the retirement village.

Maximum penalty: 200 penalty units.

- (2) A scheme operator for a retirement village commits an offence if the scheme operator, in a general services charge in a residence contract, includes, or provides for, an amount (however described) that is payable for or towards replacing the retirement village's capital items.

Maximum penalty: 200 penalty units.

*On Clause 18(7)(2)
in which recurrent charges may
be used to replace capital items & to
acquire capital items*

What if a resident dies

Part 8 Financial management of retirement villages
Division 8.4 Services charges
Section 126

- (3) A scheme operator for a retirement village commits an offence if the scheme operator, in a general services charge in a residence contract, includes, or provides, for an amount (however described) that is payable for or towards costs awarded by the ACAT against the scheme operator.

Maximum penalty: 200 penalty units.

- (4) Subsections (1) and (2) do not apply to an amount that a scheme operator includes, or provides for in a general services charge that is indirectly or directly attributable to GST payable for the supply of a service.

- (5) In this section:

GST has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

supply has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

126 Responsibility of residents for general services charge

- (1) A resident of a retirement village is responsible for only the resident's proportion of the general services charge for the period that the resident lives in the resident's accommodation unit.

- (2) This section is subject to section 127.

127 Working out and paying general services charge for former residents

- (1) A former resident of a retirement village is liable for the resident's proportion of the general services charge after the resident vacates the resident's accommodation unit until the first of the following happens:

- (a) the right to live in the accommodation unit is sold;

Our 14/09/11 Recurrent charges cease either 14 days or 42 days

- (b) a period of 90 days elapses (the *90-day period*);
 - (c) the ACAT orders the scheme operator for the retirement village to pay the former resident's exit entitlement under section 190 (ACAT orders—payment of exit entitlement).
- (2) If the former resident's right to live in the accommodation unit has not been sold during the 90-day period—
- (a) the resident and the scheme operator are each liable, after the 90-day period ends, to pay the general services charge in the same proportion as they are to share the gross ingoing contribution on the sale of the right to live in the accommodation unit, as provided for in the residence contract; and
 - (b) the former resident stops being liable to continue to pay a proportion of the general services charge when the first of the following happens:
 - (i) the right to live in the accommodation unit is sold;
 - (ii) a period of 9 months after the resident vacates the accommodation unit ends.
- (3) If a former resident's right to live in an accommodation unit has not been sold during the 90-day period, the scheme operator may—
- (a) accrue, as a book debt, the resident's proportion of the general services charge; and
 - (b) set off the accrued amount against the resident's exit entitlement.

130. Scheme operators paying general services charge

The scheme operator for a retirement village must pay an amount payable under section 129 into the maintenance reserve fund for the retirement village.

131. Offence—increasing general services charge by more than CPI

- (1) A scheme operator for a retirement village commits an offence if the scheme operator increases the total of the general services charge for the retirement village for a financial year by more than the CPI percentage increase for the financial year.

Maximum penalty: 200 penalty units.

Average weekly earnings?

- (2) Subsection (1) does not apply if—
- (a) the residents of the retirement village, by special resolution at a residents meeting, approve an increase of more than the CPI percentage increase for the financial year; or
 - (b) the increase is attributable to an increase in—
 - (i) rates, taxes or charges levied under a Commonwealth law or another territory law in relation to the retirement village land or its use; or
 - (ii) the salary or wages of a person engaged in the retirement village's operation and payable under an award or industrial agreement made, approved, certified, or continued in force under a Commonwealth law or another territory law; or
 - (iii) insurance premiums, or insurance excesses paid, in relation to the retirement village or its use; or
 - (iv) maintenance reserve fund contributions.

*7 7
we may be
disadvantaged*

- (ii) section 48 (Ending residence contracts—scheme operators); and
- (c) the scheme operator charges the resident for personal services after—
 - (i) if the period of the notice given under the ending provision is extended—the end of the extended period of notice; or
 - (ii) in any other case—the end of the period of notice given under the ending provision.

Maximum penalty: 540 penalty units.

- (2) The scheme operator commits an offence if— *something missing?*
 - (a) a resident of the retirement village receives personal services under a residence contract; and
 - (b) the resident's residence contract ends because the resident dies; and
 - (c) the scheme operator charges the resident for personal services for more than 28 days after the residence contract ends.

Maximum penalty: 540 penalty units.

Division 8.5 Insurance

138 Offence—failure to take out etc public liability insurance

- (1) A scheme operator for a retirement village commits an offence if the scheme operator fails to take out and maintain public liability insurance in relation to all of the following events happening in relation to the retirement village as a result of an accident:
 - (a) death, bodily injury or illness of anyone;

(4) Subsection (3) does not apply to a person if the person's identity card has been—

- (a) lost or stolen; or
- (b) destroyed by someone other than the person.

Note The person has an evidential burden in relation to the matters mentioned in s (4) (see Criminal Code, s 58).

(5) An offence against this section is a strict liability offence.

Division 12.3 Powers of authorised officers

194 Power to enter premises

- (1) For this Act, an authorised officer may—
- (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment); or
 - (b) at any time, enter premises with the occupier's consent; or
 - (c) enter premises in accordance with a warrant.
- (2) However, subsection (1) (a) does not authorise entry into a part of premises that is being used for residential purposes.
- (3) An authorised officer may, without the consent of the occupier of premises, enter land that is around, or part of, the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an authorised officer may enter premises under subsection (1) without payment of an entry fee or other charge.

*Why sect 194
only section
How does this relate to
suburban dwellings*

(55)

Hello Mary,

I would like to congratulate you once again on your continued effort to gain for the Territory, a draft for Retirement Village Legislation. I was thrilled to see it tabled in May and have received a copy of which I have now read.

I am now more than thrilled to note that most, if not all prior complaints, have been addressed and will be established rights for both residents and operators.

My queries, or lack of understanding of the draft is as follows:

Resident Contracts- 19 Meaning of Resident Contract-ACT

- 1 or more contracts?
- In another contract (ancillary) what is an ancillary contract?

In the explanation I would presume that it means their right to live in the village under the governing rules of the village, and the ancillary is agreeing to the services in the daily recurring budget fees.

Resident Contracts- does this draft apply to unit titles act only= ownership,(strata) and also covers license to live without ownership? I think however that the basis of licence was also under the units title Act.

Division 6:3 Indicates selling if ownership, not license.....

At the moment in ACT there are Licence to live in (no ownership) and Strata title villages..they are one or the other.....how does this section apply? My understanding would be if licence only the operator values the license at market value.

Division 6:4 relatives may enter into residents contracts...if a resident is married a surviving spouse naturally would continue the contract... however if only a visiting relative, does this contravene the waiting list paid for? Currently relatives or friends can stay for a short period of time only, relatives are not given the privilege of opportunity. This would give the 'proverbial foot in the door'. I think this leads to prioritising.

I am a layman in the true sense, of being able to read legal documents so please forgive me if I have aspired to a total misreading of the above.

What I do understand is encouraging and cannot wait to see this draft become the legal document, be voted on as a political achievement with deserved recognition to the one who threw down the gauntlet and made it happen, Mary Porter and the team.

Kind regards



COMMENTS/CONCERNS REGARDING EXPOSURE DRAFT OF RETIREMENT VILLAGES BILL 2010

The major concern revolves around the proposed treatment of Retirement Villages such as [REDACTED] where the residence agreement is compromised of a Sublease, a Loan Agreement and a separate Service Agreement.

The [REDACTED] Sublease documentation provides that if a resident vacates the Unit and no Eligible Transferee is found to whom the Sublease may be transferred or a New Sublease granted (that is no 'buyer' has been found) within the Code Time Period, the Retirement Village Operator will effectively surrender the Sublease/transfer it back to the Village Operate in return for the Village Operator complying with its obligations which include repaying the Loan Amount to the Resident minus any payments the Resident is otherwise required to make to the Village Operator.

The Code of Practice sets a Code Time period of 6 months.

The [REDACTED] Sublease documentation states that where there is no Code Time period, this 'buy back' provision does not apply. As a result, should the *Retirement Villages Bill 2010* be enacted such that there is no, effective 'Code Time period' for repayment, residents who at [REDACTED] who under the current Code have a guarantee of receiving their funds 6 months after vacating at the latest, will have their rights significantly adversely affected. Without a Code Time period, residents would have to wait until a 'buyer'/eligible transferee could be found.

There are additional concerns in terms of clarity as to how the various provisions of the exposure draft of the *Retirement Villages Bill 2010* would apply to in the [REDACTED] situation which are set out below.

Concern 1

What is the ingoing contribution where a Sublease and Loan model is utilised?

Basis of Concern

Section 27 of the exposure draft of the *Retirement Villages Bill 2010* ("the Bill"), defines ingoing contribution to mean an amount payable by a person under a residence contract to secure a right to live in the retirement village whether or not the payment alone secures the right, or something else is also required to secure the right.

Under the [REDACTED] Sublease model, the resident pays \$8,000.00 'rental' to secure the right to live in the Village. However, the scheme operator will not enter into the sublease unless the Loan Agreement is also entered into and the Loan amount paid. The Sublease rental is not refundable. The Loan amount less certain fees which are to be deducted (the amount of which is dependent upon whether the resident has chosen the capital guarantee or sublease termination payment option) is refundable. The [REDACTED] Sublease model also entitles the

resident to the capital gain, if any, between the Loan amount originally paid by the resident and the amount to be paid by the new resident (excluding their rental component and service agreement component).

Section 19 of the Bill defines what constitutes a residence contract. Section 19(1) states that it includes contracts which cover the matters set out in sub-section (2) as well as ancillary contracts which *depend on, or arise out of, the making of the residence contract or another ancillary contract*. The Loan Agreement does not cover matters set out in sub-section (2). It is unclear whether a separate loan agreement which provides that the loan is to be made on the date of the loan contract with the only reference in it to the Sublease is that the Sublease expiry date is the trigger for the Repayment Date means that the contract is an ancillary contract and thus included in the definition of residence contract.

Proposed change

To remove doubt, I would suggest that the above situation be included as a non-exhaustive example of an ancillary contract.

Concern 2

Is there a Code Time Period in the Bill in relation to retirement village residents whose residence contract is based on a leasehold interest and, if so, what is it?

Fundamental to this concern are the following questions :

- (a) Does Division 4.5 apply to residents who hold a leasehold interest or does Division 6.3 apply instead?;
- (b) If Division 4.5 applies, what is the Code Time Period dependent upon how the residence contract ends?

Basis of Concern

Does Part 4.5 apply to the Sublease model?

Under section 19(2)(d) of the Bill makes it clear that a contract based on a leasehold interest is a residence contract. Accordingly, Part 4 of the Bill would seem to apply to the Sublease model.

Section 44 states that in Division 4.5 a resident includes a person who, for someone else, enters into a residence contract to secure the other person's right to live in a retirement village.

The Dictionary to the Bill states that resident generally means the definition set out in section 10 - a person who has a right under a residence contract to live in the retirement village and receive 1 or more services in relation to the retirement village. The Dictionary further states, though, that for the purpose of Division 4.5 the definition in section 44 applies.

Presumably, the definition in section 44 is not meant to only include people who pay on behalf of someone else to secure that other person's right to live in the retirement village as this would mean that there is nothing in the code about how people who have a normal Licence model residence contract end their contracts.

If the definition of resident is then taken to include the broader section 10 definition, a leasehold interest would seem to be included.

What is the time frame for repayment of an ingoing contribution depending upon the different ways in which a residence contract may be ended under Division 4.5?

Section 46 of the Bill (Part 4 Division 4.5) states that if a resident ends a residence contract in accordance with section 45 of the Bill, the scheme operator commits an offence if it fails to refund the full amount of the resident's ingoing contribution to the resident within 30 days after the day the residence contract ends and section 47 allows this amount to be recovered as a debt.

By contrast, section 48 sets out the basis on which scheme operators may end a residence contract *but does not specify any time frame for repayment of the ingoing contribution*. Thus there does not appear to be any time line required to repay a resident where the scheme operator ends the residence contract.

Section 48 also constitutes a negative change from the current Code as it sets out how the scheme operator ends the contract, rather than continuing the current situation whereby the scheme operator must apply to someone independent on those grounds to end the residence contract.

The same problem arises in relation to section 52. While sensibly ending a contract upon the death of the resident, there is nothing in the Bill regarding time frame for repayment in those circumstances.

Does Division 6.3 apply to long term residents/residents who hold a Sublease and are entitled to at least 50% of any capital gain?

For the purpose of Division 6.3, resident of a retirement village is defined to mean a resident who owns an accommodation unit in the retirement village.

The Dictionary to the Bill defines 'own' as "a person owns an accommodation unit if the person has a leasehold interest in the parcel on which the accommodation unit is located". In the ACT, the normal method of ownership of property is by way of leasehold interest. In the sublease model of retirement villages, a sub leasing plan is registered showing the individual units and the Subleases then make reference to the sublease being of a particular part of the Block shown on the sub leasing plan. It is unclear from this definition as to whether a leasehold interest in part of a parcel is included or only leasehold interests in the entire parcel.

This confusion as to whether Subleases are included in the definition of 'own' is exacerbated by section 78(2) which defines a long term resident as a resident who does not own an accommodation unit but whose residence contract is in the form of a long-term lease and includes a provision that entitles the resident to at least 50% of the any capital gain in the unit. The note below section 78 refers the reader to the dictionary for the definition of 'own', implying that long-term residents do not, therefore, 'own' their unit.

The reference in section 78, however, to long term resident relates to a requirement upon the scheme operator to specify in the exit entitlement and liability statement the amount for which a long-term resident's accommodation unit has been sold – thus implying that division 6.3 is indeed meant to apply to Sublease models.

If Division 6.3 is intended to apply to the Sublease model/long-term residents then it will mean that under the Bill they will be in exactly the same position as if they outright owned

~~their unit and have to await a 'buyer'. This constitutes a backwards step for the majority of~~
~~residents.~~

Proposed changes/recommendations

1. Section 44 – definition should be amended to include the definition in section 10.
2. Division 4.5 should apply to all types of residence contracts with respect to how those contracts may be ended.
3. A separate division/part should be drafted to specify the time frames for repayment of ingoing contributions for the various types of retirement village models – licence, sublease and outright ownership. Clear definitions should be included in that part as to the definition of resident for the purpose of each type of repayment clause. For example, for the licence model of retirement village, the definition would include the generally definition at section 10 plus that presently in section 44 but specifically exclude residents who are long-term residents or who own their unit. For the sublease model, the definition would be residents who are long-term residents. For the ownership model, the definition would be with reference to ownership.
4. If the sublease model does not have the same repayment time frame as appears proposed for the licence model (that is, 1 month) then it should **not** be treated the same as outright ownership (particularly where some subleases may not entitle a resident to all of the capital gain or might purport to entitle the resident to all of the capital gain but then calculate an exit fee based on a proportion of the sale price rather than the original purchase price).

Sublease models should be viewed differently from outright ownership as they are different. While theoretically it is possible for a resident to borrow against an interest in a sublease, the practicality is that few, if any, lenders are prepared to lend in relation to these form of 'ownership'. A resident who owns their unit and requires access to their equity to pay an accommodation bond or accommodation charge can potentially borrow against their unit. A resident who has a sublease interest is realistically unable to do this.

Sublease model resident contracts should continue to have a repayment time frame by the scheme operator (where a buyer has not been found) of 6 months.

5. Definition of 'own' in Dictionary – should be further clarified so as to make it clear that it only means a leasehold interest over the entire parcel on which the accommodation unit is located, not a leasehold interest of part of that parcel.
6. A definition of long-term resident should be inserted into the Dictionary in the Bill rather than in section 78 with a further definition of 'long-term lease' being given (as none is presently included)
7. The repayment obligations in clause 46 & 47 should be extended to cover where the residence contract ends other than through the resident giving notice.