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Sent: Friday, 24 February 2012 3:34 PM
To: Quinton, Peter
Cc: [REDACTED]
Subject: RVA / ACSA Submission on the Retirement Villages Bill 2011
Attachments: ACT-Submission-feb11.pdf; ACT Legislation Submission[1].doc; ACT Legislation Submission - Supplementary .doc

Hi Peter

It was great to talk to you today. As discussed, attached is a Submission to the ACT Government on the Retirement Villages Bill. I have also attached the two Submission that we prepared for Mary Porter MLA as many of the issues in these Submission remain unaddressed. These two submissions form an Attachment to this latest Submission.


My contact details are below. Once you have digested the submission, please give me a call and we can meet to talk about it.

Have a great weekend.

Regards

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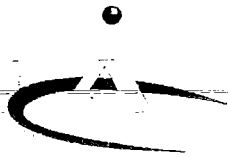
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Dear Mr Quinton

Thank you for the opportunity to provide a written submission on the *Retirement Villages Bill 2011*. This Submission is a joint Submission from the Retirement Village Association (RVA) and the Aged and Community Services Association (ACSA).

As I am sure you are aware, our members based in the Australian Capital Territory (ACT) have worked constructively with Mary Porter MLA as she has drafted this legislation. This is despite the fact we do not believe legislation is necessary - particularly this legislation with its onerous compliance burdens on an industry that is already struggling with development of new housing for older people due to the costs of overregulation.

This legislation is not in the ACT community's interest due to the following:

- Compliance administration will redirect staff in retirement villages from looking after the interests of residents to dealing with a significant increase in paper work.
- Up-front costs of complying with the legislation will stymie investment. This includes investment in current and new facilities, as the sector looks to other less complex opportunities such as standard residential stock that does not serve the needs of older people.

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- Annual compliance costs will have an impact on services and / or costs to village residents. This will also reduce the resources of ACT seniors in terms affording future care. This is directly in opposition to current policy that seeks to lower costs of accommodation and care for older people.
- Increasing the cost of seniors housing will also have broader social and economic impacts. It will lead to a reduction in the residential housing stock being made available to younger generations. Less construction activity means less jobs and economic activity.
- The Territory's population is ageing and there are long lag times in constructing affordable and appropriate seniors housing.
- Retirement villages are in high demand in Canberra and there are very professional and committed operators that have heavily invested in older people in the Territory. They are an affordable seniors accommodation solution for government.

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) governs the occupation and operation of villages.

This arrangement and the consumer protections afforded have been working and the industry remains perplexed about the need for legislation given there has been no Tribunal cases in the ACT.

As part of our member survey, we have determined that retirement village operators in the ACT have currently earmarked around \$204 million in new investment in the ACT. This investment creates jobs, seniors housing with broader social and economic benefits, and adds to the economic base of the Territory.

The potential impact of this new legislative burden is a reduction in the industry's investment and in addition, the timing of that investment.

With over 2300 Canberrans in retirement villages, future investment plans, and no tribunal cases to date - it raises the question - why are we trying to fix something that is not broken?



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We would welcome the opportunity to meet with you to discuss our concerns in more depth. We stand ready to work with you to ensure continued investment in affordable accommodation options in the ACT.

Yours sincerely

[Redacted signature]

[Redacted text]

Retirement Village
Association

[Redacted signature]

[Redacted text]

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24 February 2011

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RVA and ACSA Submission on the ACT Retirement Villages Bill 2011

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Executive Summary

The Retirement Village Association and Aged and Community Services Association of NSW and ACT (ACSA) would like to thank you for the opportunity to again provide written comments regarding the regulation of retirement villages in the ACT.

We are particularly pleased that we are now at a stage where the Government has the opportunity to fully consider the impact on the community of this legislation.

You can find further information about our organisations at Attachment A.

This Submission is a joint RVA and ACSA Submission as both peak bodies are deeply concerned about the *Retirement Villages Bill 2011*. Both organisations are committed to ensuring positive outcomes for village residents, the retirement village industry and the ACT community. Happy residents are the cornerstone of the industry. Our own surveys highlight greater than 96% satisfaction by people in villages, which would be the envy of any industry.

In July 2010 and September 2010, the RVA and ACSA provided submissions to Mary Porter MLA. These Submissions are at Attachment B for your information. We are attaching these Submissions as many of the issues raised remain in contention with the current legislation, which in our view is poorly conceived given the paucity of issues raised by residents in the Territory.

From these Submissions you will note our consistent written commitment to an outcome that promotes consumer protection and robust fair trading practices. What is also critical with our ageing community is an investment climate that will encourage continued growth and the provision of much-needed seniors housing in the ACT.



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Since the Submissions we provided to Mary Porter MLA in July 2010 and September 2010, we have met with her to express our concern that the current Bill does not address the issues previously raised. It should be noted that Mary Porter MLA has undertaken to respond to the outstanding issues with the reasons for their exclusion in the current Bill.

In addition, the RVA has written to the Chief Minister to implore the Government to undertake an economic and regulatory impact statement. The industry contends that this Bill should not be considered until the facts about its impact are properly assessed and debated. The flow on impacts of this Bill will be very significant and have the potential to switch off investment in what is already a very difficult market that has been greatly impacted by the global financial crisis.

Introduction

It is important that this Submission provide context regarding the current operating environment in the ACT for the retirement village industry.

The current system is working

Currently, the system is working. There has not been a tribunal case in the ACT and nor have there been large numbers of residents agitating for legislation. In fact, many residents are concerned about the compliance burdens that naturally follow legislation and just how much of these new costs will be passed on to them by operators.

The RVA and ACSA acknowledge that there has been a minority of residents that believe because there is legislation in other jurisdictions there should be legislation in the ACT. There is no evidence to suggest that the current system is not adequate and nor has there been any attempt to modify or reform the current system before reaching for legislation. There is also, importantly, no evidence to suggest that legislation in other jurisdictions produces better outcomes for village residents.

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As you will see from previous Submissions (Attachment B), the RVA and ACSA believe that there are relatively simple reforms to the Code that could be undertaken to enhance existing consumer protections. The RVA and ACSA firmly believe this should be implemented prior to considering legislation.

Retirement village industry

In the ACT there are 28 retirement villages containing 1429 units and accommodating around 2300 Canberrans. Nationally there are 1,900 villages, accommodating 160,000 people.

This means that on a national basis over 5% of the population over 65 years of age live in a retirement village. Some States like Western Australia and South Australia have much higher penetration rates, and also a more flexible and balanced regulatory environment.

Even if we assume a 5% penetration rate in the ACT (as it is nationally), there could be as many as 29,000 people living in retirement villages in the ACT. Put another way, this would require as many as 150 or more new villages that could be constructed to meet current demand. This would result in a construction value in the order of \$4 billion that would be significantly impacted by what will be the most onerous legislation in Australia (as it is currently drafted).

This Bill will have a major negative impact on future investment and jobs in the ACT economy and mean that older people will have little choice in how to access accommodation that is fit for purpose for their needs.

However, our ageing population, particularly evident in the ACT, and a greater acceptance of village living, could result in around 8% of the population living in retirement villages, which would drastically increase the need for new villages. This assumes constant demand from seniors for village living. The consequence of this is the need for new retirement



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villages in the ACT. For this to occur, the retirement village industry requires an investment climate that stimulates expansion.

For further information about the community benefits of retirement village living see Attachment C.

Summary of Recommendations

The following is a list of recommendations contained within this Submission.

Recommendation One

That the ACT Government formally respond to previous RVA and ACSA Submissions to Mary Porter MLA (Attachment B) to ensure a robust understanding by all parties of the current environment and Government objectives in regulating the retirement village industry.

Recommendation Two

That the ACT Government, in concert with the ACT retirement village industry, complete a RIS prior to debate on the Retirement Village Bill in the Legislative Assembly and that the results of this RIS be made public.

Recommendation Three

That the ACT Government review the *Retirement Villages Bill 2011* and seek to simplify the legislation in order to significantly reduce the compliance burden on the industry – and thereby the negative impact this will have on ACT seniors and the broader community.

Recommendation Four

That the ACT Government undertake, in concert with the ACT retirement village industry, an assessment of the likely investment impact of the



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Retirement Village Bill 2011 to determine the social and economic costs to the ACT - and whether any perceived benefits of the current legislative approach outweighs these costs.

Recommendation Five

That the ACT Government amend the Bill where specifically recommended and establish a round table with industry, residents and government to carefully consider those aspects where the drafting and intent of certain provisions is not clear to determine how best to amend the Bill.

Recommendation Six

That the ACT Government works with the Federal Government to:

- Ensure the Australian Housing and Urban Research Institute is resourced to measure the demand for, and supply of, aged friendly housing for seniors in the ACT.
- Enable the National Housing Supply Council to continue its annual 'State of Supply' report.

Recommendation Seven

That the ACT Government:

- Lead a renewed partnership between all governments and industry to work together to develop more age friendly and integrated housing communities.
- Consider planning reforms such as retirement village zoning to encourage investment.
- Work with industry, including the RVA and ACSA, in a creative collaboration to deliver more and better seniors housing.



Recommendation Eight

That the ACT Government:

- Transfer policy responsibility for retirement villages and associated legislative instruments to the Community Services Directorate to ensure a whole of government focus.

Recommendation Nine

That the ACT Government:

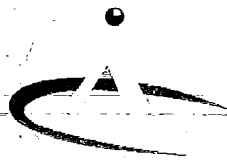
- Reform the stamp duty payable on seniors housing such as retirement villages to encourage senior choice in accommodation.
- Encourage the Federal Government through the Council of Australian Governments to remove current pension and assets testing disincentives to free up equity for seniors to invest in their future housing and care needs.
- Investigate ways that ACT seniors can be supported in financial literacy and in accessing the independent financial advice they need to make decisions about their future. This would include information about the impact of housing decisions on their overall financial position.

Response to Previous Submissions

As discussed previously, the RVA has provided two Submissions to Mary Porter MLA and these are at Attachment B.

The current Bill before the Assembly does not fully address the issues and concerns raised in these submissions by the retirement village industry. Both the RVA and ACSA spent a significant amount of time and resources putting forward practical suggestions for reform.

Prior to any debate in the Legislative Assembly, it is contended that the issues canvassed in these Submissions be formally responded to by the



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Government. If there are suggestions in these Submissions that cannot be implemented, the industry would like the opportunity to understand the rationale and to respond.

The RVA and ACSA will work with the Government to deliver a balanced and fair Code. Similarly, after extensive policy work and analysis, should the Government determine that a legislative approach is in the community's interest, the RVA and ACSA will work with the Government to ensure this legislation is balanced and fair – and will deliver on the Government's objectives.

Recommendation One

That the ACT Government formally respond to previous RVA and ACSA Submissions to Mary Porter MLA to ensure a robust understanding by all parties of the current environment and Government objectives in regulating the retirement village industry.

Regulatory Impact Statement


Regulatory impact statements (RIS) are a rigorous way for governments to analyse the most efficient and effective way of regulating to produce the greatest net benefit to society.

Unlike normal policy and regulatory development processes of the Government, the current Retirement Villages Bill has not been fully assessed. This assessment should be undertaken and the results publically released before the Bill is debated in the Legislative Assembly.

The RIS should assess the current Bill to determine whether:

- Legislation is necessary to achieve desired government outcomes and deliver greatest benefit to the community.
- The legislation is simple and avoids unnecessary restrictions.
- It employs the minimum regulation necessary to achieve its objectives.

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- The legislation imposes an unnecessary burden on those affected and whether it is unduly prescriptive.
- As drafted, it is performance and outcomes focused.
- It is easy to understand, fair and can be consistently enforced.
- It enshrines some flexibility in dealing with special circumstances.
- It addresses particular problems that cannot be addressed in another way such as reforms to the current Code.
- It is clear and concise and is appropriately mindful of the compliance burden imposed.
- It is a response that is proportionate to the problem – particularly in this case where there is no demonstrable problem existing in the ACT.

In essence, the RVA and ACSA contend that other government legislation is subjected to this type of scrutiny and therefore this Bill should not be debated and supported by the Government until a RIS has been undertaken.

We contend that it is incumbent on the Government to assess the risks, costs and benefits to the Government, business and the community before supporting this Bill. In addition, the results of the RIS should be made public to enable debate.

The RVA and ACSA stand ready to work with the Government through the provision of data and other facts that will assist the Government in undertaking a robust RIS.

Recommendation Two

That the ACT Government, in concert with the ACT retirement village industry, complete a RIS prior to debate on the Retirement Village Bill in the Legislative Assembly and that the results of this RIS be made public.



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Compliance Cost Burdens

The RVA and ACSA believe that once a full RIS is undertaken by the Government, the extent of the onerous and unnecessary compliance costs inherent with the current Bill will be identified and understood. There is no doubt this Bill will impact on the future of the industry in providing affordable and appropriate seniors accommodation in the ACT.

This Bill will add to the bureaucracy of running retirement villages. Additional time and resources will have to be dedicated to ensuring documentation and policies and procedures are compliant.

Compliance costs

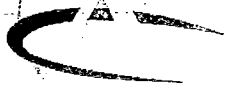
In preparing this Submission, the industry in the ACT has undertaken a survey of all operators and determined the following compliance costs:

- The total up-front cost of the industry becoming compliant will be between \$650,000 and \$750,000. This estimate does not include personnel costs.
- There will be an annual ongoing compliance cost to the industry of approximately \$500,000.

The immediate impact of these costs will be a reduction in capital expenditure earmarked for upgrading existing facilities. This will result in a loss of jobs in the ACT and poorer infrastructure for retirement village residents. These costs will impact on the services the industry provides to residents - the RVA and ACSA believe this is not in the community's interest.

Compliance costs and who pays?

Unfortunately, the impact of this Bill will fall on retirement village residents. Each operator will work to minimize the impact and each



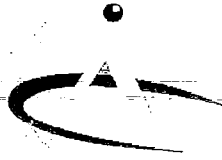
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operator is likely to pass on the compliance costs in different ways. Ultimately, it is ACT village residents that will pay for this legislation.

There are a number of different ways that operators will work to defray the compliance costs associated with the legislation and these are as follows:

- Personnel and residents. Our industry survey showed that operators will try to absorb the new paper work and compliance obligations within the current staff base. There will be reduced availability of staff for village residents and therefore a reduced service offering.
- Passing on costs to residents. The financial costs associated with this legislation will very likely be passed onto residents. This is likely to occur in different ways but the options available to operators are as follows:
 - Increased unit prices. Future sales of village units in the ACT are likely to see an increase in the asking price. This does not assist with current affordability pressures, nor does it assist seniors to downsize and free up existing standard residential stock for future generations. Further, it does not assist seniors in funding their future care needs – the burden of which will inevitably fall on the Government.
 - Increased exit fees. Residents will be very concerned about this prospect but some operators feel that they will not have a choice. The Government, and the broader community, should also be concerned as it will impact on an older person's ability to pay for their future care needs.
 - Increasing ongoing maintenance levies. Again, this will concern residents and it will impact on the affordability of the retirement village product in Canberra.

To re-iterate our first recommendation, a robust RIS will identify the onerous compliance burden built into this legislation and this cost should be known prior to debate on the Bill.



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Recommendation Three

That the ACT Government review the *Retirement Villages Bill 2011* and seek to simplify the legislation in order to significantly reduce the compliance burden on the industry – and thereby the negative impact this will have on ACT seniors and the broader community.

Reduced Territory Investment

Any changes to the regulatory environment mean that business like operators of retirement villages have to reassess. RVA and ACSA members are currently reassessing their investment plans as a consequence of the *Retirement Villages Bill 2011*.

As background, retirement villages are a difficult asset class through which the property industry makes very modest profit. The very nature of the partnership agreement between the operators and residents is about ensuring mutual financial benefit.

Our members can make greater profits and quicker profits through developing standard residential stock, which does not serve the interests of many older people as well as retirement villages. Standard residential stock is developed more quickly, the upfront costs are less, and the investment recouped immediately upon sale. This is not the case with retirement villages meaning investment is more risky, requires large up front debt and equity and return timeframes are very long (10 years or more in many cases).

As part of our member survey, we have determined that retirement village operators in the ACT have currently earmarked around \$204 million in new investment in the ACT. This investment creates jobs, seniors housing with broader social and economic benefits, and adds to the economic base of the Territory.



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The potential impact of this new legislative burden is a reduction in the industry's investment and in addition, the timing of that investment.

Canberra's population is ageing and there is a need now for more appropriate and affordable seniors accommodation. There are long lag times associated with the building of retirement villages, villages are in demand in the ACT, and they are currently affordable. The industry, and ultimately the Government, will not be able to meet future demand should investment stall.

A rigorous RIS will determine the likely impact on investment in the ACT and this will enable the Government to fully consider the social and economic impact of the *Retirement Villages Bill 2011*.

The ACT industry stands ready to work with the Government through the provision of information that will assist with the RIS being undertaken.

Recommendation Four

That the ACT Government undertake, in concert with the ACT retirement village industry, an assessment of the likely investment impact of the *Retirement Village Bill 2011* to determine the social and economic costs to the ACT - and whether any perceived benefits of the current legislative approach outweighs these costs.

Specific Drafting Concerns

There are drafting issues with the *Retirement Villages Bill 2011* that the RVA and ACSA believe need to be addressed.

It is obvious that the current Bill cherry picks provisions from legislation in other jurisdictions such as Queensland and New South Wales (NSW). The Bill as it currently stands does not promote harmonization and is not cohesive.

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Further, given that this Bill has not been the subject of a normal public policy process and a RIS has not been undertaken, this is not surprising. Nevertheless, these issues do need to be addressed prior to the any debate in the Legislative Assembly on this Bill.

As further context, the final report of the Productivity Commission, *Caring for Older Australians*, recently provided to the Federal Government, provides a comprehensive analysis of the retirement village industry regulatory environment. This report recognises that the current regulatory environment is stifling investment and needs to be addressed should seniors housing continue to be developed.

In addition, the Federal Government's Advisory Panel on the Economic Potential of Senior Australians also points to the need for reform of the current regulatory environment. The Panel notes that the current regulatory and taxation environment is stifling investment in seniors housing in parts of the country. The retirement village industry believes the ACT risks experiencing the decline in investment experienced in other parts of the country such as NSW and Queensland.

The RVA and ACSA support these findings and recommendations and encourage the ACT Government to look closely at these reports before determining that a legislative approach is necessary - or that the current Bill is necessary.

The following is a table that outlines RVA and ACSA's concerns with the current Bill. It makes some re-drafting recommendations and observes that in some areas, the Government and industry would benefit from discussing the intent of certain sections.



Section by Section Analysis of the Bill

Item	Section	Issues / Recommendation
1.	S12 Application for registration	<p>This Section is inflexible, does not reflect existing arrangements, and does not encourage operators to work with residents to enable them to access a Village should they choose.</p> <p>A Scheme to be registered should not limit the form of village contract to be utilised in a Village. Village operators are now adopting multiple forms of tenure / terms to accommodate different resident needs.</p> <p>For example, some operators conduct both rental units under the NSW Act as well as standard for loan/lease in the same village. The registration process should not operate in a manner to limit flexibility in forms of village contracts that can be used. The Queensland model of a PID operates in a manner to be so restrictive that it has difficulty recognising rental contracts and makes it difficult to change the form of village contract from time to time.</p>
2.	S14 Power to ask for information etc from applicants and others	<p>The industry contends that a process to effectively 'qualify' a prospective village operator is appropriate to ensure only persons of good reputation and capacity are able to conduct the business. In a retirement village setting this is appropriate given the cohort of residents.</p> <p>Having said that, the industry is concerned that the process of qualification outlined in the Bill may act as a deterrent to new entrants. It may, by default,</p>



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		consolidate and protect incumbent operators. This could have the unintended consequence of stifling variety, new products and ultimately competition.
3.	S15 Transferring registration	<p>The ability of an operator to transfer and organise its business affairs is a critical part of the conduct of the operations of a business.</p> <p>A number of larger portfolios have been established as a result of smaller operators / developers developing their model, selling to another operator and then ultimately being purchased by an institution.</p> <p>Examples of this include the Glen Group in NSW that was consolidated and then sold its interests to the AMP Group.</p> <p>Another example is the Salvation Army Southern Region being acquired by the Macquarie Bank group. More recently Sakkara Group established a portfolio that was formed from smaller operators, sold to Aevum Ltd and then ultimately acquired by Stockland Group Ltd.</p> <p>There is no doubt there should be disclosure to residents of prospective operators of the village. However there should not be a power granted to residents to restrict the ability to transfer. That would constitute a significant restriction of development of the industry and would fly in the face of the one of the objects of the Act.</p> <p>There is also a definitional issue in relation to change in control particularly for villages held by listed corporations.</p> <p>The obligation should not be to 'apply' to the Commissioner but more correctly to inform. The ability of a resident to object generally and further to have 60 days within which to object will affect the ability of operators to transfer their villages and will</p>



again restrict the ability to develop the diversity of the industry.

The only basis upon which a transfer of registration could be refused is if the transferee is a person that would not otherwise qualify as a scheme operator under s13(2). To the extent that Government wishes to protect residents from a former operator paying outstanding refunds, this is addressed in the notice mechanism raising the issue and the transferee and transferor responding to the issue but not acting to stop any transfer. It would probably be in the best interest of a resident that if an operator can't pay a refund then it is better that the next operator can pay and does buy the facility.

The RVA and ACSA contend that at a minimum the following amendments need to be made to this Section.

- 15 (2) – replace “apply” with “notify” and insert “its intention” following fair trading. This would then read as follows –
(2) The scheme operator must notify in writing to the commissioner for fair trading its intention to transfer the registration of the scheme for the retirement village.
- 15 (3) (a) (i) – replaced “asked” with “notified” and after fair trading insert “of its intention”. This would then read as follows –
(i) that the operator has notified the commissioner for fair trading of its intention to transfer the registration of the scheme for the village;
- Delete 15 (3) (iv).
- Insert 15 (3) (c) “A resident who has received



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		<p>notice under (a) above, may within 30 days of receiving the notice give notice to the operator and the Commissioner raising any concerns they may have to the transfer".</p> <ul style="list-style-type: none">• 15 (4) should then read as follows - (4) <i>On application, if the transferee is a person described in s13(2) and is satisfied as to the matters set out in (5) below the commissioner for fair trading will within 60 days of an application, —</i> <p><i>transfer the registration of the scheme for the retirement village to the person named in the application;</i></p> <ul style="list-style-type: none">• 15 (4) (b) - delete.• 15 (5) should consequently read as follows - (5) <i>The commissioner for fair trading in considering the transfer in the registration of a scheme for a retirement village will consider the following matters—</i>
		<p><i>(a) the commissioner is satisfied that—</i></p> <ul style="list-style-type: none"><i>(i) the scheme operator for the village has complied with subsection (2); and</i><i>(ii) the person to whom the scheme is to be transferred is—</i><ul style="list-style-type: none"><i>(A) at least 18 years old; and</i><i>(B) not prohibited from operating a scheme for a retirement village under section 94 (Offence— operating retirement village schemes etc while insolvent); or</i>



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		<p>(C) not prohibited from operating a scheme for a retirement village under section 95 (Offence—operating retirement village schemes etc with relevant conviction); and</p> <p>(iii) the transferor and transferee have provided a response to any notice issued under subsection (3).</p> <p>(6) If the commissioner for fair trading transfers the registration of a scheme for a retirement village, the commissioner must record the transfer in the retirement village scheme register.</p> <p>(7) In this section: resident includes a former resident who has not received an exit entitlement to which the former resident is entitled under the former resident's residence contract.</p>
4.	S19 Residence contracts generally	<p>This section seeks to limit any other clauses to 'no less beneficial'. It is contended that this is too subjective a test. The better test is to ensure there is no provision made contrary to the provisions of the Part. Otherwise if the Act changes in the future, confusion is potentially created.</p> <ul style="list-style-type: none"> It is recommended that 19 (2) be amended to read – (2) Nothing in this part prevents 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 not contrary to the provisions in this



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		<i>part.</i>
5.	S20 Meaning of residence contract	This section uses the term or expression 'person' rather than 'resident'. This is potentially confusing. It potentially enables a person, not a resident, to use the village facilities. There are likely other unintended consequences and it is recommended that the Government redraft this Section.
6.	S 21 Form and content of residence contracts	S21 (a) (vii) – insert “-if applicable” at the end. It should be noted that some operators choose to fund this component of capital works themselves without committing to a fund. The objective of this clause is transparency and this is transparent.
7.	S23 Residence contracts – guidelines	The RVA and ACSA believe that it is a useful concept to have the language of village contracts consistent so long as the Act does not limit the variety of provisions that could be agreed to within a contract/s.
8.	S31 Offence – failure to notify end of cooling-off periods to certain circumstances	<p>It is unduly harsh than an operator commits and offence for failing to notify of the later event. This Section should be re-drafted to say that a notice must be issued otherwise the contract could be unenforceable or may be rescinded by the resident within the settling in period without penalty.</p> <ul style="list-style-type: none">• It is recommended that the Section re re-drafted so that it reads as follows: <i>A scheme operator for a retirement village must: —</i> <i>(a) if the cooling-off period for a residence</i>



		<p><i>contract for the retirement village starts on a day that a later event happens;</i></p> <p><i>(b) give the resident under the residence contract, as soon as practicable after the event happens, written notice of—</i></p> <p><i>(i) the date the later event happens; and</i></p> <p><i>(ii) the date the cooling-off period ends.</i></p> <p><i>If the operator fails to issue the notice, the resident may rescind at any time without penalty.</i></p>
9.	S32 Residence contract may be rescinded during cooling-off period.	<ul style="list-style-type: none"> Given the above change to S31, it is recommended that S32 read as follows – <i>A resident of a retirement village may, by written notice to the scheme operator for the village, rescind a residence contract in relation to the village before the cooling-off period ends or during the settling in period if the operator fails to issue a notice under s31.</i>
10.	S34 Offences – failure to deal with instruments assigning property during cooling-off period	<p>This Section is unclear regarding the problem it is seeking to address or the resident rights seeking to be protected. The RVA and ACSA would welcome a discussion with the Government about this Section to determine why it has been included.</p> <p>As it is drafted, it could relate to the transfer of items to a resident or it could be the transfer of an interest in the property itself.</p>



		<p>If the intention is to stop operators from selling items of equipment to residents then seeking to buy them back at the end of the contract, it is recommended that the Section be drafted along the lines of the following –</p> <ul style="list-style-type: none"> <i>The Operator must not sell items of equipment to residents with a provision that the operator may repurchase the equipment upon departure of the resident. Any contract that contains such a provision is of no effect.</i>
11.	S41 Offences – failure to hold and repay ingoing contributions	<p>The RVA and ACSA would welcome discussion with the Government regarding this Section as this potentially has significant investment implications for the sector. It may be, however, that this is simply poorly drafted. Until the RVA and ACSA are clear on what the issue is that it is trying to address, we are unable to recommend a specific form of words to deal with the problem is it seeking to address.</p> <p>The effect of this provision is that money paid under a village contract cannot be paid to the operator until after the cooling off period. Given all trustees operate under instructions from their clients, to have the trustee liable under the Act for having committed an offence is inappropriate.</p> <p>Further, the effect of this provision means financiers will need to wait until the end of the cooling off period.</p> <p>The provision effectively operates to provide a resident a form of deposit security to receive back</p>



		<p>their ingoing contribution until the end of the cooling off period. This is in spite of the fact that the resident receives the benefit of some occupation and use of village facilities during this time.</p>
12.	S53 Ending residence contracts – scheme operators	<p>This could be amended and improved by the addition of the following words at the end of S53 (2) (c) –</p> <ul style="list-style-type: none"> <i>In this regard, the resident agrees the operator may contact the resident's medical practitioner to obtain details of the resident's care needs.</i> <p>There are also some significant problems with this provision.</p> <p>This provision has been drafted so that it is similar to the Aged Care Act. It is designed to ensure that if a person is not able to remain in a facility, the provider must have an alternative. The difficulty is that under this Act, the village operator is not a person under the control of the Aged Care Act but is being directed to this Act to ensure they can identify an appropriate aged care facility. This is something a village operator may not be able to do.</p> <p>The proper course is to determine if the person can remain in the village and if they cannot to then terminate the agreement.</p>
13.	Division 4.9 Exit entitlements	<p>The RVA and ACSA contend that the first part of this Division over-emphasises offences being committed for certain things not being done by an operator, which actually might simply have occurred as a result of administrative error.</p>



		<p>This appears unnecessary when an alternative for a failure by an operator to provide these items is for the resident to approach the Commissioner and to make a specific request. If after that request, the operator does not fulfill their obligations, then one could legitimately say that an offence has occurred.</p> <p>It is recommended that this Division be re-drafted.</p>
14.	S59 Offence – failure to pay exit entitlements to residents who own units	<p>This provision seeks to use the language of s180 of the NSW Act relating to the obligation to repay amounts for registered interest holders however it has the effect of requiring repayment of such amounts within 6 months.</p> <p>The NSW legislation recognises the right of the resident to be paid under their contract when a future event occurs namely the unit being re-leased. This provision seeks to set that aside and introduces a mandatory 6 month buy back provision. This does give rise to adjustments for capital gains or calculations of departure fees based on next price. It is recommended that the Government use the relevant provisions from the NSW Act.</p> <p>Further, the effect of this Section is similar to the effect of s60 below - that is repayment is to be within 6 months of vACSAnt possession at the latest.</p> <p>It is recommended that this Section be re-drafted or deleted.</p>
15.	S62 Orders for payment of exist entitlements on sale of units	<p>This provision cannot properly work if the form of contract relies upon a future incoming price to be determined. Either the provision allows for a determination to be made on an amount</p>

		<p>independently determined, which is extremely difficult and problematic, or it should be removed.</p> <p>It is recommended that this Section be removed.</p>
16.	S63 Enforcing residence contracts	<p>The effect of this provision is that it could make former scheme operators or parties to the residence contract, liable for future problems. This is inappropriate and flies in the face of the practice of a business being sold and the purchaser taking on all responsibilities. In circumstances where the village has a charge to secure performance, that the Commissioner is involved in the transfer of the village and so can vet the purchaser, then this provision is excessive. In relation to residence contracts, the effect of the provision is to ensure all residence contracts are in fact assigned or novated or if the land is registered that the transfer is registered.</p>
		<p>It is recommended this current section be replaced simply with –</p> <ul style="list-style-type: none"> <i>A residence contract in relation to a retirement village is enforceable against the owner of the land to which the village relates, the scheme operator or the current scheme operator on the title or the party liable under the contract.</i>
17.	S65 Meaning of public information document	<p>The RVA and ACSA and our members in the ACT are committed to ensure that village residents are provided with the information necessary to make an informed decision / choice. We are committed to transparency and fairness. We also believe that sometimes the more information an operator provides to resident, the more confusing and</p>



		<p>potentially problematic this decision process becomes.</p> <p>This provision as drafted seeks to bring in elements of the Queensland PID format. The difficulty of that format is that the document becomes very cumbersome. As an alternative, it may be sufficient to provide all the information requested but to provide a mechanism for updates or modifications to the PID to be by way of a simpler document similar to a 'Request' Document used in the LPI in NSW.</p> <p>If a PID is to be prepared, then noting the Inquiry Document is used, the process of having the PID registered and kept up to date (but not provided to each prospective resident) and having the Inquiry Document as the disclosure statement to form part of the contract may be a compromise to reduce the bulk of paper provided to residents. And to reduce confusion and compliance costs.</p>
		<p>That is, have the PID operate similar to a registered dealing in the LPI in NSW that a person is directed to can refer to. At the very least, the PID should be allowed to be electronically available and an operator has satisfied the obligation to disclose if they identify a website to which the PID is located. That concept already exists in the realm of financial services where a Product Disclosure Statement can be provided by way of internet link.</p> <p>The alternative is to use a form of disclosure statement as is done in Victoria or NSW to reduce the bulk.</p> <p>In the interests of future village residents in the ACT, the RVA and ACSA believe this Division should be re-drafted.</p>



18.	S72 Offence – failure to correct inaccuracies in public information documents	It is recommended that this be re-drafted to enable operators the opportunity to change information.
19.	S101 Meaning of capital improvement	<p>The use of a definition that is linked to the Taxation Act is inherently difficult and only opens up the whole issue to argument.</p> <p>In circumstances where this Act compels the establishment of a capital replacement fund then the distinction between maintenance and replacement becomes irrelevant.</p> <p>It is simpler that the village operator is responsible for all maintenance and replacement but is allowed to use general service charges plus the proportion of funds paid into the capital replacement fund to meet all the cost of maintenance and replacement.</p> <p>This can be combined to form a capital works fund to</p>
		<p>which the residents and operator contribute. In essence, the form of the NSW Act before the final changes were made to the establishment of the capital works fund.</p> <p>Sections 102 – 108 appear to try to stop refurbishment being passed to either fund. It is difficult to draw the line between a request and a need. If a resident does not request the improvement it may still be in the best interest of the village and the other residents that some improvement occur by way of replacement. Otherwise both the operators and residents run the risk of deterioration of value and unnecessary ongoing higher maintenance cost i.e. better to redo the kitchen as a whole for a new resident rather than</p>



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		<p>spend ongoing maintenance for an old fit-out.</p> <p>It is recommended that the Government and the industry work together to ensure this Section meets the objectives of the Government, residents and industry.</p>
20.	<p>S142 Working out and paying general services charge for former residents</p>	<p>This provision again links the ongoing liability to a maximum period of 6 months. This may be inappropriate and insufficient and does not reflect the sharing of gain between the resident and operator.</p> <p>It is recommended that the Government and the industry work together to ensure this Section meets the objectives of the Government, industry, and residents.</p>
21.	<p>S166 Classification of expenditure</p>	<p>The RVA and ACSA would welcome a discussion with the government about why this provision seeks to classify expenditure. This is essentially an accounting concept and we are unsure as to why this is included in the Bill.</p> <p>It is therefore recommended that this also be a point of discussion between government and industry to determine the intent of this provision and whether it could be better drafted.</p>
22.	<p>S168 Creating charges over retirement village land</p>	<p>It is contended that the drafting of this section creates an inflexible business and investment environment for the retirement village industry in the ACT and will potentially have unintended consequences for the community.</p>



		<p>Within this Bill, there needs to be an ability to differentiate land that has more than one function e.g. a residential aged care facility on site (co-located with a retirement village). In NSW, the process allows for the shading out of non-retirement village land and this Bill much also allow for that.</p> <p>It is recommended that Government re-draft this section to allow for diversity and choice in use of land / facilities for ACT seniors. This is going to become incredibly important over coming years.</p>
23.	<p>Division 10 Residents participation</p>	<p>Village operators and residents are a partnership. Both seek to gain from a well operating village with increasing unit values. Hence, the RVA and ACSA believe that strong communication channels between operators and residents are essential.</p> <p>This Division simply envisages that communication will occur between resident committees and</p>
		<p>operators. Sometimes this works very well although sometimes a small group of residents can dominate and not act in the interests of the whole village population.</p> <p>It is recommended that a provision be inserted to enable an operator to call a meeting with all residents at any time. Communication should not be limited to the residents committee.</p>



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Recommendation Five

That the ACT Government amend the Bill where specifically recommended and establish a round table with industry, residents and government to carefully consider those aspects where the drafting and intent of certain provisions is not clear to determine how best to amend the Bill.

ACT Opportunities

The Australian retirement village story is a successful one and the industry has grown despite any support or overt policy framework delivered by governments. There are, however, emerging challenges for the industry that if addressed will ensure retirement village living and all its advantages for seniors will continue to be provided. Importantly, it will ensure the industry will be in a position to keep up with demand from ACT seniors.

It is clear that retirement villages will continue to represent an essential component of housing for seniors in the future. Even based on current penetration rates nationally, a projected growth of five million people aged 65 and over in the next 40 years would require an additional 2,800 villages to meet demand.

Should retirement village housing stock not be available, there would be four clear socio-economic drawbacks:

1. 300,000 or more residents would have to be housed in standard residential stock that in many cases would be too large and too difficult to maintain. This would exacerbate existing shortages of stock available to younger families heightening intergenerational inequities.



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2. Those 300,000 or more residents would likely experience heightened social isolation contributing to poorer quality of life.
3. A greater need for more investment by government in health care, public housing and home-based care – a significant proportion of which is currently provided by retirement villages.
4. Direct and indirect economic impacts (employment, investment in infrastructure).

The Advisory Panel established by the Federal Government on the Economic Potential of Senior Australians acknowledges that there are barriers affecting the supply of housing for seniors and the RVA endorses the commentary and evidence it has provided to the Federal Government.

Barriers that need to be addressed are:

- Availability and affordability of suitable housing including problems with developer access to appropriate land.
- Downsizing or moving to more appropriate housing is discouraged by financial disincentives and a lack of clear and accessible advice.
- Regulatory burdens imposed by State and Territory legislation.
- Taxation treatment of retirement village investment.
- Difficulties in unlocking existing senior wealth. Developer access to capital and investment disincentives.

These provide an opportunity for the ACT Government to take pro-active action and planning to ensure ACT seniors have access for affordable and appropriate housing.

Measuring senior housing demand and supply

As discussed above, Australia and the ACT face a looming challenge in providing appropriate and affordable accommodation for our ageing population. The RVA has presented some analysis above of the recent



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retirement village construction trends and made some evidence based predictions on the potential impact should this continue.

This evidence is not dissimilar to the data emerging on the housing industry generally. The final Australian Bureau of Statistics figures released in January confirmed a weak quarter for both new housing and major alterations and additions activity in September 2011.

Seasonally adjusted residential building work done fell by 1.6 per cent to an annualised level of \$45.5 billion in the September 2011 quarter. New residential building work fell by 1.9 per cent in the September quarter. In addition, the value of major alterations and additions work done, which accounts for around 20 per cent of total renovations activity, eased by 0.2 per cent.

The RVA contends that in order for any government to properly plan the extent of seniors housing that is needed into the future, that there should be ongoing and comprehensive work on measuring housing demand and supply.

Recommendation Six

That the ACT Government works with the Federal Government to:

- Ensure the Australian Housing and Urban Research Institute is resourced to measure the demand for, and supply of, aged friendly housing for seniors in the ACT.
- Enable the National Housing Supply Council to continue its annual 'State of Supply' report.

Improving access to land and planning reform

The RVA contends that lack of access to cost effective land is one of the key impediments to increasing the supply of seniors housing in the ACT.



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Whilst the RVA believes that the issue of seniors housing is so significant that a nationally driven, Commonwealth- lead set of planning targets (for a set quota of housing to meet demand in specific areas) would best ensure seniors are able to access appropriate housing across Australia, there are some immediate steps the ACT Government can take to drive further investment in retirement villages.

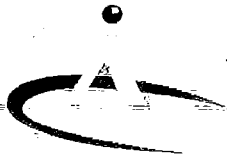
Planning reforms that are targeted towards the delivery of seniors housing would assist the industry to deliver a wider range of products.

Such reforms could include:

- Initiatives to speed up planning timeframes.
- Adding a requirement for land purchasers to include a percentage of land development targeted to seniors housing.
- Allowing different zonings for retirement villages to be accommodated in association with other relevant uses (for example, retail, commercial, mixed use).
- Allocating surplus public land specifically for seniors housing.
- Setting seniors housing targets.
- Providing other incentives to developers of seniors housing (i.e. increasing height limits, lowering car parking requirements, floor space ratio incentives) in other or linked developments.
- Governments working with industry to deliver inner urban solutions where the development of villages is most difficult and costly, including investigation of surplus government or brownfield sites that could accommodate seniors living.

The removal of barriers such as stamp duty (see below) will also assist with increasing seniors housing supply and will encourage more efficient use of existing housing stock.

The RVA stands ready to the work with the ACT Government in a creative collaboration to deliver more and better seniors housing.



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Recommendation Seven

That the ACT Government:

- Lead a renewed partnership between all government and industry to work together to develop more age friendly and integrated housing communities.
- Consider reforms such as retirement village zoning to encourage investment.
- Work with industry, including the RVA, in a creative collaboration to deliver more and better seniors housing.

Retirement villages as part of aged care continuum

As you can see from the attachments to this Submission, retirement villages provide many benefits to ACT seniors and the wider community.

There are more seniors living in retirement villages than there are in residential care. The average age of retirement village residents is increasing and more and more seniors want to age in place. This will drive government policy responses.

To meet this growing trend, retirement villages and governments need to work together to deliver innovative accommodation and care solutions. The RVA contends that this will require a whole of government response – from planning, home design, active ageing initiatives, community care, and health services.

The RVA proposes that, like elsewhere in the country, the ACT Government recognise the important role of retirement villages in the aged care continuum. An important element of this would be to transfer policy and regulatory responsibility for retirement villages to the Community Services Directorate. This would ensure a whole of government approach to providing ACT seniors with new and integrated solutions to all issues.



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Recommendation Eight

That the ACT Government:

- Transfer policy responsibility for retirement villages and associated legislative instruments to the Community Services Directorate to ensure a whole of government focus.

Assisting ACT seniors to downsize

Housing is often seen as the fourth pillar of Australia's retirement income system, after pension income, voluntary savings and superannuation (Yates and Bradbury, 2009)¹.

The RVA agrees with the Federal Government's Advisory Panel's assessment that:

Much of the wealth of the current cohort of ageing Australians is locked up in ways that cannot be used to meet challenging circumstances, primarily as residential property, often in the post-war housing stock of a single house on a suburban block²

Given the ageing population, all governments in Australia need to consider new and creative ways to support seniors to downsize from standard residential homes.

It is in the interest of retirees as they will no longer, for example, have the same home maintenance issues and nor will they have to potentially modify their existing home to cope with changed circumstances. There is also ample evidence to show that making the decision earlier makes it

¹ Advisory Panel on the Economic Potential of Senior Australians., *Realising the economic potential of senior Australians; enabling opportunity.*, Commonwealth of Australia, 2011., page 19.

² Advisory Panel on the Economic Potential of Senior Australians., *Realising the economic potential of senior Australians: enabling opportunity.*, 2011., page 3.



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easier for seniors to adapt to the change and enjoy the resulting new lifestyle.

Implementing new and creative ways to support seniors to downsize is also important for governments and the broader community. It frees up standard residential stock for future generations, it should assist with housing affordability issues, and should ACT seniors make the decision earlier and be in appropriate accommodation, they are more likely to live independently longer.

The Federal Government has received two pieces of significant advice about the ways in which seniors should be supported in downsizing to appropriate accommodation and to free up their existing equity to provide for their future care needs. The PC report and the Advisory Panel have both observed that there are disincentives in the system that should be removed.

Key issues that the RVA believes need to be addressed are the existing stamp duty arrangements, a focus on pension entitlement rather than overall financial position, and a lack of readily available and accessible advice for seniors in planning for their retirement and their future needs.

Stamp duty

Stamp duty on properties adds to transaction costs and there is no doubt that this suppresses the number of transactions in the housing market. It can act as a deterrent to seniors making the decision to move to more suitable housing and can, in effect, reduce the supply of appropriate and affordable senior housing.

The RVA contends that there is a need to reform the stamp duty payable on seniors housing such as retirement villages to encourage senior choice in accommodation.



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Pension disincentives

As the Federal Government's Advisory Panel has observed, the current retirement system provides a focus on pension entitlement rather than the overall financial position of Australian seniors. This is a further barrier to seniors accessing housing to maintain independent living. This means that a senior may be concerned that their pension entitlement will be reduced due to the increase in assessable assets derived from any gain in downsizing.

The RVA is cognisant of the fact that this issue is primarily a Federal issue and not a matter for the ACT Government. On the other hand, should change occur, the benefits will flow to the ACT Government. There are the village style living benefits as per the attachment, and the broader economic and social benefits such as freeing up residential stock for younger generations, and providing greater accommodation and care choices for ACT seniors.

Removal of the current pension and assets testing disincentives would provide the opportunity for seniors to contribute to their future housing and care needs.

In addition, the RVA contends that there is a need to ensure that Australian seniors have access to appropriate financial advice to enable to make decisions before or upon retirement. Advice regarding the pension access should be readily available.

There remains an opportunity for the ACT Government to lend its support to calls for a change to the pension asset test and to use forums such as COAG to press for reform.



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Recommendation Nine

That the ACT Government:

- Reform the stamp duty payable on seniors housing such as retirement villages to encourage senior choice in accommodation.
- Encourage the Federal Government through the Council of Australian Governments to remove current pension and assets testing disincentives to free up equity for seniors to invest in their future housing and care needs.
- Investigate ways that ACT seniors can be supported in financial literacy and in accessing the independent financial advice they need to make decisions about their future. This would include information about the impact of housing decisions on their overall financial position.



Attachment A

The Retirement Village Association: Key Facts

The Retirement Village Association (RVA) is Australia's peak body for the retirement village industry. The RVA represents over 800 villages and associate members nationally.

Membership consists of retirement village operators, managers, owners, developers, investors, and industry specialists across Australia.

Members include FKP Aveo, Lend Lease Primelife, Australian Unity, Hindmarsh Group, IRT.

The RVA has five regional offices located in Brisbane, Sydney, Melbourne, Adelaide and Perth.

As the leading industry voice, the principle 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.
- Support and promote the benefits of retirement villages as 'the preferred choice of lifestyle for senior Australians'.

The RVA is made up of around 60% of for-profit operators and 40% not-for-profit operators.



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Economic modeling by KMPG-Econtech shows the retirement village sector contributes up to:

- \$4.7 billion in turnover across the Australian economy, comprising the operations of retirement villages and in the broader economy.
- \$2.8 billion to Australia's GDP.
- 30,000 jobs across retirement villages, construction and other sectors supporting retirement villages³

³ KPMG., Retirement Village Association., 24 October 2011

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Aged and Community Services Association of NSW and ACT: Key Facts

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

ACSA 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. ACSA supports a regional network comprising 12 Regional Committees across the NSW and the ACT.

ACSA represents 21 of the 28 villages in the ACT:

The role of ACSA 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.



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Attachment B

Previous submissions on the ACT regulatory environment

(See separate documents)



Attachment C

Individual and Community Benefits of Retirement Villages

Ageing in place	Villages support individuals to continue living independently for as long as possible, which is what seniors want. This also results in delayed entry to hospitals and residential care.
Connection	Villages enable access to social networks with significant health and wellbeing benefits.
Support services and senior friendly facilities	Villages offer services, site monitoring and other forms of care in purpose built facilities.
Quality of life focus	Villages focus on quality of life and encourage physical and mental activity.
Active ageing	Villages provide access to on-site facilities and programs that encourage activity, healthy lifestyles, and connectedness. These facilities relieve pressure on local community services.
Community benefits	Villages maintain and enhance the character of the local community by establishing multiple close networks e.g. health, exercise, volunteering.
Safety	Villages provide a safe and monitored environment e.g. call systems, 24 hour monitoring and first aid.
Senior friendly infrastructure and design	Villages provide senior friendly infrastructure that relieves pressure on families, carers and government resources.



Retirement Village Association

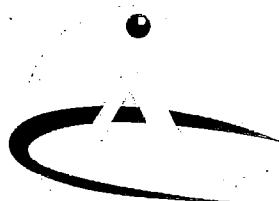


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**Retirement Villages Bill 2010 (ACT):
Exposure Draft
Submission to Mary Porter - Supplementary**

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>

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>

<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>

12.	<p>S72 and S73 Resident may set the sale price of the unit and appoint a selling agent</p>	<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.	<p>S78(2) Definition of long term resident</p>	<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.	<p>S80 Relatives may continue to live in units</p> <p>S81 Relative may enter into residence contract</p>	<p>Issue: 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: Amend S81(2) to read that the scheme operator <i>may</i> enter into a residence contract with the relative.</p> <p>Issue: 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: Set the sale price to be agreed by both the resident and the operator (S72).</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.	S103(1)(c) Tax on amounts paid	<p>Issue:</p> <p>Drafting error.</p> <p>Recommendation:</p> <p>This should read "under section 101(1)(d)" referring to tax on interest.</p>
17.	S105 & S118 Capital replacement reserve and maintenance reserve reports	<p>Issue:</p> <p>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:</p> <p>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>
18.	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>
19.	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>
20.	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>

21.	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>
22.	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>
23.	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>
24.	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>
25.	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>

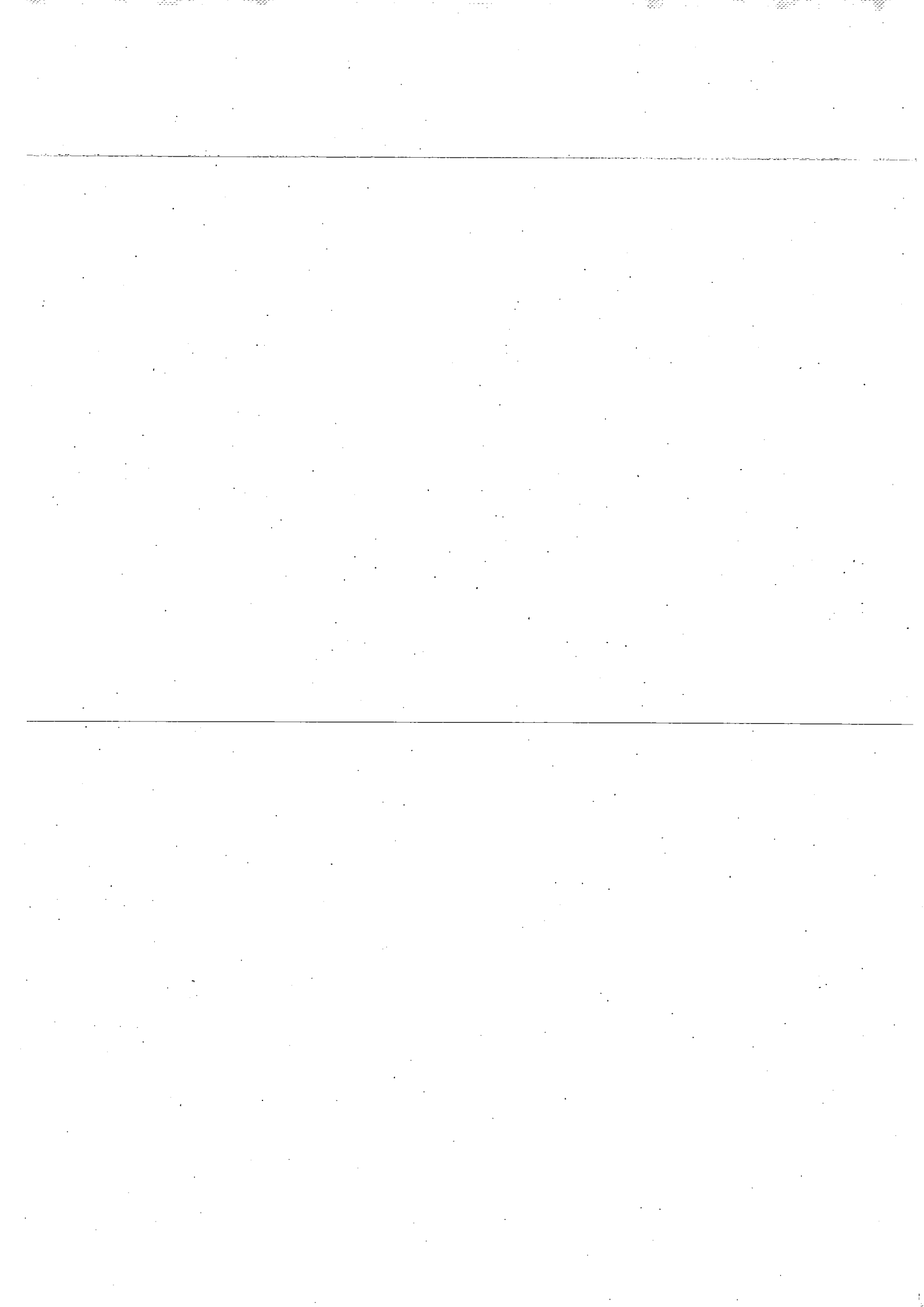
26.	S146(b) Have annual financial statement audited	<p>Issue:</p> <p>There needs to be clarification of what audit means.</p> <p>Recommendation:</p> <p>Adopt the NSW legislation description ie that the accounts for the village are audited annually by a person qualified to audit accounts for the purposes of the <i>Corporations Act 2001</i> of the Commonwealth S118(1).</p>
27.	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>
28.	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>
29.	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>
30.	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>

31.	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>
32.	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>
33.	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>
34.	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>
35.	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>

36.	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>
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Disclaimer

This submission has been prepared by the Retirement Village Association (RVA) Ltd and Aged & Community Services Association of NSW & ACT (ACS) Inc. 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 Inc.





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~~Simon Corbell~~ MLA

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

MEMBER FOR MOLONGLO

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

Dear Ms Graudenz

Thank you for your emails of 27 January 2012 regarding the Retirement Village Bill 2011 to myself and the Chief Minister, Ms Katy Gallagher MLA. I am responding as this matter falls within my portfolio responsibilities.

I understand that since you emailed me, you received a letter from the Deputy Director-General (Justice) of my Directorate dated 3 February 2012.

The letter invited the Retirement Villages Residents' Association's comments to the ACT Government in relation to Ms Porter's private member's bill, the Retirement Villages Bill 2011.

I am advised that the ACT Retirement Villages Residents' Association's submission of 17 February 2012 on this Bill was received by my Directorate. If you require any further information on this matter, please contact Mr Peter Quinton from my Directorate on 6207 0546.

Yours sincerely

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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Katy Gallagher MLA
CHIEF MINISTER
MINISTER FOR HEALTH
MINISTER FOR TERRITORY AND MUNICIPAL SERVICES
MEMBER FOR MOLONGLO

[REDACTED]
Retirement Village Association Limited
Suite 4, Level 7
350 Collins Street
MELBOURNE VIC 3000

Dear [REDACTED]

Thank you for your letter of 17 January 2012 in relation to the Retirement Villages Bill 2011, tabled by Ms Mary Porter AM MLA in the ACT Legislative Assembly.

I understand that since you wrote to me, the Deputy Director-General (Justice) of the Justice and Community Safety Directorate wrote to [REDACTED] of the Retirement Villages Association on 3 February 2012, and a copy of that letter was also emailed to him on 6 February 2012.

~~That letter invited the Retirement Village Association's comments to the ACT Government in relation to Ms Porter's private member's bill.~~

I understand that submissions close on 24 February 2012 and are to be provided to:

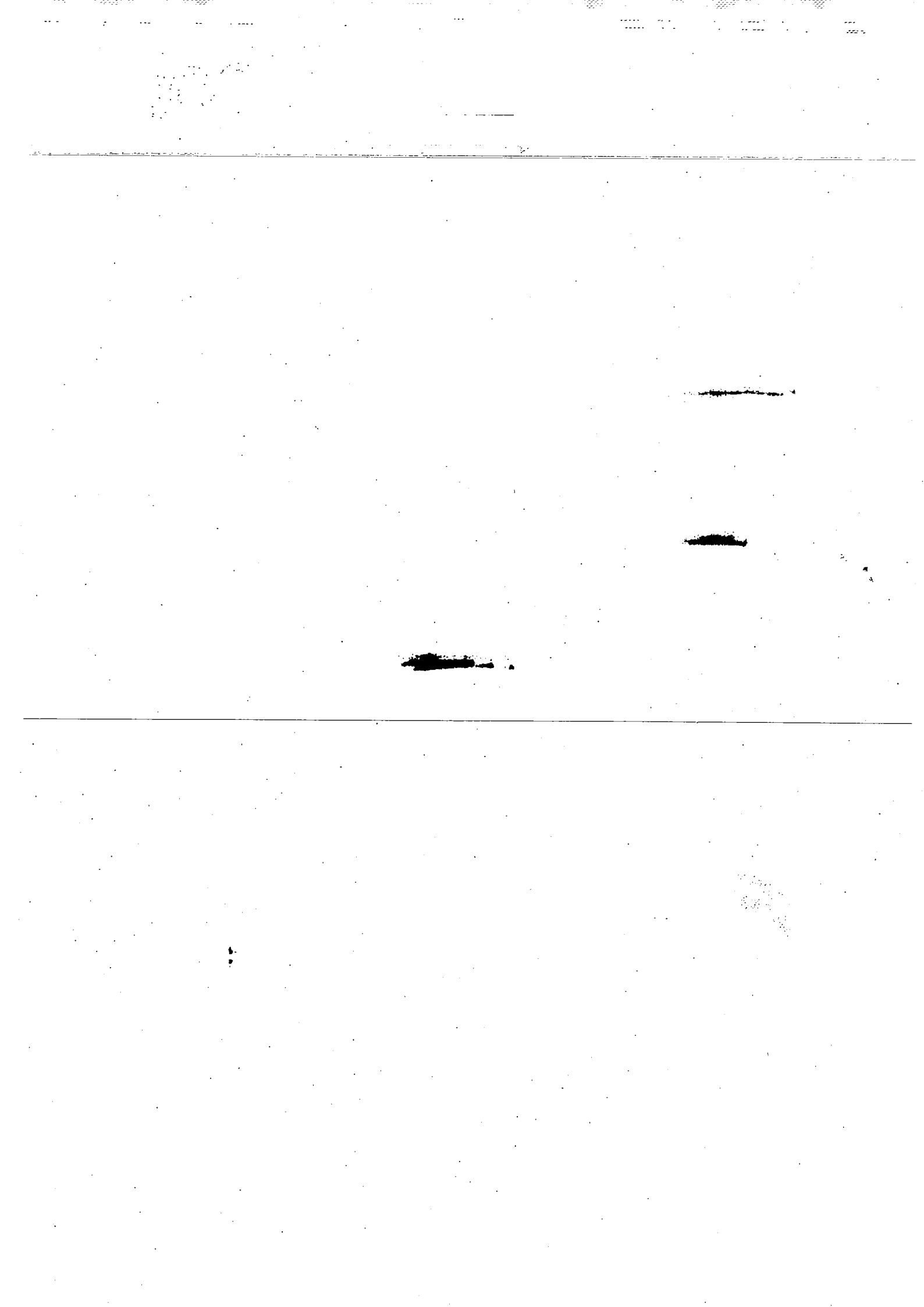
Legislation and Policy Branch
Justice and Community Safety Directorate
GPO Box 158
CANBERRA ACT 2601
Attention: Mr Peter Quinton

Please contact Mr Peter Quinton of the Justice and Community Safety Directorate on (02) 6207 0546 if you have any queries about this matter.

Yours sincerely

Katy Gallagher MLA
Chief Minister
24 FEB 2012

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White, Stephanie

From: [REDACTED]
Sent: Friday, 17 February 2012 2:52 PM
To: White, Stephanie
Cc: Quinton, Peter
Subject: Re: Retirement Villages Bill 2011
Attachments: Ms A. Playford.pdf

Attn: Ms Alison Playford
Mr Peter Quinton

Dear Ms White,

Thank you for your correspondence of 6 February 2012.

I have much pleasure in attaching the submission regarding the Retirement Villages Bill 2011 on behalf of the ACT Retirement Village Residents Association Inc.

I will be sending hard copies to Ms Playford and Mr Quinton.

Kind regards
[REDACTED]
[REDACTED]

ACT RVRA.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ACT Retirement Village Residents Association Inc.

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

Ms Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate
ACT Government
Attn: Mr Peter Quinton



ACT RVRA

Dear Ms Playford

Retirement Villages Bill 2011

Thank you for giving me the opportunity to present to the ACT Government the views of the ACT Retirement Village Residents Association Incorporated in relation to this Bill.

The Association strongly supports the Private Member's Bill as tabled by Ms Mary Porter in the ACT Legislative Assembly on 16 November 2011. The Bill is the result of a number of years of consultation by Ms Porter with ACT Retirement Village residents, their families and the Retirement Villages Industry.

Retirement Villages have become an important part of the Australian Capital Territory, particularly as its population ages. When the Retirement Villages Industry Code of Practice was developed in 1999, under the Fair Trading Act of 1992, there were far fewer Retirement Villages and, therefore, fewer residents.

The development of the industry, which now includes 28 Villages with approximately 2000 residents in Independent Living Units, requires Legislation which protects the interests of residents, managers and operators.

Legislation, which covers all aspects of multi-million dollar developments, will enhance the quality of life for residents and protect the investments of both the Not-for-Profit and Private Development sectors.

Residents are also investors in these Retirement Villages, as, for most of them, entering a retirement village requires the investment of most of their available assets, usually from the sale of their home. The protection of this investment becomes a vital issue, as it will probably be required to be used for their future care.

All of the Australian States have moved to legislation so as to regulate effectively this large and growing industry. In the substantive report, "Caring for Older Australians", produced as a result of the Productivity Commission Inquiry, to which we made submissions, Recommendation 12.5 requires State and Territory Governments to "pursue nationally consistent retirement village legislation under the aegis of the Council of Australian Governments."

The ACT RVRA believes that, without appropriate legislation, the residents of the Australian Capital Territory will be seriously disadvantaged.

Furthermore, Legislation enacted in the ACT will give both residents and management protection and the ability to have a financially secure, properly administered industry. Currently the Code of Practice does none of this, as its scope is severely limited and there are no enforceable penalties for non-compliance.

Ph.

Email:

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The Committee of the ACT Retirement Village Residents Association has very much appreciated the workshops, consultations and submission process as developed by Ms Porter. We feel she has consulted widely, so as to effect the best outcomes for residents and protection for the industry. The Committee is composed of members who have significant experience and talent, which has enabled us, we believe, to genuinely represent Retirement Village residents in the Territory.

We will be joining with the various State Retirement Village Resident Associations in forming a National Association with a view to enhancing village life, not only for our members, but for all residents in retirement villages.

I must emphasise that the ACT RVRA Inc considers that the Retirement Villages Bill 2011 is a vital piece of legislation for the Australian Capital Territory and will complement the other pieces of Legislation which have been enacted and which support the health, welfare and well-being of the older citizens of the ACT.

Our support for this Bill relates also to the need for all parties, residents, management and operators, to clearly understand their respective rights and responsibilities – the Bill will be a huge step forward in achieving this.

Kind regards



ACT Retirement Village Residents Association Inc.


17 February 2012.

White, Stephanie

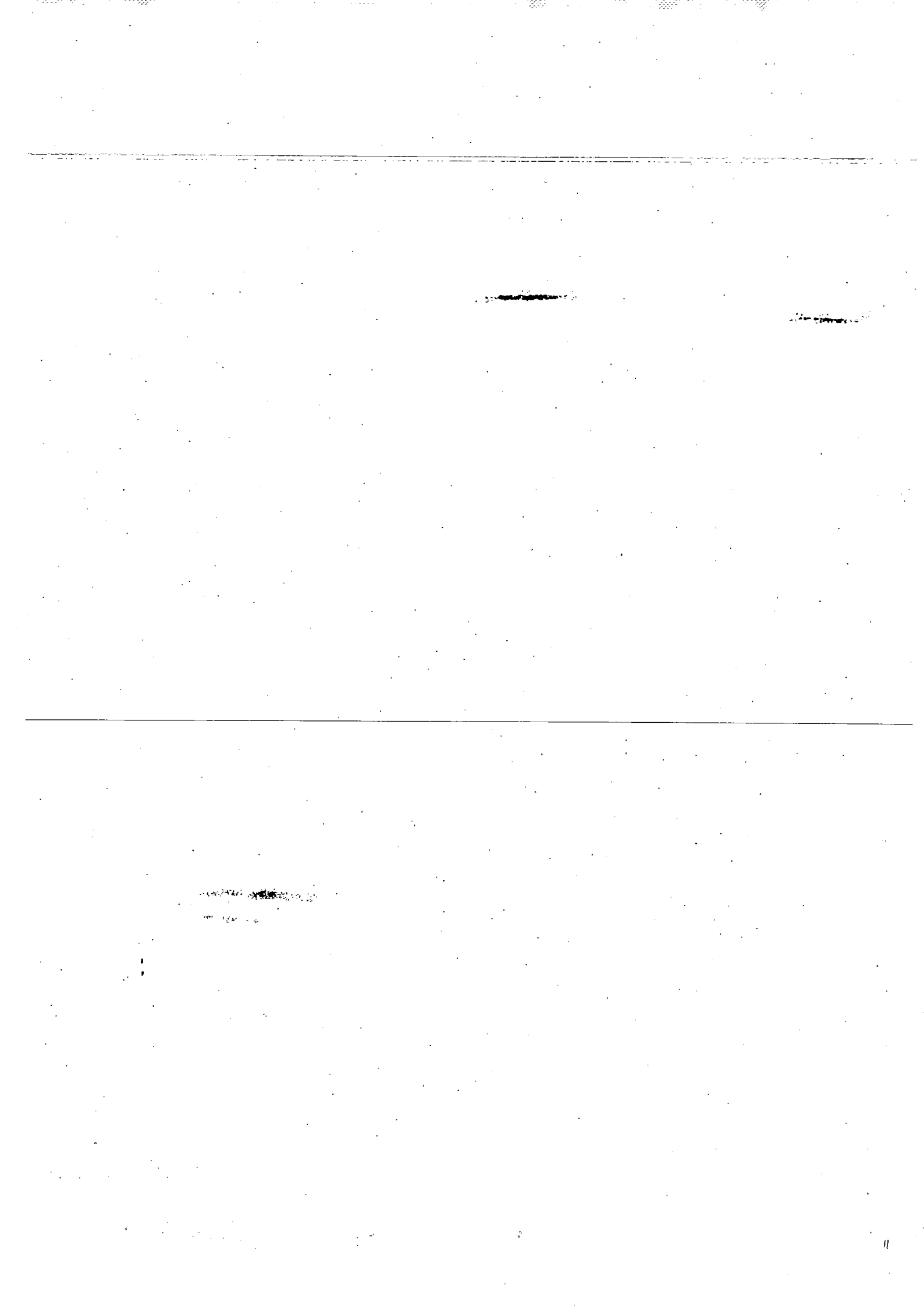
From: Georges, Sandra
Sent: Friday, 17 February 2012 11:39 AM
To: White, Stephanie
Cc: Quinton, Peter
Subject: Retirement Villages Bill - our request for comments

Stephanie –

As discussed, the person who called me is [REDACTED] of Aged and Community Services Association (phone: [REDACTED]). She wants help answering our request for comments-- in relation to how the Bill differs from the exposure draft already commented on.

She also asked at what stage the Bill is, and when comments are due. I think the information that the Bill is a Private Members Bill introduced in November is already in the letter she received.

Sandra Georges | A/g Deputy, Director-General Justice
Phone: +61 2 6205 3507 | Fax: +61 2 6207 0499
Email: sandra.georges@act.gov.au
Justice and Community Safety Directorate
Level 9, 12 Moore Street | GPO Box 158 Canberra ACT 2601
www.act.gov.au



ACT Retirement Village Residents Association Inc.

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

Ms Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate
ACT Government
Attn: Mr Peter Quinton


ACT RVRA

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The Committee of the ACT Retirement Village Residents Association has very much appreciated the workshops, consultations and submission process as developed by Ms Porter. We feel she has consulted widely, so as to effect the best outcomes for residents and protection for the industry. The Committee is composed of members who have significant experience and talent, which has enabled us, we believe, to genuinely represent Retirement Village residents in the Territory.

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Our support for this Bill relates also to the need for all parties, residents, management and operators, to clearly understand their respective rights and responsibilities – the Bill will be a huge step forward in achieving this.

Kind regards

[REDACTED]
[REDACTED]
[REDACTED]
ACT Retirement Village Residents Association Inc.
[REDACTED]
[REDACTED]

17 February 2012.

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RECEIVED

16 FEB 2012

Ms Alison Playford
Deputy Director-General (Justice)
GPO BOX 158
CANBERRA ACT 2601
Attention: Mr Peter Quinton




Dear Ms Playford

Retirement Villages Bill 2011

Thank you for giving me the opportunity to comment on the above private members bill introduced into the Legislative Assembly by Ms Mary Porter on 16 November 2011. I will take the opportunity to present my observations under 2 main headings, namely, *Why legislation is required* and *Comments on the Porter Bill*.

Why legislation is required

I believe strongly that retirement villages in the ACT should be regulated by legislation rather than the present situation whereby they operate under the Retirement Villages Industry Code of Practice under the *Fair Trading (Australian Consumer Law) Act 1992*. There are a number of reasons for this conclusion: -

- the present Code of Practice does not cover all the important issues affecting the management of retirement villages. For example, it neither includes proper procedures for supplying appropriate information to prospective or current residents, nor contains a workable guide for the resolution of any dispute between village operators or residents
- even if the Code were to be amended to cover all important issues, the ACT would remain as "the odd man out", namely the only jurisdiction in Australia where retirement villages do not operate under legislation. Further, it would not be possible for the ACT to participate in the 'harmonising' of the retirement villages' legislation in Australia (as recommended by the Productivity Commission) if our retirement villages remained covered by the Code of Practice, and
- decisions taken under legislation have the force of law

Comments on the Porter Bill

I would like to congratulate Ms Porter and her staff for the considerable time and effort they have put into the research and wide ranging discussions necessary to produce such a detailed Bill. It represents a big advance on the Code of Practice, covering most of the issues important to residents of retirement villages.

Having said that, there remain a number of comments, covering both substantive and, of less importance, presentational issues, that could be made on the Porter Bill. I will

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restrict their number, appreciating that (i) it is unrealistic to expect a major review of the Bill at this late stage in the deliberations, and (ii) no one group can expect to achieve all its objectives; some compromises are essential in any legislation covering the range of interests embraced in the Bill.

Substantive issues

There are, however, a number of omissions, as seen by village residents, including: -

- of greatest importance, the lack of any obligatory requirements in the present draft for (a) Management to provide residents with a detailed draft of the proposed Budget for the forthcoming year, enabling them to have an input into the final budget, and (b) this budget to be approved by residents.

Such a requirement is presently covered in the *Retirement Villages Industry Code of Practice* and, I feel very strongly, should be included in the Porter Bill, probably in *Part 8, Division 8.4, Services Charges*.

- the financial security of residents who do not own an accommodation unit in a retirement village could be put at risk in the event of the statutory charge being exempt [*Part 9, Section 168 (4)*], if the village is placed under administration, sold or closed for refurbishment

It is essential that the wording of the Bill should protect residents' financial security in considering any decision to exempt the creation of a charge over retirement village land.

- There is no reference to Village Rules in the present Porter Bill, in contrast to the **Code of Practice**, that makes clear the need for retirement villages to have such Rules.

It is important that this deficiency be rectified. Rules cover the day-to-day arrangements of individual villages and need to be amendable (with the agreement of management and residents) should circumstances change.

Presentation concerns

My hands-on experience of Acts of Parliament are restricted to those governing the activities of the Universities of New England (NSW) and Tasmania. Both these Acts were short documents, covering policy and principles, with much longer Regulations or Ordinances governing their interpretation (where necessary) and implementation. Should circumstances change, these Regulations or Ordinances could be amended by the respective universities without reference to Parliament, always with the proviso that any such amendments fell within the meaning of the Act. It was thus a much quicker and easier process to amend the Regulations than to change the Act.

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Judged on the above criteria, I found the **Retirement Villages Bill 2011** too detailed, difficult to interpret easily and too long. It could also be argued that it was too prescriptive in places. In addition, it is clear that, for some reason, the Parliamentary Draughtsman has not accepted the suggestion made earlier by residents of St Andrew's that the legislation should be in two parts, namely a relatively short Act and a longer set of Regulations.

Further, I was a little perplexed with the use of the word Dictionary at the end of the Act (*pp 151-158*). It seems to me that, as a number of the words found in this section were defined in the Legislation Act and many more in the body of the Porter Bill, with only a minority of words actually defined in the so-called Dictionary, there would be more logic in the section being called an Index.

I hope that you will find the above comments helpful in your final consideration on the wording of the Bill.

Yours sincerely



St Andrew's Townhouse Residents' Committee

14 February 2012

365



White, Stephanie

From: Quinton, Peter
Sent: Thursday, 8 March 2012 11:21 AM
To: White, Stephanie
Subject: FW: Retirement Villages Bill 2011
Attachments: Retirement Villages Bill - letter to JACS Feb 2012.pdf

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

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From: [REDACTED]
Sent: Thursday, 8 March 2012 11:16 AM
To: Quinton, Peter
Cc: [REDACTED]
Subject: RE: Retirement Villages Bill 2011

Hello Peter

The letter referred to below has been posted today. I have attached a scanned copy for you.

Apologies for the delay in getting this to you.

Regards

From: [REDACTED]
Sent: Wednesday, 29 February 2012 4:11 PM
To: 'peter.quinton@act.gov.au'
Cc: [REDACTED]
Subject: Retirement Villages Bill 2011

Hello Peter

I refer to Alison Playford's letter of 3 February to [REDACTED] seeking comments on this Bill.

The Society would like to provide comments on this Bill, noting that these are however overdue.

I hope that the letter to you will be finalised tomorrow and I will email through an advance copy.

Please accept my apologies for the lateness of this response.

Please call if you have any queries.

Regards

512

[REDACTED]
[REDACTED]
[REDACTED]

7 March 2012

Mr Peter Quinton
Legislation and Policy Branch
Justice and Community Safety Directorate
GPO Box 158
CANBERRA ACT 2601

Dear Mr Quinton

Law Society's Response to Retirement Villages Bill 2011

I am writing in relation to Alison's Playford letter of 3 February 2012 seeking submissions on the Retirement Villages Bill 2011. I apologise for the delay in responding.

By way of background, the Society's Elder Law Committee met with Ms Porter MLA in July 2010 to discuss the exposure draft of the Bill. The Bill was then considered in detail and issues and concerns were set down in a response to Ms Porter. Due to inadvertence, that response was never sent. A copy of the proposed response from 2010 was provided to Ms Porter's Office on 22 February 2012.

The Society has now had an opportunity to review the Bill in comparison with the Exposure Draft. The Society's concerns are:

The need for the introduction of implication of the Bill in the context of the current system operating in the ACT.

It is noted that:

1. there is no substantive need/mischief that the Bill identifies as requiring attention (other than other jurisdictions having comparable legislation);
2. the current system under the ACT Retirement Villages Code of Practice (the Code) has on the majority worked well. Having consulted industry representatives, such as the Retirement Village Association (RVA), there appears to be little need for the extensive regulation under the Bill, as it was found that complaints with respect to retirement villages (received by the Office of Fair Trading) were basically non-existent; and
3. a recent Australian Government Productivity Commission Report (January 2011) called for a nationalised Aged Care system through an "Australian Seniors Gateway Agency". In light of this Report, it appears that the legislation in question could have a short life considering the potential overhaul of State and Territory regulation.

Issues addressed by the Bill

It is noted that two of the issues identified in our original consideration of the Exposure Draft have been addressed under the Bill. These are:

Maintenance Reserve Fund (MRF)

Division 8.3 of the Exposure Draft included new sections dealing with a specific MRF. This provided for an upfront payment to be made by the resident as part of their ingoing contribution payment. We argued that this upfront payment for maintenance was impractical and suggested that the legislation provided for an annual outgoing levy. This appears to have been addressed, as the definition of 'maintenance reserve fund contribution' has been re-drafted to include an annual general service charge, rather than an initial contribution lump sum.

Price of Units

We had noted that the draft Bill allowed the resident to set the sale price of the resident's unit (s.72(a) of the Exposure Draft). We suggested that the operator be permitted to seek a valuation where the price did not seem to reflect the market value. This issue looks to have been addressed under the new Bill with the inclusion of two new provisions within Division 6.3.

The new provisions note that the asking price of the unit must be agreed to in writing between the resident and scheme operator (s 87(1)). Where the two parties cannot agree on an asking price within 14 days after the day the resident has appointed a selling agent, the asking price is to be determined by an independent valuer (s.87(2)). If there is a dispute over the appointment of the valuer (s.87(3)) either party may apply to ACAT for the registrar to make a determination.

Issues of Concern and Not addressed by the Bill

Below is a summary of the Society's previously identified concerns with the Exposure Draft that have not been addressed by the Bill.

1. *Residents having input into the budget*

We noted the Exposure Draft contained no comparative provision to s 14 of the Code, which provides for resident input into the operational budget of the retirement village.

2. *Incoming contributions to be held by trustees*

We questioned whether the new provisions requiring an ingoing contribution by residents to a trustee, would result in higher administration costs for village operators. These provisions (Division 4.3 of Exposure Draft) have been retained under Division 4.6 of the Bill.

3. *Ending Residence Contracts*

Division 4.5 of the Exposure Draft outlined the circumstances in which residents could end their contracts. These provisions have been re-drafted and extended in the Bill. Division 4.7 deals with ending residence contracts during the *settling-in period* (being 90 days after the resident is entitled to occupy the property) and Division 4.8 which deals with ending a residence contract *in other circumstances*.

If the resident wishes to end their contract during the setting-in period (s.48 of the Bill) the resident must give written notice to the operator before they have been entitled to occupy the premises for 90 days. In this event, s.49 provides the amount payable by the resident to the operator. This being, fair market rent for the period that the resident occupied the accommodation unit under the contract and the cost of any reinstatement work required in relation to the unit.

We noted that s 45 of the Exposure Draft allowed for a resident to end their contract by giving one month's written notice to the operator. This is now included in Division 4.8 (*in other circumstances*), s 52 of the Bill.

Whilst this provision conforms to s 30 of the Code, under the Code the circumstances surrounding the termination of the contract were to be determined by the individual residence contract (s 30(1) of the Code). We were concerned about the level of regulation surrounding the circumstances where a residence contract can be terminated under the Bill. There is no provision allowing the resident and operator to enter into alternative contractual arrangements. Therefore, the Society's original concerns stand.

3.1 *Repayment time frame*

We noted the repayment time frame of 14 days for operators to pay residents their exit entitlement is artificial and does not take into account the time required to refurbish the apartment at the end of the resident's occupation. We suggest that this time frame be set individually by each retirement operator to take into account each village's supply and demand for beds.

3.2 *Circumstances where an operator may end a contract*

We noted that the Code did not spell out specific circumstances where an operator can terminate a contract. Section 48 of the Exposure Draft set out specific circumstances where an operator may end a contract such as, where a resident has injured a person when in the retirement village or done serious damage to the residence.

We queried whether this list (set out in s.48(2) of the Exposure Draft) is exhaustive, as there may be other circumstances where management would wish to retain control over their termination rights of a contract. We note that s.48 of the Exposure Draft has been retained under s.53 of the Bill.

4. *Enforcing Residence Contracts*

We noted that s 53 of the Exposure Draft had the effect of keeping previous operators or owners of a village 'on the hook' even though they are not contracting parties under the residence contract. This provision has been retained in full under s 63 of the Bill.

5. *Relatives in the units*

Section 80 of the Exposure Draft set out a right of a relative to "live in the unit" and s.81 set out the right of the relative to "enter into residence contract". These provisions have been renumbered as s.91 and s.92 respectively. Apart from a minor formatting change, they have been retained in full in the Bill.

We noted that the submission prepared by the Retirement Villages Association suggested that the resident has a right of first purchase of the unit. We were concerned that s.81 did not make it clear that a relative can "purchase" the previous resident's interest in the unit. As the Bill retains both provisions in full, this concern remains.

6. *General Services Charges*

General Services charges (GSC) are outlined under Division 8.4 of the Bill.

Firstly, we are concerned that the GSC, as it is simply defined as 'a charge payable by a resident for general services under a contract', could not capture day-to-day maintenance costs (we refer to previous comments above as to the MRF).

The Bill contemplates that where a resident is no longer liable for such a charge the operator becomes liable. We are concerned that this may not be practical, and suggest that outgoing costs be reapportioned to the number of residents.

We are also concerned regarding the operator and resident's liability for the charge where the resident vacates. This is because an outgoing resident is only solely liable for the charge up to 90 days after the resident vacates, even if the unit has not sold. We note that in many villages a resident elects to occupy a serviced apartment and the cleaning and maintenance costs are constant, irrespective as to whether the services are used or not. Therefore, we are concerned that the Bill will force operators to cease to provide this service and require residents to seek outside contractors. These provisions remain unchanged, except for the following:

6.1 *Changes to the services charges*

S.127(2)(b)(ii) of the Exposure Draft stated, "if the former resident's right to live in the accommodation unit has not been sold during the 90 day period, the former resident stops being liable to continue to pay a proportion of the general services charge when the first of the following happens, (a) the right to live in the unit when sold or (b) a period of 9 months after the resident vacates the accommodation unit ends." This provision has been re-drafted under s.142(2)(ii), reducing the original period to 6 months. This provides an even lesser period of time for which operators can recover the general services charge.

7. *Statutory charges over the land*

Part 9 of the Exposure Draft provided that on registration of a retirement village scheme, a statutory charge is automatically created over the land. This provided the residents with the right to occupy the resident's units, use the village's facilities and be paid exit entitlements. Our concern was that the Exposure Draft stated that this charge has priority over all registered securities regardless of when the security is created. We were concerned that financiers may refuse to enter into a finance agreement because the priority of the charge provides too much uncertainty. The priority of charges is included under s 172 of the new Bill (s 155 of the Exposure Draft).

The priority of charge provision has not been altered from the Exposure Draft. Therefore, our concern regarding the uncertainty remains.

We further noted concern for ss.156 and 157 of the Exposure Draft (whereby a Court or Tribunal can order an amount to be paid to the resident and if not paid, the resident can apply for an order that the land be sold) and it's enforcing statutory charges provision. Once again we noted that these provisions would provide too much uncertainty for potential financiers. Having discussed this with financiers, it was noted they would cease to fund retirement villages in the ACT. We suggested that a financier simply be required to honour the terms of any existing residence contract. However, these provisions have been retained in full under s 173 and s 174 of the Bill respectively.

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8. *Dispute Resolution*

We noted that the Exposure Draft gives ACAT additional powers to hear disputes and make orders with respect to retirement village disputes. We noted that the ACAT legislation provides that other legislation may set out the power and purposes of the ACAT so this is permitted. The dispute resolution provisions under Part 11 of the Bill remain unchanged from the Exposure Draft.

The Exposure Draft proposed a 3 tier dispute resolution process. That being, a negotiation process (s.181), mediation (s.182) and an ACAT Tribunal process (s.187). We questioned whether this was necessary and noted that in the operator's experiences many disputes were not even making it to the disputes committee (the process established under the Code). Furthermore, we noted that the disputes committee has not been included in the Exposure Draft. These dispute resolution provisions have been retained in full in the Bill under Part 11. Furthermore, the dispute committee established by the Code has not been incorporated.

9. *Capital Improvement Funds*

Section 90 of the Exposure Draft provided that an operator is solely responsible for the cost of the village's capital improvements. We questioned whether the two exceptions (found under ss.1 and 92) covered all the situations that might arise where it is not appropriate that the operator be solely responsible. Section 91 states, (a) a resident must give the scheme operator a written request for a stated capital improvement and (b) the operator must agree to this. Section 92 provides for (a) residents passing a special resolution to give the operator a written request for capital improvement and (b) the operator agreeing to make these improvements.

Section 90 remains unchanged in the Bill and has been renumbered as s.102. Likewise, the exceptions are now found under ss.103 and 104 respectively. Therefore, the Society's concerns remain in terms of the limitations with respect to s.90.

10. *Charge created over capital replacement funds (CRF)*

We noted in the Submission that s.04 of the Exposure Draft provides for a statutory charge created over the CRF, and has priority over all other interests. We noted that this failed to appreciate that in many villages, responsibilities (and benefits) are akin to ownership, so the resident should be responsible for maintenance in these cases. Otherwise the resident shares in the capital gain but does not contribute to the capital improvements. The statutory charge provision has been retained in full under s.116 of the Bill.

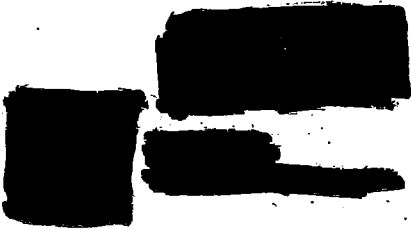
11. *Increasing General Services Charges No More than Consumer Price Index (CPI)*

Section 131 of the Exposure Draft stated that the general services charge can only increase by CPI. We noted that it may not be appropriate that general services are only ever increased by CPI. There were a number of exceptions such as, increases attributable to rates, taxes or charges under a Commonwealth or Territory law, for salary increases, insurance premiums and maintenance fund contributions. However, we questioned whether these exceptions would necessarily capture all types of general services. Furthermore, we questioned whether all charges for gas, water, electricity etc are charges that would fall under the exceptions. If not, this would mean that the operator can only ever pass on CPI increases to these costs.

We suggested that the process set out under the current code was more appropriate, as residents are currently actively involved in setting budgets and making decisions regarding money spent (i.e. on the upkeep of grounds). We also noted that in some villages, residents have rights equivalent to ownership and should therefore be responsible for bearing the costs of ownership. It appears that none of these concerns have been addressed under the current Bill, as s.131 has been retained in full under s.146 of the Bill.

We look forward to any comments you have, and in particular, if you have any questions in relation to the foregoing, please do not hesitate to contact the Society.

Yours sincerely

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

COPY



Katy Gallagher MLA

CHIEF MINISTER
MINISTER FOR HEALTH
MINISTER FOR TERRITORY AND MUNICIPAL SERVICES

MEMBER FOR MOLONGLO

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

Dear Ms Porter

Thank you for your letter to me of 13 February 2012 about your private members bill, the Retirement Villages Bill 2011, which you introduced into the Legislative Assembly on 16 November 2011.

I appreciate the initiative you have taken to address stakeholder concerns and to keep me informed of these concerns.

The ACT Government is in the process of considering its position in relation to the bill.

The Deputy Director-General (Justice) of the Justice and Community Safety Directorate has written to key stakeholder groups. Submissions on the bill closed on 24 February 2012 and will assist in informing the Government of its position.

The contact officer for this matter is Mr Peter Quinton of the Legislation and Policy Branch of the Justice and Community Safety Directorate. If stakeholders wish to lodge a late submission to Government they should contact Mr Quinton on (02) 6207 0546.

You can appreciate that, given that the Government has not yet formalised its position, it would be inappropriate for Government to prepare a Regulatory Impact Statement at this time.

Yours sincerely

Katy Gallagher MLA
Chief Minister

8 MAR 2012

ACT LEGISLATIVE ASSEMBLY

1

White, Stephanie

From: Quinton, Peter
Sent: Friday, 2 March 2012 9:36 AM
To: White, Stephanie
Subject: FW: Retirement Villages Bill 2011

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

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From: [REDACTED]
Sent: Wednesday, 29 February 2012 4:11 PM
To: Quinton, Peter
Cc: [REDACTED]
Subject: Retirement Villages Bill 2011

Hello Peter

I refer to Alison Playford's letter of 3 February [REDACTED] seeking comments on this Bill.

The Society would like to provide comments on this Bill, noting that these are however overdue.

I hope that the letter to you will be finalised tomorrow and I will email through an advance copy.

Please accept my apologies for the lateness of this response.

Please call if you have any queries.

Regards

[REDACTED]

504

University of Illinois at Urbana-Champaign

Page 1

1/1/2012

1/1/2012



Simon Corbell MLA

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

MEMBER FOR MOLONGLO

[REDACTED]
[REDACTED]
Goodwin Aged Care Services Ltd
22 Marshall Street
FARRER ACT 2607

Dear [REDACTED]

Thank you for your letter of 8 February 2012 regarding the Retirement Villages Bill 2011, which is a private member's bill introduced by Ms Mary Porter MLA on 16 November 2011. The ACT Government is currently considering its position on the Retirement Villages Bill 2011

Your letter will be invaluable in informing this position in relation to the Bill.

If you have any further representations you wish to provide to the ACT Government about Ms Porter's bill, you should urgently contact Mr Peter Quinton of my Directorate.

Mr Quinton may be contacted on (02) 6207 0546 or by email at peter.quinton@act.gov.au.

Thank you again for taking the time to write to me.

Yours sincerely

Simon Corbell MLA
Attorney-General

1.3.12

ACT LEGISLATIVE ASSEMBLY

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

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██████████

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White, Stephanie

From: Quinton, Peter
Sent: Monday, 27 February 2012 2:05 PM
To: White, Stephanie
Subject: FW: ACT Retirement Villages Bill 2011
Attachments: Property Council Submission ACT Retirement Villages Bill 2011.pdf

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

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From: Playford, Alison
Sent: Monday, 27 February 2012 12:31 PM
To: Field, Julie; Quinton, Peter; Anderson, Erin
Subject: FW: ACT Retirement Villages Bill 2011

fyi

Alison Playford | Acting Director-General
Phone: +61 2 6205 3507 | Fax: +61-2 6207 0499 | Mobile: 0417 254 159
Email: alison.playford@act.gov.au
Justice and Community Safety Directorate
Level 9, 12 Moore Street | GPO Box 158 Canberra ACT 2601
www.act.gov.au

From: [REDACTED]
Sent: Monday, 27 February 2012 11:57 AM
To: Playford, Alison
Subject: ACT Retirement Villages Bill 2011

Dear Alison !

Please find attached the Property Council's response to your recent correspondence seeking comment on the Retirement Villages Bill introduced by Ms Mary Porter on 16 November 2011.

Regards

Catherine

[REDACTED]
[REDACTED]
Property Council of Australia
GPO Box 1025
Canberra ACT 2601
T: [REDACTED] F: [REDACTED] V: www.propertyvozt.com.au

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24 February 2012

Ms Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate
GPO Box 158
Canberra ACT 2601

Dear Ms Playford

Thank you for your correspondence of 3 February 2012 seeking comment on the Retirement Villages Bill 2011, introduced by Ms Mary Porter MLA on 16 November 2011.

As this is the first notice the Property Council has received about the Bill, I would be keen to know what level of consultation has taken place to date.

However, having read the Bill I can provide the following comments:

At the outset I can advise that the property industry would not support the Bill in its current form being enacted. As you would be aware, 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) governs the occupation and operation of retirement villages.

We are not aware that any evidence has been presented that the existing legislative scheme has not been working. We would therefore be very concerned were the *Retirement Villages Bill 2011* as proposed by Ms Porter were to be enacted. Firstly the proposed legislation seems unnecessary in terms of the protection of resident's rights but, secondly, which would have the effect of causing an extremely onerous compliance burden on retirement village operators.

In the broader social context, we also believe the proposed legislation is not in the community's interest for a range of reasons including:

- **Compliance costs:** annual compliance costs will inevitably have an impact on services and/or costs to village residents. This is in direct conflict with current policy that seeks to lower accommodation and care costs for older people.
- **Compliance administration:** the increase in paperwork and administration associated with new requirements will divert staff time and attention away from looking after residents to dealing with new compliance requirements.

ActewAGL

CBRE
CB RICHARD ELLIS

Commonwealth Bank

JONES LANG
LASALLE
Real estate in a changing world

MinterEllison

RLB Rider
Levett
Bucknall

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E: act@probertvoz.com.au
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- **A deterrent to investment:** the upfront costs involved in order to comply with the proposed legislation will present a major deterrent to investment in the ACT retirement sector, as industry looks for less complex development opportunities, both within and outside the ACT.
- **Responding to Canberra's ageing population:** Canberra's population is ageing at rates higher than much of the rest of the country, and there is an increasing demand for retirement villages and other retirement living options. Additional red tape which acts as a deterrent to investment in the sector, will lead to a reduction in stock with broader negative economic and social consequences.

For the reasons stated above, our preference is that the existing Code of Practice remains in force.

We would welcome the opportunity to meet with your office or with Ms Porter to discuss our concerns in greater details and to work to find a positive outcome for all stakeholders.

Yours sincerely

[Redacted signature]

ActewAGL

CBRE
CB RICHARD ELLIS

Commonwealth Bank

 **JONES LANG
LASALLE**
Real value in a changing world

Mintec Ellison

RLB Rider
Levett
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White, Stephanie

From: Quinton, Peter
Sent: Saturday, 25 February 2012 7:25 AM
To: White, Stephanie
Subject: FW: Retirement Villages Bill (ACT) - Lend Lease Submission
Attachments: RV Bill Submission - 240212.pdf; ACT-Submission-feb11.pdf; ACT Legislation Submission - Supplementary .doc; ACT Legislation Submission[1].doc

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

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From: [REDACTED]
Sent: Friday, 24 February 2012 4:18 PM
To: Quinton, Peter
Subject: Retirement Villages Bill (ACT) - Lend Lease Submission.

[REDACTED] Retirement Living & Aged Care | Lend Lease
Level 4 / 111 Cecil Street, South Melbourne VIC 3205
T [REDACTED] F [REDACTED] M [REDACTED]

www.primelife.com.au

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24 February 2012

Mr Peter Quinton
Legislation and Policy Branch
Justice and Community Safety
GPO Box 158
CANBERRA ACT 2001

Dear Mr Quinton

Retirement Villages Bill 2011 (ACT) – Lend Lease Submission

We refer to the tabling of the Retirement Villages Bill 2011 in the Legislative Assembly on 16 November 2011.

Lend Lease is the largest for-profit owner, manager and developer of retirement living and aged care facilities in Australia. We have over 70 retirement villages and 30 aged care facilities in Australia and New Zealand and provide accommodation for over 15,000 residents. In Australia, we own or manage sites in New South Wales, Queensland, Victoria, South Australia and Western Australia.

On 4 January 2012 we announced our intention to enter the seniors living market in the ACT following the acquisition of a 4 hectare site at Isabella Plains, Canberra. The development will include a retirement village and associated community centre and facilities. Our acquisition of the site was preceded by an extended period of due diligence, commencing in June 2011 and which culminated in our tender being lodged on 22 November 2011.

As an owner and manager of retirement villages across a number of Australian states, Lend Lease is uniquely placed to understand the impact burdensome regulation can have on business and investment in the retirement living sector.

The lack of uniformity in the regulation of retirement villages across Australia adds a significant compliance and cost burden to our business. The proposed adoption in the ACT of yet another distinct style of regulation which contains onerous obligations is only going to increase this cost on us and on the industry.

If Lend Lease had been aware of those more onerous obligations proposed in the Bill (such as those referred to later in this letter) at the time of lodging its tender for Isabella Plains, we would have viewed the ACT retirement living market differently and we most probably would not have proceeded with the acquisition.

Lend Lease's general comments on the proposed legislation

We have been provided with a copy of the joint submission on the Bill prepared by the Retirement Villages Association and the Aged and Community Services Association NSW and ACT. We support this submission, a copy of which is enclosed, and the recommendations it proposes.

We are disappointed that the ACT Government has not provided a formal response to the previous RVA and ACA submission on the regulation of retirement villages in the ACT. We would like to see a more committed and robust

Lend Lease

engagement between the ACT Government and the industry on issues of such importance as the introduction of a new regulatory framework.

The joint RVA-ACA submission confirms that the current Retirement Villages Industry Code of Practice 1999 which governs ACT retirement villages is working well. This brings into question whether there is a need for new legislation in the ACT.

Further, given the relatively small size of the ACT seniors living market and the existence of widely accepted data showing our population is ageing, it is difficult to see what policy reasons there are to support new regulations that impose significant compliance burdens and are likely to stifle investment and development.

A number of the provisions in the proposed Bill create compliance obligations for retirement village operators that exceed those imposed by other states. The provisions we believe are unmatched in any other Australian state are referred to below. The ACT seniors living market will be placed at a competitive disadvantage if these compliance obligations become law. This is likely to impact future investment in the ACT seniors living market and, in turn, could potentially lead to a significant reduction in the supply of affordable accommodation for the ACT's ageing population. If the Bill in its current form is allowed to proceed and becomes law, Lend Lease does not anticipate making any further investment in the ACT seniors living market.

Lend Lease's key issues with the Bill – compliance obligations unmatched in other states

We have set out in the table below our brief comments on three key issues we believe need reviewing before the legislation proceeds any further. We believe these provisions create compliance obligations for retirement village operators that are unmatched in other Australian states.

Section	Lend Lease Comment	Lend Lease recommendation
15	<p>This section requires the commissioner of fair trading to approve a transfer of control of a retirement village scheme.</p> <ul style="list-style-type: none"> • No other States have matching provisions requiring pre approval of changes in control by fair trading. • This section was incorporated in the Bill tabled in the Legislative Assembly on 16 November 2011 and is new. There was: <ul style="list-style-type: none"> ○ No similar requirement to obtain approval of a change in control in the earlier version of the Bill released as an exposure draft in May 2010; ○ No prior notice from the ACT Government of an intention to implement a requirement to obtain approval from fair trading prior to transferring control of a village; and ○ No consultation with industry as to how such a provision might impact investment and development. <p>If Lend Lease had been aware of the intention to incorporate this requirement in legislation at the time it was considering and lodging its tender for Isabella Plains (that is, during the period from June</p>	<p>We see no problem with having an obligation to inform residents and the commissioner of fair trading of a proposed transfer of control. A requirement to inform residents exists under NSW and South Australian legislation and works well.</p> <p>The Bill should be amended to create an obligation to inform rather than seek approval for a transfer of control.</p>

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	<p>2011 to November 2011), it would have viewed the ACT retirement living market differently and most probably would not have invested.</p> <ul style="list-style-type: none"> o The section imposes a constraint on sales of retirement village sites. o The mischief the section intends to mitigate is dealt with elsewhere in the legislation. For example, the sections which prohibit certain persons from becoming an operator are sufficient to protect the interests of residents. The requirement for pre-approval is therefore unnecessary. o The section requires the commissioner of fair trading to take into account objections to a change in control made by residents; however residents are not generally equipped to understand the commercial considerations related to a sale/acquisition of a village. o We would question whether the commissioner of fair trading is satisfactorily equipped to deal with all of the considerations (commercial, legal and otherwise) which are relevant to a transfer of control of a village. 	
<p>59, 60 & 87</p>	<p>These sections require repayment of former residents' exit entitlements within 6 months of their departure and give the former resident the right to have input in relation to the re-lease price for the premises</p>	<p>These sections should be reconsidered and re-drafted so as to take into account the different financial arrangements that exist between operators and residents.</p>
	<ul style="list-style-type: none"> o While these provisions are largely taken from the current Retirement Villages Industry Code of Practice, legislation in other states does not require the operator to 'buyback' premises from all leasehold residents. o It is not clear how these provisions will operate where there is no new incoming resident and: <ul style="list-style-type: none"> o the exit fee is to be calculated by reference to the next price; and o the resident is entitled to capital gain. o In our experience, partial repayments/buybacks do not work well as, once the former resident has received a proportion of their exit entitlement, they no longer have as much of an incentive to achieve a timely sale/re-lease. This leads to: <ul style="list-style-type: none"> o delays in the turnover of premises and the payment to former residents of the remainder of their exit entitlement (capital gain); and o disputes as to what the re-lease price for the premises should be. This means a valuation is going to be needed in most cases to resolve the dispute and adds to 	<p>The sections ought not to apply where:</p> <ul style="list-style-type: none"> o residents are entitled to a proportion of any capital gain on the premises; and o where the departure fee payable by the resident is calculated by reference to the price paid by the next incoming resident; and o where the former resident is entitled to have input in relation to the re-lease price of their premises. <p>For example, in NSW the operator is not required to 'buyback' premises if the resident is a registered interest holder.</p> <p>In Victoria the operator is not required to 'buyback' premises if the resident is an 'owner'. The operator also does not have to 'buyback' the premises if the resident is entitled to appoint a sales agent to sell their premises.</p>

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	<p style="text-align: center;">residents' costs.</p> <ul style="list-style-type: none"> o These sections could lead to retirement village operators adopting switching clauses in residents' contracts. These switching clauses operate so that, if the operator has to repay an exit entitlement and there is no new incoming resident, the former resident loses any entitlement to capital gain. This is not in residents' interests. o These sections adversely affect valuations for retirement villages which damages business and investment interest in the sector. 	
<p>142 & 144</p>	<p>These sections limit a former resident's liability for services fees to a maximum of 6 months after leaving the village and the scheme operator is then required to pay the service fees</p> <ul style="list-style-type: none"> o As indicated above, the incentive for a former resident to achieve a timely re-lease of their premises is reduced if the operator has to provide a partial buyback. A resident's commercial imperative to achieve a timely re-lease is further reduced if they are exempted from having to pay services fees for their premises. o This means that the premises can go unoccupied for a lengthy period and the operator has to fund the service fees in respect of the premises. This is not an appropriate or fair balancing of the operator's and the residents' interests. o Legislation in other States is less onerous for an operator in terms of when the operator becomes responsible for paying services fees on vacant premises. For example, in Qld, the operator becomes responsible after 9 months. In NSW, the operator becomes liable for the whole amount of the services fees after 42 days only if a resident is not a 'registered interest holder'. <p>In Victoria, the limitation on how long a former resident's liability for service fees continues applies only to residents who do not 'own' their premises and, in any case, the operator is not liable to pay service fees in respect of vacant premises.</p> <p>In South Australia, the former resident is liable for service fees for a period of 6 months only; however their input into the re-leasing price for their premises is limited.</p> <p>In Western Australia, this issue is left to be dealt with under the resident's contract with the operator.</p>	<p>These sections should be reconsidered and, if the ACT Government considers it necessary to limit a former residents' liability for service fees after they leave, regard should be had to the regimes that exist in other States.</p>

The way forward

We would be happy to meet with you to discuss any of the matters referred to in this letter.

In our view, careful consideration of the policy reasons supporting a change to the regulatory regime in the ACT and a move away from the Retirement Villages Industry Code of Practice 1999 is still needed.

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Specifically, the ACT Government should be satisfied as to the potential adverse affects any new legislation would have on investment and growth in the ACT seniors living market. Our acquisition of the site at Isabella Plains demonstrates our willingness to be a participant in that market. However, a burdensome regulatory change and an unwillingness on the part of government to take into account and be responsive to industry concerns will make it more difficult for us to decide our future participation in the ACT seniors living market.

As stated above, if the Bill in its current form is allowed to proceed, Lend Lease does not anticipate making any further investment in the ACT retirement living sector.


We look forward to working with the ACT Government to settle on a mutually acceptable and workable regulatory framework for retirement villages in the ACT.

Yours sincerely

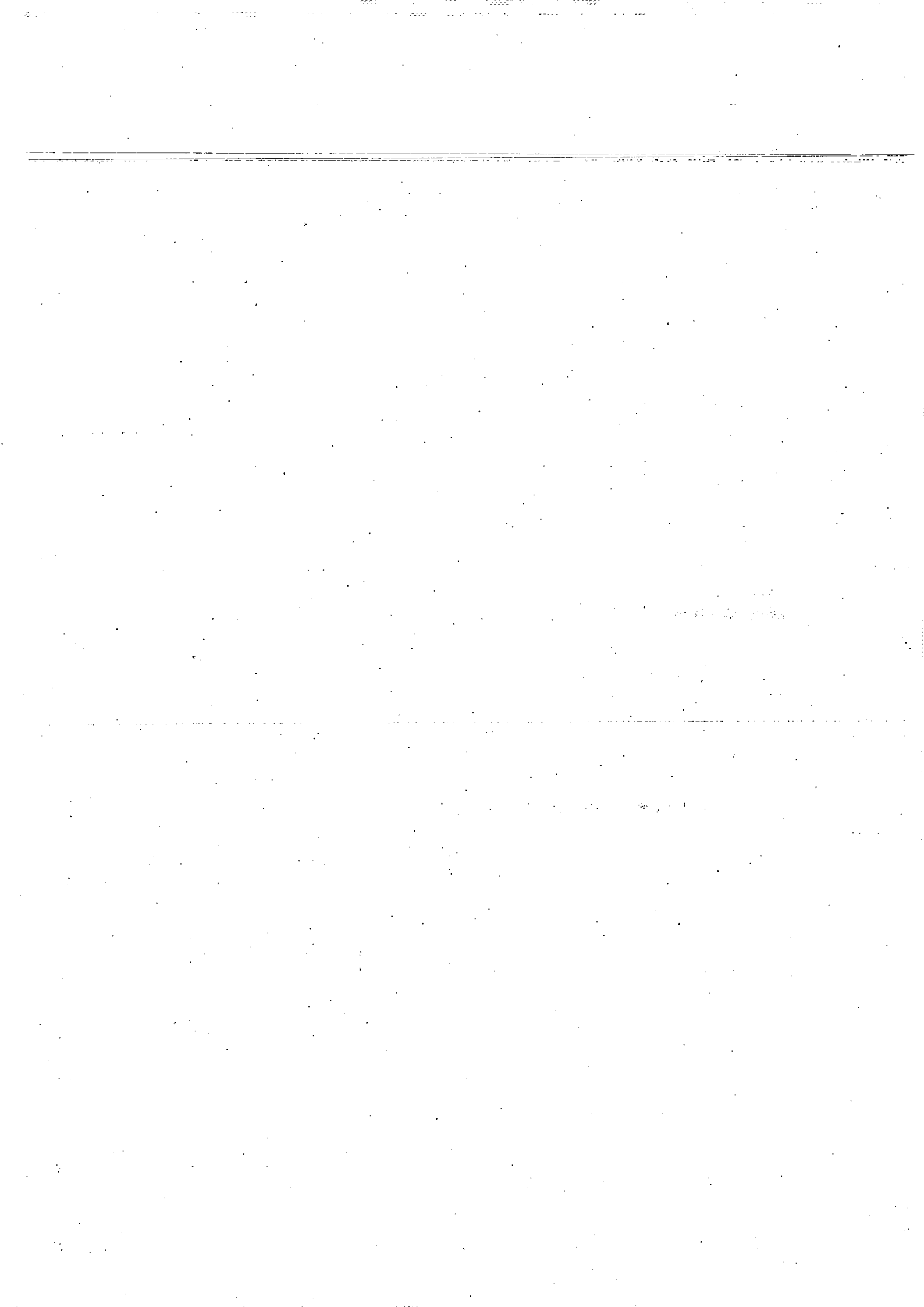
 Retirement Living and Aged Care
Lend Lease

Cc: Simon Corbell MLA
Chief Minister, ACT

And

Retirement Villages Association Limited
C/- 

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Dear Mr Quinton

Thank you for the opportunity to provide a written submission on the *Retirement Villages Bill 2011*. This Submission is a joint Submission from the Retirement Village Association (RVA) and the Aged and Community Services Association (ACSA).

As I am sure you are aware, our members based in the Australian Capital Territory (ACT) have worked constructively with Mary Porter MLA as she has drafted this legislation. This is despite the fact we do not believe legislation is necessary – particularly this legislation with its onerous compliance burdens on an industry that is already struggling with development of new housing for older people due to the costs of overregulation.

This legislation is not in the ACT community's interest due to the following:

- Compliance administration will redirect staff in retirement villages from looking after the interests of residents to dealing with a significant increase in paper work.
- Up-front costs of complying with the legislation will stymie investment. This includes investment in current and new facilities, as the sector looks to other less complex opportunities such as standard residential stock that does not serve the needs of older people.

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- Annual compliance costs will have an impact on services and / or costs to village residents. This will also reduce the resources of ACT seniors in terms affording future care. This is directly in opposition to current policy that seeks to lower costs of accommodation and care for older people.
- Increasing the cost of seniors housing will also have broader social and economic impacts. It will lead to a reduction in the residential housing stock being made available to younger generations. Less construction activity means less jobs and economic activity.
- The Territory's population is ageing and there are long lag times in constructing affordable and appropriate seniors housing.
- Retirement villages are in high demand in Canberra and there are very professional and committed operators that have heavily invested in older people in the Territory. They are an affordable seniors accommodation solution for government.

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) governs the occupation and operation of villages.

This arrangement and the consumer protections afforded have been working and the industry remains perplexed about the need for legislation given there has been no Tribunal cases in the ACT.

As part of our member survey, we have determined that retirement village operators in the ACT have currently earmarked around \$204 million in new investment in the ACT. This investment creates jobs, seniors housing with broader social and economic benefits, and adds to the economic base of the Territory.

The potential impact of this new legislative burden is a reduction in the industry's investment and in addition, the timing of that investment.

With over 2300 Canberrans in retirement villages, future investment plans, and no tribunal cases to date - it raises the question - why are we trying to fix something that is not broken?



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We would welcome the opportunity to meet with you to discuss our concerns in more depth. We stand ready to work with you to ensure continued investment in affordable accommodation options in the ACT.

Yours sincerely

[Redacted signature]

[Redacted signature]

[Redacted name]

[Redacted name]

Retirement Village
Association

Aged and Community
Services Association of
NSW and ACT

24 February 2011

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RVA and ACSA Submission on the ACT Retirement Villages Bill 2011

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Executive Summary

The Retirement Village Association and Aged and Community Services Association of NSW and ACT (ACSA) would like to thank you for the opportunity to again provide written comments regarding the regulation of retirement villages in the ACT.

We are particularly pleased that we are now at a stage where the Government has the opportunity to fully consider the impact on the community of this legislation.

You can find further information about our organisations at Attachment A.

This Submission is a joint RVA and ACSA Submission as both peak bodies are deeply concerned about the *Retirement Villages Bill 2011*. Both organisations are committed to ensuring positive outcomes for village residents, the retirement village industry and the ACT community. Happy residents are the cornerstone of the industry. Our own surveys highlight greater than 96% satisfaction by people in villages, which would be the envy of any industry.

In July 2010 and September 2010, the RVA and ACSA provided submissions to Mary Porter MLA. These Submissions are at Attachment B for your information. We are attaching these Submissions as many of the issues raised remain in contention with the current legislation, which in our view is poorly conceived given the paucity of issues raised by residents in the Territory.

From these Submissions you will note our consistent written commitment to an outcome that promotes consumer protection and robust fair trading practices. What is also critical with our ageing community is an investment climate that will encourage continued growth and the provision of much-needed seniors housing in the ACT.



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Since the Submissions we provided to Mary Porter MLA in July 2010 and September 2010, we have met with her to express our concern that the current Bill does not address the issues previously raised. It should be noted that Mary Porter MLA has undertaken to respond to the outstanding issues with the reasons for their exclusion in the current Bill.

In addition, the RVA has written to the Chief Minister to implore the Government to undertake an economic and regulatory impact statement. The industry contends that this Bill should not be considered until the facts about its impact are properly assessed and debated. The flow on impacts of this Bill will be very significant and have the potential to switch off investment in what is already a very difficult market that has been greatly impacted by the global financial crisis.

Introduction

It is important that this Submission provide context regarding the current operating environment in the ACT for the retirement village industry.

The current system is working

Currently, the system is working. There has not been a tribunal case in the ACT and nor have there been large numbers of residents agitating for legislation. In fact, many residents are concerned about the compliance burdens that naturally follow legislation and just how much of these new costs will be passed on to them by operators.

The RVA and ACSA acknowledge that there has been a minority of residents that believe because there is legislation in other jurisdictions there should be legislation in the ACT. There is no evidence to suggest that the current system is not adequate and nor has there been any attempt to modify or reform the current system before reaching for legislation. There is also, importantly, no evidence to suggest that legislation in other jurisdictions produces better outcomes for village residents.



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As you will see from previous Submissions (Attachment B), the RVA and ACSA believe that there are relatively simple reforms to the Code that could be undertaken to enhance existing consumer protections. The RVA and ACSA firmly believe this should be implemented prior to considering legislation.

Retirement village industry

In the ACT there are 28 retirement villages containing 1429 units and accommodating around 2300 Canberrans. Nationally there are 1,900 villages, accommodating 160,000 people.

This means that on a national basis over 5% of the population over 65 years of age live in a retirement village. Some States like Western Australia and South Australia have much higher penetration rates, and also a more flexible and balanced regulatory environment.

Even if we assume a 5% penetration rate in the ACT (as it is nationally), there could be as many as 29,000 people living in retirement villages in the ACT. Put another way, this would require as many as 150 or more new villages that could be constructed to meet current demand. This would result in a construction value in the order of \$4 billion that would be significantly impacted by what will be the most onerous legislation in Australia (as it is currently drafted).

This Bill will have a major negative impact on future investment and jobs in the ACT economy and mean that older people will have little choice in how to access accommodation that is fit for purpose for their needs.

However, our ageing population, particularly evident in the ACT, and a greater acceptance of village living, could result in around 8% of the population living in retirement villages, which would drastically increase the need for new villages. This assumes constant demand from seniors for village living. The consequence of this is the need for new retirement



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villages in the ACT. For this to occur, the retirement village industry requires an investment climate that stimulates expansion.

For further information about the community benefits of retirement village living see Attachment C.

Summary of Recommendations

The following is a list of recommendations contained within this Submission.

Recommendation One

That the ACT Government formally respond to previous RVA and ACSA Submissions to Mary Porter MLA (Attachment B) to ensure a robust understanding by all parties of the current environment and Government objectives in regulating the retirement village industry.

Recommendation Two

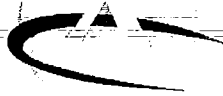
That the ACT Government, in concert with the ACT retirement village industry, complete a RIS prior to debate on the Retirement Village Bill in the Legislative Assembly and that the results of this RIS be made public.

Recommendation Three

That the ACT Government review the *Retirement Villages Bill 2011* and seek to simplify the legislation in order to significantly reduce the compliance burden on the industry - and thereby the negative impact this will have on ACT seniors and the broader community.

Recommendation Four

That the ACT Government undertake, in concert with the ACT retirement village industry, an assessment of the likely investment impact of the



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Retirement Village Bill 2011 to determine the social and economic costs to the ACT - and whether any perceived benefits of the current legislative approach outweighs these costs.

Recommendation Five

That the ACT Government amend the Bill where specifically recommended and establish a round table with industry, residents and government to carefully consider those aspects where the drafting and intent of certain provisions is not clear to determine how best to amend the Bill.

Recommendation Six

That the ACT Government works with the Federal Government to:

- Ensure the Australian Housing and Urban Research Institute is resourced to measure the demand for, and supply of, aged friendly housing for seniors in the ACT.
- Enable the National Housing Supply Council to continue its annual 'State of Supply' report.

Recommendation Seven

That the ACT Government:

- Lead a renewed partnership between all governments and industry to work together to develop more age friendly and integrated housing communities.
- Consider planning reforms such as retirement village zoning to encourage investment.
- Work with industry, including the RVA and ACSA, in a creative collaboration to deliver more and better seniors housing.



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Recommendation Eight

That the ACT Government:

- Transfer policy responsibility for retirement villages and associated legislative instruments to the Community Services Directorate to ensure a whole of government focus.

Recommendation Nine

That the ACT Government:

- Reform the stamp duty payable on seniors housing such as retirement villages to encourage senior choice in accommodation.
- Encourage the Federal Government through the Council of Australian Governments to remove current pension and assets testing disincentives to free up equity for seniors to invest in their future housing and care needs.
- Investigate ways that ACT seniors can be supported in financial literacy and in accessing the independent financial advice they need to make decisions about their future. This would include information about the impact of housing decisions on their overall financial position.

Response to Previous Submissions

As discussed previously, the RVA has provided two Submissions to Mary Porter MLA and these are at Attachment B.

The current Bill before the Assembly does not fully address the issues and concerns raised in these submissions by the retirement village industry. Both the RVA and ACSA spent a significant amount of time and resources putting forward practical suggestions for reform.

Prior to any debate in the Legislative Assembly, it is contended that the issues canvassed in these Submissions be formally responded to by the



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Government. If there are suggestions in these Submissions that cannot be implemented, the industry would like the opportunity to understand the rationale and to respond.

The RVA and ACSA will work with the Government to deliver a balanced and fair Code. Similarly, after extensive policy work and analysis, should the Government determine that a legislative approach is in the community's interest, the RVA and ACSA will work with the Government to ensure this legislation is balanced and fair – and will deliver on the Government's objectives.

Recommendation One

That the ACT Government formally respond to previous RVA and ACSA Submissions to Mary Porter MLA to ensure a robust understanding by all parties of the current environment and Government objectives in regulating the retirement village industry.

Regulatory Impact Statement

Regulatory impact statements (RIS) are a rigorous way for governments to analyse the most efficient and effective way of regulating to produce the greatest net benefit to society.

Unlike normal policy and regulatory development processes of the Government, the current Retirement Villages Bill has not been fully assessed. This assessment should be undertaken and the results publically released before the Bill is debated in the Legislative Assembly.

The RIS should assess the current Bill to determine whether:

- Legislation is necessary to achieve desired government outcomes and deliver greatest benefit to the community.
- The legislation is simple and avoids unnecessary restrictions.
- It employs the minimum regulation necessary to achieve its objectives.

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- The legislation imposes an unnecessary burden on those affected and whether it is unduly prescriptive.
- As drafted, it is performance and outcomes focused.
- It is easy to understand, fair and can be consistently enforced.
- It enshrines some flexibility in dealing with special circumstances.
- It addresses particular problems that cannot be addressed in another way such as reforms to the current Code.
- It is clear and concise and is appropriately mindful of the compliance burden imposed.
- It is a response that is proportionate to the problem – particularly in this case where there is no demonstrable problem existing in the ACT.

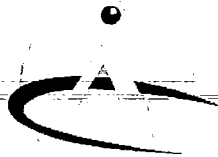
In essence, the RVA and ACSA contend that other government legislation is subjected to this type of scrutiny and therefore this Bill should not be debated and supported by the Government until a RIS has been undertaken.

We contend that it is incumbent on the Government to assess the risks, costs and benefits to the Government, business and the community before supporting this Bill. In addition, the results of the RIS should be made public to enable debate.

The RVA and ACSA stand ready to work with the Government through the provision of data and other facts that will assist the Government in undertaking a robust RIS.

Recommendation Two

That the ACT Government, in concert with the ACT retirement village industry, complete a RIS prior to debate on the Retirement Village Bill in the Legislative Assembly and that the results of this RIS be made public.



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Compliance Cost Burdens

The RVA and ACSA believe that once a full RIS is undertaken by the Government, the extent of the onerous and unnecessary compliance costs inherent with the current Bill will be identified and understood. There is no doubt this Bill will impact on the future of the industry in providing affordable and appropriate seniors accommodation in the ACT.

This Bill will add to the bureaucracy of running retirement villages. Additional time and resources will have to be dedicated to ensuring documentation and policies and procedures are compliant.

Compliance costs

In preparing this Submission, the industry in the ACT has undertaken a survey of all operators and determined the following compliance costs:

- The total up-front cost of the industry becoming compliant will be between \$650,000 and \$750,000. This estimate does not include personnel costs.
- There will be an annual ongoing compliance cost to the industry of approximately \$500,000.

The immediate impact of these costs will be a reduction in capital expenditure earmarked for upgrading existing facilities. This will result in a loss of jobs in the ACT and poorer infrastructure for retirement village residents. These costs will impact on the services the industry provides to residents - the RVA and ACSA believe this is not in the community's interest.

Compliance costs and who pays?

Unfortunately, the impact of this Bill will fall on retirement village residents. Each operator will work to minimize the impact and each



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operator is likely to pass on the compliance costs in different ways. Ultimately, it is ACT village residents that will pay for this legislation.

There are a number of different ways that operators will work to defray the compliance costs associated with the legislation and these are as follows:

- Personnel and residents. Our industry survey showed that operators will try to absorb the new paper work and compliance obligations within the current staff base. There will be reduced availability of staff for village residents and therefore a reduced service offering.
- Passing on costs to residents. The financial costs associated with this legislation will very likely be passed onto residents. This is likely to occur in different ways but the options available to operators are as follows:
 - Increased unit prices. Future sales of village units in the ACT are likely to see an increase in the asking price. This does not assist with current affordability pressures, nor does it assist seniors to downsize and free up existing standard residential stock for future generations. Further, it does not assist seniors in funding their future care needs – the burden of which will inevitably fall on the Government.
 - Increased exit fees. Residents will be very concerned about this prospect but some operators feel that they will not have a choice. The Government, and the broader community, should also be concerned as it will impact on an older person's ability to pay for their future care needs.
 - Increasing ongoing maintenance levies. Again, this will concern residents and it will impact on the affordability of the retirement village product in Canberra.

To re-iterate our first recommendation, a robust RIS will identify the onerous compliance burden built into this legislation and this cost should be known prior to debate on the Bill.

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Recommendation Three

That the ACT Government review the *Retirement Villages Bill 2011* and seek to simplify the legislation in order to significantly reduce the compliance burden on the industry – and thereby the negative impact this will have on ACT seniors and the broader community.

Reduced Territory Investment

Any changes to the regulatory environment mean that business like operators of retirement villages have to reassess. RVA and ACSA members are currently reassessing their investment plans as a consequence of the *Retirement Villages Bill 2011*.

As background, retirement villages are a difficult asset class through which the property industry makes very modest profit. The very nature of the partnership agreement between the operators and residents is about ensuring mutual financial benefit.

Our members can make greater profits and quicker profits through developing standard residential stock, which does not serve the interests of many older people as well as retirement villages. Standard residential stock is developed more quickly, the upfront costs are less, and the investment recouped immediately upon sale. This is not the case with retirement villages meaning investment is more risky, requires large up front debt and equity and return timeframes are very long (10 years or more in many cases).

As part of our member survey, we have determined that retirement village operators in the ACT have currently earmarked around \$204 million in new investment in the ACT. This investment creates jobs, seniors housing with broader social and economic benefits, and adds to the economic base of the Territory.



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The potential impact of this new legislative burden is a reduction in the industry's investment and in addition, the timing of that investment.

Canberra's population is ageing and there is a need now for more appropriate and affordable seniors accommodation. There are long lag times associated with the building of retirement villages, villages are in demand in the ACT, and they are currently affordable. The industry, and ultimately the Government, will not be able to meet future demand should investment stall.

A rigorous RIS will determine the likely impact on investment in the ACT and this will enable the Government to fully consider the social and economic impact of the *Retirement Villages Bill 2011*.

The ACT industry stands ready to work with the Government through the provision of information that will assist with the RIS being undertaken.

Recommendation Four

That the ACT Government undertake, in concert with the ACT retirement village industry, an assessment of the likely investment impact of the *Retirement Village Bill 2011* to determine the social and economic costs to the ACT - and whether any perceived benefits of the current legislative approach outweighs these costs.

Specific Drafting Concerns

There are drafting issues with the *Retirement Villages Bill 2011* that the RVA and ACSA believe need to be addressed.

It is obvious that the current Bill cherry picks provisions from legislation in other jurisdictions such as Queensland and New South Wales (NSW). The Bill as it currently stands does not promote harmonization and is not cohesive.



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Further, given that this Bill has not been the subject of a normal public policy process and a RIS has not been undertaken, this is not surprising. Nevertheless, these issues do need to be addressed prior to the any debate in the Legislative Assembly on this Bill.

As further context, the final report of the Productivity Commission, *Caring for Older Australians*, recently provided to the Federal Government, provides a comprehensive analysis of the retirement village industry regulatory environment. This report recognises that the current regulatory environment is stifling investment and needs to be addressed should seniors housing continue to be developed.

In addition, the Federal Government's Advisory Panel on the Economic Potential of Senior Australians also points to the need for reform of the current regulatory environment. The Panel notes that the current regulatory and taxation environment is stifling investment in seniors housing in parts of the country. The retirement village industry believes the ACT risks experiencing the decline in investment experienced in other parts of the country such as NSW and Queensland.

The RVA and ACSA support these findings and recommendations and encourage the ACT Government to look closely at these reports before determining that a legislative approach is necessary – or that the current Bill is necessary.

The following is a table that outlines RVA and ACSA's concerns with the current Bill. It makes some re-drafting recommendations and observes that in some areas, the Government and industry would benefit from discussing the intent of certain sections.



Section by Section Analysis of the Bill

Item	Section	Issues / Recommendation
1.	S12 Application for registration	<p>This Section is inflexible, does not reflect existing arrangements, and does not encourage operators to work with residents to enable them to access a Village should they choose.</p> <p>A Scheme to be registered should not limit the form of village contract to be utilised in a Village. Village operators are now adopting multiple forms of tenure / terms to accommodate different resident needs.</p> <p>For example, some operators conduct both rental units under the NSW Act as well as standard for loan/lease in the same village. The registration process should not operate in a manner to limit flexibility in forms of village contracts that can be used. The Queensland model of a PID operates in a manner to be so restrictive that it has difficulty recognising rental contracts and makes it difficult to change the form of village contract from time to time.</p>
2.	S14 Power to ask for information etc from applicants and others	<p>The industry contends that a process to effectively 'qualify' a prospective village operator is appropriate to ensure only persons of good reputation and capacity are able to conduct the business. In a retirement village setting this is appropriate given the cohort of residents.</p> <p>Having said that, the industry is concerned that the process of qualification outlined in the Bill may act as a deterrent to new entrants. It may, by default,</p>

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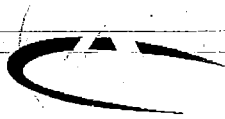
		consolidate and protect incumbent operators. This could have the unintended consequence of stifling variety, new products and ultimately competition.
3.	S15 Transferring registration	<p>The ability of an operator to transfer and organise its business affairs is a critical part of the conduct of the operations of a business.</p> <p>A number of larger portfolios have been established as a result of smaller operators / developers developing their model, selling to another operator and then ultimately being purchased by an institution.</p> <p>Examples of this include the Glen Group in NSW that was consolidated and then sold its interests to the AMP Group.</p> <p>Another example is the Salvation Army Southern Region being acquired by the Macquarie Bank group. More recently Sakkara Group established a portfolio that was formed from smaller operators, sold to Aevum Ltd and then ultimately acquired by Stockland Group Ltd.</p> <p>There is no doubt there should be disclosure to residents of prospective operators of the village. However there should not be a power granted to residents to restrict the ability to transfer. That would constitute a significant restriction of development of the industry and would fly in the face of the one of the objects of the Act.</p> <p>There is also a definitional issue in relation to change in control particularly for villages held by listed corporations.</p> <p>The obligation should not be to 'apply' to the Commissioner but more correctly to inform. The ability of a resident to object generally and further to have 60 days within which to object will affect the ability of operators to transfer their villages and will</p>



		<p>again restrict the ability to develop the diversity of the industry.</p> <p>The only basis upon which a transfer of registration could be refused is if the transferee is a person that would not otherwise qualify as a scheme operator under s13(2). To the extent that Government wishes to protect residents from a former operator paying outstanding refunds, this is addressed in the notice mechanism raising the issue and the transferee and transferor responding to the issue but not acting to stop any transfer. It would probably be in the best interest of a resident that if an operator can't pay a refund then it is better that the next operator can pay and does buy the facility.</p> <p>The RVA and ACSA contend that at a minimum the following amendments need to be made to this Section.</p> <ul style="list-style-type: none"> • 15 (2) - replace "apply" with "notify" and insert "its intention" following fair trading. This would then read as follows - <i>(2) The scheme operator must notify in writing to the commissioner for fair trading its intention to transfer the registration of the scheme for the retirement village.</i> • 15 (3) (a) (i) - replaced "asked" with "notified" and after fair trading insert "of its intention". This would then read as follows - <i>(i) that the operator has notified the commissioner for fair trading of its intention to transfer the registration of the scheme for the village;</i> • Delete 15 (3) (iv). • Insert 15 (3) (c) "A resident who has received
		<ul style="list-style-type: none"> • 15 (2) - replace "apply" with "notify" and insert "its intention" following fair trading. This would then read as follows - <i>(2) The scheme operator must notify in writing to the commissioner for fair trading its intention to transfer the registration of the scheme for the retirement village.</i> • 15 (3) (a) (i) - replaced "asked" with "notified" and after fair trading insert "of its intention". This would then read as follows - <i>(i) that the operator has notified the commissioner for fair trading of its intention to transfer the registration of the scheme for the village;</i> • Delete 15 (3) (iv). • Insert 15 (3) (c) "A resident who has received



		<p>notice under (a) above, may within 30 days of receiving the notice give notice to the operator and the Commissioner raising any concerns they may have to the transfer".</p> <ul style="list-style-type: none">• 15 (4) should then read as follows - (4) <i>On application, if the transferee is a person described in s13(2) and is satisfied as to the matters set out in (5) below the commissioner for fair trading will within 60 days of an application, —</i> <i>transfer the registration of the scheme for the retirement village to the person named in the application;</i>• 15 (4) (b) - delete.• 15 (5) should consequently read as follows - (5) <i>The commissioner for fair trading in considering the transfer in the registration of a scheme for a retirement village will consider the following matters—</i><ul style="list-style-type: none">(a) <i>the commissioner is satisfied that—</i><ul style="list-style-type: none">(i) <i>the scheme operator for the village has complied with subsection (2); and</i>(ii) <i>the person to whom the scheme is to be transferred is—</i><ul style="list-style-type: none">(A) <i>at least 18 years old; and</i>(B) <i>not prohibited from operating a scheme for a retirement village under section 94 (Offence—operating retirement village schemes etc while insolvent); or</i>
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		<p>(C) <i>not prohibited from operating a scheme for a retirement village under section 95 (Offence—operating retirement village schemes etc with relevant conviction); and</i></p> <p>(iii) <i>the transferor and transferee have provided a response to any notice issued under subsection (3).</i></p> <p>(6) <i>If the commissioner for fair trading transfers the registration of a scheme for a retirement village, the commissioner must record the transfer in the retirement village scheme register.</i></p> <p>(7) <i>In this section:</i> <i>resident includes a former resident who has not received an exit entitlement to which the former resident is entitled under the former resident’s residence contract.</i></p>
4.	S19 Residence contracts generally	<p>This section seeks to limit any other clauses to ‘no less beneficial’. It is contended that this is too subjective a test. The better test is to ensure there is no provision made contrary to the provisions of the Part. Otherwise if the Act changes in the future, confusion is potentially created.</p> <ul style="list-style-type: none"> It is recommended that 19 (2) be amended to read – (2) <i>Nothing in this part prevents 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 not contrary to the provisions in this</i>



		<i>part.</i>
5.	S20 Meaning of residence contract	This section uses the term or expression 'person' rather than 'resident'. This is potentially confusing. It potentially enables a person, not a resident, to use the village facilities. There are likely other unintended consequences and it is recommended that the Government redraft this Section.
6.	S 21 Form and content of residence contracts	S21 (a) (vii) – insert “-if applicable” at the end. It should be noted that some operators choose to fund this component of capital works themselves without committing to a fund. The objective of this clause is transparency and this is transparent.
7.	S23 Residence contracts – guidelines	The RVA and ACSA believe that it is a useful concept to have the language of village contracts consistent so long as the Act does not limit the variety of provisions that could be agreed to within a contract/s.
8.	S31 Offence – failure to notify end of cooling-off periods to certain circumstances	<p>It is unduly harsh than an operator commits and offence for failing to notify of the later event. This Section should be re-drafted to say that a notice must be issued otherwise the contract could be unenforceable or may be rescinded by the resident within the settling in period without penalty.</p> <ul style="list-style-type: none"> It is recommended that the Section re re-drafted so that it reads as follows: <i>A scheme operator for a retirement village must: —</i> <i>(a) if the cooling-off period for a residence</i>



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		<p><i>contract for the retirement village starts on a day that a later event happens;</i></p> <p><i>(b) give the resident under the residence contract, as soon as practicable after the event happens, written notice of—</i></p> <p><i>(i) the date the later event happens; and</i></p> <p><i>(ii) the date the cooling-off period ends.</i></p> <p><i>If the operator fails to issue the notice, the resident may rescind at any time without penalty.</i></p>
9.	S32 Residence contract may be rescinded during cooling-off period.	<ul style="list-style-type: none"> Given the above change to S31, it is recommended that S32 read as follows – <i>A resident of a retirement village may, by written notice to the scheme operator for the village, rescind a residence contract in relation to the village before the cooling-off period ends or during the settling in period if the operator fails to issue a notice under s31.</i>
10.	S34 Offences – failure to deal with instruments assigning property during cooling-off period	<p>This Section is unclear regarding the problem it is seeking to address or the resident rights seeking to be protected. The RVA and ACSA would welcome a discussion with the Government about this Section to determine why it has been included.</p> <p>As it is drafted, it could relate to the transfer of items to a resident or it could be the transfer of an interest in the property itself.</p>

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		<p>If the intention is to stop operators from selling items of equipment to residents then seeking to buy them back at the end of the contract, it is recommended that the Section be drafting along the lines of the following –</p> <ul style="list-style-type: none"> <i>The Operator must not sell items of equipment to residents with a provision that the operator may repurchase the equipment upon departure of the resident. Any contract that contains such a provision is of no effect.</i>
11.	S41 Offences – failure to hold and repay ingoing contributions	<p>The RVA and ACSA would welcome discussion with the Government regarding this Section as this potentially has significant investment implications for the sector. It may be, however, that this is simply poorly drafted. Until the RVA and ACSA are clear on what the issue is that it is trying to address, we are unable to recommend a specific form of words to deal with the problem is it seeking to address.</p> <p>The effect of this provision is that money paid under a village contract cannot be paid to the operator until after the cooling off period. Given all trustees operate under instructions from their clients, to have the trustee liable under the Act for having committed an offence is inappropriate.</p> <p>Further, the effect of this provision means financiers will need to wait until the end of the cooling off period.</p> <p>The provision effectively operates to provide a resident a form of deposit security to receive back</p>



		their ingoing contribution until the end of the cooling off period. This is in spite of the fact that the resident receives the benefit of some occupation and use of village facilities during this time.
12.	S53 Ending residence contracts – scheme operators	<p>This could be amended and improved by the addition of the following words at the end of S53 (2) (c) –</p> <ul style="list-style-type: none"> <i>In this regard, the resident agrees the operator may contact the resident's medical practitioner to obtain details of the resident's care needs.</i> <p>There are also some significant problems with this provision.</p> <p>This provision has been drafted so that it is similar to the Aged Care Act. It is designed to ensure that if a person is not able to remain in a facility, the provider must have an alternative. The difficulty is that under this Act, the village operator is not a person under the control of the Aged Care Act but is being directed to this Act to ensure they can identify an appropriate aged care facility. This is something a village operator may not be able to do.</p> <p>The proper course is to determine if the person can remain in the village and if they cannot to then terminate the agreement.</p>
13.	Division 4.9 Exit entitlements	The RVA and ACSA contend that the first part of this Division over-emphasises offences being committed for certain things not being done by an operator, which actually might simply have occurred as a result of administrative error.



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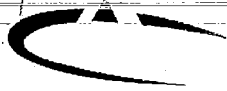
		<p>This appears unnecessary when an alternative for a failure by an operator to provide these items is for the resident to approach the Commissioner and to make a specific request. If after that request, the operator does not fulfill their obligations, then one could legitimately say that an offence has occurred.</p> <p>It is recommended that this Division be re-drafted.</p>
14.	S59 Offence – failure to pay exit entitlements to residents who own units	<p>This provision seeks to use the language of s180 of the NSW Act relating to the obligation to repay amounts for registered interest holders however it has the effect of requiring repayment of such amounts within 6 months.</p> <p>The NSW legislation recognises the right of the resident to be paid under their contract when a future event occurs namely the unit being re-leased. This provision seeks to set that aside and introduces a mandatory 6 month buy back provision. This does give rise to adjustments for capital gains or calculations of departure fees based on next price. It is recommended that the Government use the relevant provisions from the NSW Act.</p> <p>Further, the effect of this Section is similar to the effect of s60 below - that is repayment is to be within 6 months of vACSAnt possession at the latest.</p> <p>It is recommended that this Section be re-drafted or deleted.</p>
15.	S62 Orders for payment of exist entitlements on sale of units	<p>This provision cannot properly work if the form of contract relies upon a future incoming price to be determined. Either the provision allows for a determination to be made on an amount</p>



		<p>independently determined, which is extremely difficult and problematic, or it should be removed.</p> <p>It is recommended that this Section be removed.</p>
16.	S63 Enforcing residence contracts	<p>The effect of this provision is that it could make former scheme operators or parties to the residence contract, liable for future problems. This is inappropriate and flies in the face of the practice of a business being sold and the purchaser taking on all responsibilities. In circumstances where the village has a charge to secure performance, that the Commissioner is involved in the transfer of the village and so can vet the purchaser, then this provision is excessive. In relation to residence contracts, the effect of the provision is to ensure all residence contracts are in fact assigned or novated or if the land is registered that the transfer is registered.</p>
		<p>It is recommended this current section be replaced simply with –</p> <ul style="list-style-type: none">• <i>A residence contract in relation to a retirement village is enforceable against the owner of the land to which the village relates, the scheme operator or the current scheme operator on the title or the party liable under the contract.</i>
17.	S65 Meaning of public information document	<p>The RVA and ACSA and our members in the ACT are committed to ensure that village residents are provided with the information necessary to make an informed decision / choice. We are committed to transparency and fairness. We also believe that sometimes the more information an operator provides to resident, the more confusing and</p>



		<p>potentially problematic this decision process becomes.</p> <p>This provision as drafted seeks to bring in elements of the Queensland PID format. The difficulty of that format is that the document becomes very cumbersome. As an alternative, it may be sufficient to provide all the information requested but to provide a mechanism for updates or modifications to the PID to be by way of a simpler document similar to a 'Request' Document used in the LPI in NSW.</p> <p>If a PID is to be prepared, then noting the Inquiry Document is used, the process of having the PID registered and kept up to date (but not provided to each prospective resident) and having the Inquiry Document as the disclosure statement to form part of the contract may be a compromise to reduce the bulk of paper provided to residents. And to reduce confusion and compliance costs.</p> <p>That is, have the PID operate similar to a registered dealing in the LPI in NSW that a person is directed to can refer to. At the very least, the PID should be allowed to be electronically available and an operator has satisfied the obligation to disclose if they identify a website to which the PID is located. That concept already exists in the realm of financial services where a Product Disclosure Statement can be provided by way of internet link.</p> <p>The alternative is to use a form of disclosure statement as is done in Victoria or NSW to reduce the bulk.</p> <p>In the interests of future village residents in the ACT, the RVA and ACSA believe this Division should be re-drafted.</p>
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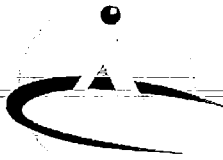
18.	S72 Offence – failure to correct inaccuracies in public information documents	It is recommended that this be re-drafted to enable operators the opportunity to change information.
19.	S101 Meaning of capital improvement	<p>The use of a definition that is linked to the Taxation Act is inherently difficult and only opens up the whole issue to argument.</p> <p>In circumstances where this Act compels the establishment of a capital replacement fund then the distinction between maintenance and replacement becomes irrelevant.</p> <p>It is simpler that the village operator is responsible for all maintenance and replacement but is allowed to use general service charges plus the proportion of funds paid into the capital replacement fund to meet all the cost of maintenance and replacement.</p> <p>This can be combined to form a capital works fund to which the residents and operator contribute. In essence, the form of the NSW Act before the final changes were made to the establishment of the capital works fund.</p> <p>Sections 102 – 108 appear to try to stop refurbishment being passed to either fund. It is difficult to draw the line between a request and a need. If a resident does not request the improvement it may still be in the best interest of the village and the other residents that some improvement occur by way of replacement.</p> <p>Otherwise both the operators and residents run the risk of deterioration of value and unnecessary ongoing higher maintenance cost i.e. better to redo the kitchen as a whole for a new resident rather than</p>



		<p>spend ongoing maintenance for an old fit-out.</p> <p>It is recommended that the Government and the industry work together to ensure this Section meets the objectives of the Government, residents and industry.</p>
20.	<p>S142 Working out and paying general services charge for former residents</p>	<p>This provision again links the ongoing liability to a maximum period of 6 months. This may be inappropriate and insufficient and does not reflect the sharing of gain between the resident and operator.</p> <p>It is recommended that the Government and the industry work together to ensure this Section meets the objectives of the Government, industry, and residents.</p>
21.	<p>S166 Classification of expenditure</p>	<p>The RVA and ACSA would welcome a discussion with the government about why this provision seeks to classify expenditure. This is essentially an accounting concept and we are unsure as to why this is included in the Bill.</p> <p>It is therefore recommended that this also be a point of discussion between government and industry to determine the intent of this provision and whether it could be better drafted.</p>
22.	<p>S168 Creating charges over retirement village land</p>	<p>It is contended that the drafting of this section creates an inflexible business and investment environment for the retirement village industry in the ACT and will potentially have unintended consequences for the community.</p>



		<p>Within this Bill, there needs to be an ability to differentiate land that has more than one function e.g. a residential aged care facility on site (co-located with a retirement village). In NSW, the process allows for the shading out of non-retirement village land and this Bill much also allow for that.</p> <p>It is recommended that Government re-draft this section to allow for diversity and choice in use of land / facilities for ACT seniors. This is going to become incredibly important over coming years.</p>
23.	Division 10 Residents participation	<p>Village operators and residents are a partnership. Both seek to gain from a well operating village with increasing unit values. Hence, the RVA and ACSA believe that strong communication channels between operators and residents are essential.</p> <p>This Division simply envisages that communication will occur between resident committees and operators. Sometimes this works very well although sometimes a small group of residents can dominate and not act in the interests of the whole village population.</p>
		<p>It is recommended that a provision be inserted to enable an operator to call a meeting with all residents at any time. Communication should not be limited to the residents committee.</p>



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Recommendation Five

That the ACT Government amend the Bill where specifically recommended and establish a round table with industry, residents and government to carefully consider those aspects where the drafting and intent of certain provisions is not clear to determine how best to amend the Bill.

ACT Opportunities

The Australian retirement village story is a successful one and the industry has grown despite any support or overt policy framework delivered by governments. There are, however, emerging challenges for the industry that if addressed will ensure retirement village living and all its advantages for seniors will continue to be provided. Importantly, it will ensure the industry will be in a position to keep up with demand from ACT seniors.

It is clear that retirement villages will continue to represent an essential component of housing for seniors in the future. Even based on current penetration rates nationally, a projected growth of five million people aged 65 and over in the next 40 years would require an additional 2,800 villages to meet demand.

Should retirement village housing stock not be available, there would be four clear socio-economic drawbacks:

1. 300,000 or more residents would have to be housed in standard residential stock that in many cases would be too large and too difficult to maintain. This would exacerbate existing shortages of stock available to younger families heightening intergenerational inequities.



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2. Those 300,000 or more residents would likely experience heightened social isolation contributing to poorer quality of life.
3. A greater need for more investment by government in health care, public housing and home-based care – a significant proportion of which is currently provided by retirement villages.
4. Direct and indirect economic impacts (employment, investment in infrastructure).

The Advisory Panel established by the Federal Government on the Economic Potential of Senior Australians acknowledges that there are barriers affecting the supply of housing for seniors and the RVA endorses the commentary and evidence it has provided to the Federal Government.

Barriers that need to be addressed are:

- Availability and affordability of suitable housing including problems with developer access to appropriate land.
- Downsizing or moving to more appropriate housing is discouraged by financial disincentives and a lack of clear and accessible advice.
- Regulatory burdens imposed by State and Territory legislation.
- Taxation treatment of retirement village investment.
- Difficulties in unlocking existing senior wealth. Developer access to capital and investment disincentives.

These provide an opportunity for the ACT Government to take pro-active action and planning to ensure ACT seniors have access for affordable and appropriate housing.

Measuring senior housing demand and supply

As discussed above, Australia and the ACT face a looming challenge in providing appropriate and affordable accommodation for our ageing population. The RVA has presented some analysis above of the recent



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retirement village construction trends and made some evidence based predictions on the potential impact should this continue.

This evidence is not dissimilar to the data emerging on the housing industry generally. The final Australian Bureau of Statistics figures released in January confirmed a weak quarter for both new housing and major alterations and additions activity in September 2011.

Seasonally adjusted residential building work done fell by 1.6 per cent to an annualised level of \$45.5 billion in the September 2011 quarter. New residential building work fell by 1.9 per cent in the September quarter. In addition, the value of major alterations and additions work done, which accounts for around 20 per cent of total renovations activity, eased by 0.2 per cent.

The RVA contends that in order for any government to properly plan the extent of seniors housing that is needed into the future, that there should be ongoing and comprehensive work on measuring housing demand and supply.

Recommendation Six

That the ACT Government works with the Federal Government to:

- Ensure the Australian Housing and Urban Research Institute is resourced to measure the demand for, and supply of, aged friendly housing for seniors in the ACT.
- Enable the National Housing Supply Council to continue its annual 'State of Supply' report.

Improving access to land and planning reform

The RVA contends that lack of access to cost effective land is one of the key impediments to increasing the supply of seniors housing in the ACT.



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Whilst the RVA believes that the issue of seniors housing is so significant that a nationally driven, Commonwealth- lead set of planning targets (for a set quota of housing to meet demand in specific areas) would best ensure seniors are able to access appropriate housing across Australia, there are some immediate steps the ACT Government can take to drive further investment in retirement villages.

Planning reforms that are targeted towards the delivery of seniors housing would assist the industry to deliver a wider range of products.

Such reforms could include:

- Initiatives to speed up planning timeframes.
- Adding a requirement for land purchasers to include a percentage of land development targeted to seniors housing.
- Allowing different zonings for retirement villages to be accommodated in association with other relevant uses (for example, retail, commercial, mixed use).
- Allocating surplus public land specifically for seniors housing.
- Setting seniors housing targets.
- Providing other incentives to developers of seniors housing (i.e. increasing height limits, lowering car parking requirements, floor space ratio incentives) in other or linked developments.
- Governments working with industry to deliver inner urban solutions where the development of villages is most difficult and costly, including investigation of surplus government or brownfield sites that could accommodate seniors living.

The removal of barriers such as stamp duty (see below) will also assist with increasing seniors housing supply and will encourage more efficient use of existing housing stock.

The RVA stands ready to the work with the ACT Government in a creative collaboration to deliver more and better seniors housing.



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Recommendation Seven

That the ACT Government:

- Lead a renewed partnership between all government and industry to work together to develop more age friendly and integrated housing communities,
- Consider reforms such as retirement village zoning to encourage investment.
- Work with industry, including the RVA, in a creative collaboration to deliver more and better seniors housing.

Retirement villages as part of aged care continuum

As you can see from the attachments to this Submission, retirement villages provide many benefits to ACT seniors and the wider community.

There are more seniors living in retirement villages than there are in residential care. The average age of retirement village residents is increasing and more and more seniors want to age in place. This will drive government policy responses.

To meet this growing trend, retirement villages and governments need to work together to deliver innovative accommodation and care solutions. The RVA contends that this will require a whole of government response – from planning, home design, active ageing initiatives, community care, and health services.

The RVA proposes that, like elsewhere in the country, the ACT Government recognise the important role of retirement villages in the aged care continuum. An important element of this would be to transfer policy and regulatory responsibility for retirement villages to the Community Services Directorate. This would ensure a whole of government approach to providing ACT seniors with new and integrated solutions to all issues.



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Recommendation Eight

That the ACT Government:

- Transfer policy responsibility for retirement villages and associated legislative instruments to the Community Services Directorate to ensure a whole of government focus.

Assisting ACT seniors to downsize

Housing is often seen as the fourth pillar of Australia's retirement income system, after pension income, voluntary savings and superannuation (Yates and Bradbury, 2009)¹.

The RVA agrees with the Federal Government's Advisory Panel's assessment that:


Much of the wealth of the current cohort of ageing Australians is locked up in ways that cannot be used to meet challenging circumstances, primarily as residential property, often in the post-war housing stock of a single house on a suburban block²

Given the ageing population, all governments in Australia need to consider new and creative ways to support seniors to downsize from standard residential homes.

It is in the interest of retirees as they will no longer, for example, have the same home maintenance issues and nor will they have to potentially modify their existing home to cope with changed circumstances. There is also ample evidence to show that making the decision earlier makes it

¹ Advisory Panel on the Economic Potential of Senior Australians, *Realising the economic potential of senior Australians; enabling opportunity*, Commonwealth of Australia, 2011., page 19.

² Advisory Panel on the Economic Potential of Senior Australians, *Realising the economic potential of senior Australians: enabling opportunity*, 2011., page 3.



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easier for seniors to adapt to the change and enjoy the resulting new lifestyle.

Implementing new and creative ways to support seniors to downsize is also important for governments and the broader community. It frees up standard residential stock for future generations, it should assist with housing affordability issues, and should ACT seniors make the decision earlier and be in appropriate accommodation, they are more likely to live independently longer.

The Federal Government has received two pieces of significant advice about the ways in which seniors should be supported in downsizing to appropriate accommodation and to free up their existing equity to provide for their future care needs. The PC report and the Advisory Panel have both observed that there are disincentives in the system that should be removed.

Key issues that the RVA believes need to be addressed are the existing stamp duty arrangements, a focus on pension entitlement rather than overall financial position, and a lack of readily available and accessible advice for seniors in planning for their retirement and their future needs.

Stamp duty

Stamp duty on properties adds to transaction costs and there is no doubt that this suppresses the number of transactions in the housing market. It can act as a deterrent to seniors making the decision to move to more suitable housing and can, in effect, reduce the supply of appropriate and affordable senior housing.

The RVA contends that there is a need to reform the stamp duty payable on seniors housing such as retirement villages to encourage senior choice in accommodation.



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Pension disincentives

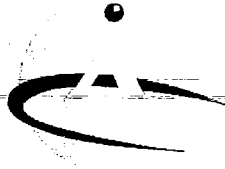
As the Federal Government's Advisory Panel has observed, the current retirement system provides a focus on pension entitlement rather than the overall financial position of Australian seniors. This is a further barrier to seniors accessing housing to maintain independent living. This means that a senior may be concerned that their pension entitlement will be reduced due to the increase in assessable assets derived from any gain in downsizing.

The RVA is cognisant of the fact that this issue is primarily a Federal issue and not a matter for the ACT Government. On the other hand, should change occur, the benefits will flow to the ACT Government. There are the village style living benefits as per the attachment, and the broader economic and social benefits such as freeing up residential stock for younger generations, and providing greater accommodation and care choices for ACT seniors.

Removal of the current pension and assets testing disincentives would provide the opportunity for seniors to contribute to their future housing and care needs.

In addition, the RVA contends that there is a need to ensure that Australian seniors have access to appropriate financial advice to enable to make decisions before or upon retirement. Advice regarding the pension access should be readily available.

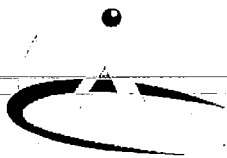
There remains an opportunity for the ACT Government to lend its support to calls for a change to the pension asset test and to use forums such as COAG to press for reform.



Recommendation Nine

That the ACT Government:

- Reform the stamp duty payable on seniors housing such as retirement villages to encourage senior choice in accommodation.
- Encourage the Federal Government through the Council of Australian Governments to remove current pension and assets testing disincentives to free up equity for seniors to invest in their future housing and care needs.
- Investigate ways that ACT seniors can be supported in financial literacy and in accessing the independent financial advice they need to make decisions about their future. This would include information about the impact of housing decisions on their overall financial position.



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Attachment A

The Retirement Village Association: Key Facts

The Retirement Village Association (RVA) is Australia's peak body for the retirement village industry. The RVA represents over 800 villages and associate members nationally.

Membership consists of retirement village operators, managers, owners, developers, investors, and industry specialists across Australia.


Members include FKP Aveo, Lend Lease Primelife, Australian Unity, Hindmarsh Group, IRT.

The RVA has five regional offices located in Brisbane, Sydney, Melbourne, Adelaide and Perth.

As the leading industry voice, the principle 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.
- Support and promote the benefits of retirement villages as 'the preferred choice of lifestyle for senior Australians'.

The RVA is made up of around 60% of for-profit operators and 40% not-for-profit operators.



Aged & Community Services
Association of NSW & ACT
Incorporated

Economic modeling by KMPG-Econtech shows the retirement village sector contributes up to:

- \$4.7 billion in turnover across the Australian economy, comprising the operations of retirement villages and in the broader economy.
- \$2.8 billion to Australia's GDP.
- 30,000 jobs across retirement villages, construction and other sectors supporting retirement villages ³

³ KPMG., Retirement Village Association., 24 October 2011



Aged & Community Services
Association of NSW & ACT
Incorporated

Aged and Community Services Association of NSW and ACT: Key Facts

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

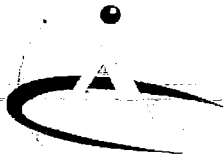
ACSA represents 300 organisations in NSW and the ACT providing over 1,700 services to more than 100,000 people. The Association's member organisations range in size from large multi-site organisations to small rural and regional sole operators.

It forms part of a national federation of states association. ACSA supports a regional network comprising 12 Regional Committees across the NSW and the ACT.

ACSA represents 21 of the 28 villages in the ACT.

The role of ACSA 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.



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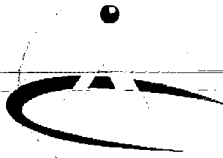
Retirement Village Association

Attachment B

Previous submissions on the ACT regulatory environment

(See separate documents)

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Attachment C

Individual and Community Benefits of Retirement Villages

Ageing in place	Villages support individuals to continue living independently for as long as possible, which is what seniors want. This also results in delayed entry to hospitals and residential care.
Connection	Villages enable access to social networks with significant health and wellbeing benefits.
Support services and senior friendly facilities	Villages offer services, site monitoring and other forms of care in purpose built facilities.
Quality of life focus	Villages focus on quality of life and encourage physical and mental activity.
Active ageing	Villages provide access to on-site facilities and programs that encourage activity, healthy lifestyles, and connectedness. These facilities relieve pressure on local community services.
Community benefits	Villages maintain and enhance the character of the local community by establishing multiple close networks e.g. health, exercise, volunteering.
Safety	Villages provide a safe and monitored environment e.g. call systems, 24 hour monitoring and first aid.
Senior friendly infrastructure and design	Villages provide senior friendly infrastructure that relieves pressure on families, carers and government resources.

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Retirement Village Association

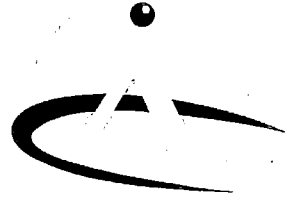


Aged & Community Services
Association of NSW & ACT
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September | 2010



Retirement Village Association Ltd



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>

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. 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:</p> <p>We do not see the need for scheme operators to be licensed agents as we are selling our "own" real estate.</p> <p>Recommendation:</p> <p>Remove the provision for the need for a selling agent.</p> <p>Issue:</p> <p>We do not support the option for residents setting the sale price.</p> <p>Recommendation:</p> <p>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:</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>
14.	S80 Relatives may continue to live in units S81 Relative may enter into residence contract	<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>Amend S81(2) to read that the scheme operator <i>may</i> enter into a residence contract with the relative.</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>

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.	S103(1)(c) Tax on amounts paid	<p>Issue:</p> <p>Drafting error.</p> <p>Recommendation:</p> <p>This should read "under section 101(1)(d)" referring to tax on interest.</p>
17.	S105 & S118 Capital replacement reserve and maintenance reserve reports	<p>Issue:</p> <p>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:</p> <p>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>
18.	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>
19.	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>
20.	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>

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21.	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>
22.	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>
23.	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>
		<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>
24.	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>
25.	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>

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26.	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>
27.	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>
28.	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>
29.	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>
30.	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>

31.	S164 to S178 The operation of residents committees	<p>Issue:</p> <p>We support the establishment and operation of a residents committee. 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 <i>Retirement Villages Act 1999</i> – "A vote of the residents on a matter referred to in subsection [(1)(c)(ii)] does not bind the operator of the village".</p>
32.	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>
33.	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>
34.	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>
35.	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>

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36.	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>
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Disclaimer

This submission has been prepared by the Retirement Village Association (RVA) Ltd and Aged & Community Services Association of NSW & ACT (ACS) Inc. 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 Inc.

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10/10/10

12.4.12.

→ many women not going to Fair Trading

- * intimidation
- * older women
- * fees → management add fees
capital repair replacement & maintenance
- * information at meetings
- * costs
- * variety of contacts - deferred mass fee

Code of Practice

or
- writing, name attached - complaint

- disputes referee, contact referee

people unaware, pay for costs

Code v Bill

a)

b) security of work

c)

* lack of consultation on financial matters
- no right to consult →

* financial security →

* legislating what is going right in
villages

St Andrews → budget ↑ 19% should
have been CPIO → large increases

- no protection for ongoing contributions
- nothing requiring residents to be able to determine

8.4 services - 139 (5) - may need redrafting

- amounts to be held in trust
- amounts to be held for capital repair/replacement & maintenance

- capital gain?

- Productivity Commission - no precedent overridable for people exiting into aged care - what happens after they go

→ Annual budget cutting

- resident contracts - P10s

→ not enough about financial statements etc

█ → does not believe it is an acquisition

5172 " other than " rather than "overall"

* loan-lease agreements - majority are w/ organisations which → more (4) → should exemption be applied?

11.4.12

Retirement Villages Association

Hindmarsh - [redacted]
#2 developments in ACT + operate + develop
- involved from 2007.

[redacted] @ RVA

#1 IRI

- 30 villages in NSW, 1 in ACT
+ Ret. villages + aged care
- not-for-profit

[redacted] @ Lease

#1 13 in NSW, investing in ACT @ Kabela
plans + develop + operate

#2 Start-up costs

RVA - \$65K - \$750,000 start up + [redacted]
- \$500K per year

- contracts - redrafted, legal costs,
- new residents Staff, + training
- how they sell + market
- Public Information Document - costly
- must be up to date
- LLUs - loan - term, in selling

NSW seen as most onerous

Act bill complex

- will discourage investment by
Lenders w/ Act.

* NSW preferred Over hybrid

* NSW - more \$ for capital replacement
but 6-month buy back does not
apply.

* NSW - contracts diff whether the
interest is registered / not registered

- lack of balance between benefit
and risk

- ANZ + Adelaide invest

- Suncorp, Bankwest dropped out

- Compliance risk

[REDACTED]

White, Stephanie

From: White, Stephanie
Sent: Thursday, 5 April 2012 4:26 PM
To: Hosking, Kim
Subject: FW: Retirement Villages Bill (ACT) - Lend Lease Submission
Attachments: RV Bill Submission - 240212.pdf; ACT-Submission-feb11.pdf; ACT Legislation Submission - Supplementary .doc; ACT Legislation Submission[1].doc

Hi Kim,

The submissions attached were a combined effort from Lendlease and RVA/ACSA as requested.

Thank you,

Steph

From: Quinton, Peter
Sent: Saturday, 25 February 2012 7:25 AM
To: White, Stephanie
Subject: FW: Retirement Villages Bill (ACT) - Lend Lease Submission

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

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If it has been sent to you in error, please delete it and notify us.

From: [REDACTED] on Behalf Of [REDACTED]
Sent: Friday, 24 February 2012 4:18 PM
To: Quinton, Peter
Subject: Retirement Villages Bill (ACT) - Lend Lease Submission

[REDACTED] | Retirement Living & Aged Care | Lend Lease
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24 February 2012

Mr Peter Quinton
Legislation and Policy Branch
Justice and Community Safety
GPO Box 158
CANBERRA ACT 2001

Dear Mr Quinton

Retirement Villages Bill 2011 (ACT) – Lend Lease Submission

We refer to the tabling of the Retirement Villages Bill 2011 in the Legislative Assembly on 16 November 2011.

Lend Lease is the largest for-profit owner, manager and developer of retirement living and aged care facilities in Australia. We have over 70 retirement villages and 30 aged care facilities in Australia and New Zealand and provide accommodation for over 15,000 residents. In Australia, we own or manage sites in New South Wales, Queensland, Victoria, South Australia and Western Australia.

On 4 January 2012 we announced our intention to enter the seniors living market in the ACT following the acquisition of a 4 hectare site at Isabella Plains, Canberra. The development will include a retirement village and associated community centre and facilities. Our acquisition of the site was preceded by an extended period of due diligence, commencing in June 2011 and which culminated in our tender being lodged on 22 November 2011.

As an owner and manager of retirement villages across a number of Australian states, Lend Lease is uniquely placed to understand the impact burdensome regulation can have on business and investment in the retirement living sector.

The lack of uniformity in the regulation of retirement villages across Australia adds a significant compliance and cost burden to our business. The proposed adoption in the ACT of yet another distinct style of regulation which contains onerous obligations is only going to increase this cost on us and on the industry.

If Lend Lease had been aware of those more onerous obligations proposed in the Bill (such as those referred to later in this letter) at the time of lodging its tender for Isabella Plains, we would have viewed the ACT retirement living market differently and we most probably would not have proceeded with the acquisition.

Lend Lease's general comments on the proposed legislation

We have been provided with a copy of the joint submission on the Bill prepared by the Retirement Villages Association and the Aged and Community Services Association NSW and ACT. We support this submission, a copy of which is enclosed, and the recommendations it proposes.

We are disappointed that the ACT Government has not provided a formal response to the previous RVA and ACA submission on the regulation of retirement villages in the ACT. We would like to see a more committed and robust

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engagement between the ACT Government and the industry on issues of such importance as the introduction of a new regulatory framework.

The joint RVA-ACA submission confirms that the current Retirement Villages Industry Code of Practice 1999 which governs ACT retirement villages is working well. This brings into question whether there is a need for new legislation in the ACT.

Further, given the relatively small size of the ACT seniors living market and the existence of widely accepted data showing our population is ageing, it is difficult to see what policy reasons there are to support new regulations that impose significant compliance burdens and are likely to stifle investment and development.

A number of the provisions in the proposed Bill create compliance obligations for retirement village operators that exceed those imposed by other states. The provisions we believe are unmatched in any other Australian state are referred to below. The ACT seniors living market will be placed at a competitive disadvantage if these compliance obligations become law. This is likely to impact future investment in the ACT seniors living market and, in turn, could potentially lead to a significant reduction in the supply of affordable accommodation for the ACT's ageing population. If the Bill in its current form is allowed to proceed and becomes law, Lend Lease does not anticipate making any further investment in the ACT seniors living market.

Lend Lease's key issues with the Bill – compliance obligations unmatched in other states

We have set out in the table below our brief comments on three key issues we believe need reviewing before the legislation proceeds any further. We believe these provisions create compliance obligations for retirement village operators that are unmatched in other Australian states.

Section	Lend Lease Comment	Lend Lease recommendation
15	<p>This section requires the commissioner of fair trading to approve a transfer of control of a retirement village scheme.</p> <ul style="list-style-type: none"> • No other States have matching provisions requiring pre approval of changes in control by fair trading. • This section was incorporated in the Bill tabled in the Legislative Assembly on 16 November 2011 and is new. There was: <ul style="list-style-type: none"> ○ No similar requirement to obtain approval of a change in control in the earlier version of the Bill released as an exposure draft in May 2010; ○ No prior notice from the ACT Government of an intention to implement a requirement to obtain approval from fair trading prior to transferring control of a village; and ○ No consultation with industry as to how such a provision might impact investment and development. • If Lend Lease had been aware of the intention to incorporate this requirement in legislation at the time it was considering and lodging its tender for Isabella Plains (that is, during the period from June 	<p>We see no problem with having an obligation to inform residents and the commissioner of fair trading of a proposed transfer of control. A requirement to inform residents exists under NSW and South Australian legislation and works well.</p> <p>The Bill should be amended to create an obligation to inform rather than seek approval for a transfer of control.</p>

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	<p>2011 to November 2011), it would have viewed the ACT retirement living market differently and most probably would not have invested.</p> <ul style="list-style-type: none"> • The section imposes a constraint on sales of retirement village sites. • The mischief the section intends to mitigate is dealt with elsewhere in the legislation. For example, the sections which prohibit certain persons from becoming an operator are sufficient to protect the interests of residents. The requirement for pre-approval is therefore unnecessary. • The section requires the commissioner of fair trading to take into account objections to a change in control made by residents; however residents are not generally equipped to understand the commercial considerations related to a sale/acquisition of a village. • We would question whether the commissioner of fair trading is satisfactorily equipped to deal with all of the considerations (commercial, legal and otherwise) which are relevant to a transfer of control of a village. 	
<p>59, 60 & 87</p>	<p>These sections require repayment of former residents' exit entitlements within 6 months of their departure and give the former resident the right to have input in relation to the re-lease price for the premises</p> <ul style="list-style-type: none"> • While these provisions are largely taken from the current Retirement Villages Industry Code of Practice, legislation in other states does not require the operator to 'buyback' premises from all leasehold residents. • It is not clear how these provisions will operate where there is no new incoming resident and: <ul style="list-style-type: none"> ○ the exit fee is to be calculated by reference to the next price; and ○ the resident is entitled to capital gain. • In our experience, partial repayments/buybacks do not work well as, once the former resident has received a proportion of their exit entitlement, they no longer have as much of an incentive to achieve a timely sale/re-lease. This leads to: <ul style="list-style-type: none"> ○ delays in the turnover of premises and the payment to former residents of the remainder of their exit entitlement (capital gain); and ○ disputes as to what the re-lease price for the premises should be. This means a valuation is going to be needed in most cases to resolve the dispute and adds to 	<p>These sections should be reconsidered and re-drafted so as to take into account the different financial arrangements that exist between operators and residents.</p> <p>The sections ought not to apply where:</p>
		<ul style="list-style-type: none"> • residents are entitled to a proportion of any capital gain on the premises; and • where the departure fee payable by the resident is calculated by reference to the price paid by the next incoming resident; and • where the former resident is entitled to have input in relation to the re-lease price of their premises. <p>For example, in NSW the operator is not required to 'buyback' premises if the resident is a registered interest holder.</p> <p>In Victoria the operator is not required to 'buyback' premises if the resident is an 'owner'. The operator also does not have to 'buyback' the premises if the resident is entitled to appoint a sales agent to sell their premises.</p>

	<p>residents' costs.</p> <ul style="list-style-type: none"> • These sections could lead to retirement village operators adopting switching clauses in residents' contracts. These switching clauses operate so that, if the operator has to repay an exit entitlement and there is no new incoming resident, the former resident loses any entitlement to capital gain. This is not in residents' interests. • These sections adversely affect valuations for retirement villages which damages business and investment interest in the sector. 	
142 & 144	<p>These sections limit a former resident's liability for services fees to a maximum of 6 months after leaving the village and the scheme operator is then required to pay the service fees</p> <ul style="list-style-type: none"> • As indicated above, the incentive for a former resident to achieve a timely re-lease of their premises is reduced if the operator has to provide a partial buyback. A resident's commercial imperative to achieve a timely re-lease is further reduced if they are exempted from having to pay services fees for their premises. • This means that the premises can go unoccupied for a lengthy period and the operator has to fund the service fees in respect of the premises. This is not an appropriate or fair balancing of the operator's and the residents' interests. • Legislation in other States is less onerous for an operator in terms of when the operator becomes responsible for paying services fees on vacant premises. For example, in Qld, the operator becomes responsible after 9 months. In NSW, the operator becomes liable for the whole amount of the services fees after 42 days only if a resident is not a 'registered interest holder'. <p>In Victoria, the limitation on how long a former resident's liability for service fees continues applies only to residents who do not 'own' their premises and, in any case, the operator is not liable to pay service fees in respect of vacant premises.</p> <p>In South Australia, the former resident is liable for service fees for a period of 6 months only; however their input into the re-leasing price for their premises is limited.</p> <p>In Western Australia, this issue is left to be dealt with under the resident's contract with the operator.</p>	<p>These sections should be reconsidered and, if the ACT Government considers it necessary to limit a former residents' liability for service fees after they leave, regard should be had to the regimes that exist in other States.</p>

The way forward

We would be happy to meet with you to discuss any of the matters referred to in this letter.

In our view, careful consideration of the policy reasons supporting a change to the regulatory regime in the ACT and a move away from the Retirement Villages Industry Code of Practice 1999 is still needed.

Specifically, the ACT Government should be satisfied as to the potential adverse affects any new legislation would have on investment and growth in the ACT seniors living market. Our acquisition of the site at Isabella Plains demonstrates our willingness to be a participant in that market. However, a burdensome regulatory change and an unwillingness on the part of government to take into account and be responsive to industry concerns will make it more difficult for us to decide our future participation in the ACT seniors living market.

As stated above, if the Bill in its current form is allowed to proceed, Lend Lease does not anticipate making any further investment in the ACT retirement living sector.

We look forward to working with the ACT Government to settle on a mutually acceptable and workable regulatory framework for retirement villages in the ACT.

Your



Retirement Living and Aged Care

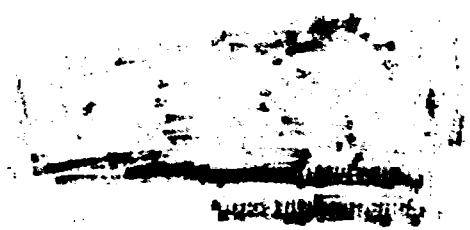
Lend Lease

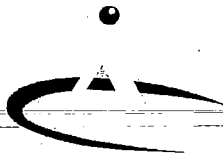
Cc: Simon Corbell MLA
Chief Minister, ACT

And

Retirement Villages Association Limited







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Dear Mr Quinton

Thank you for the opportunity to provide a written submission on the *Retirement Villages Bill 2011*. This Submission is a joint Submission from the Retirement Village Association (RVA) and the Aged and Community Services Association (ACSA).

As I am sure you are aware, our members based in the Australian Capital Territory (ACT) have worked constructively with Mary Porter MLA as she has drafted this legislation. This is despite the fact we do not believe legislation is necessary – particularly this legislation with its onerous compliance burdens on an industry that is already struggling with development of new housing for older people due to the costs of overregulation.

This legislation is not in the ACT community's interest due to the following:

- Compliance administration will redirect staff in retirement villages from looking after the interests of residents to dealing with a significant increase in paper work.
- Up-front costs of complying with the legislation will stymie investment. This includes investment in current and new facilities, as the sector looks to other less complex opportunities such as standard residential stock that does not serve the needs of older people.

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- Annual compliance costs will have an impact on services and / or costs to village residents. This will also reduce the resources of ACT seniors in terms affording future care. This is directly in opposition to current policy that seeks to lower costs of accommodation and care for older people.
- Increasing the cost of seniors housing will also have broader social and economic impacts. It will lead to a reduction in the residential housing stock being made available to younger generations. Less construction activity means less jobs and economic activity.
- The Territory's population is ageing and there are long lag times in constructing affordable and appropriate seniors housing.
- Retirement villages are in high demand in Canberra and there are very professional and committed operators that have heavily invested in older people in the Territory. They are an affordable seniors accommodation solution for government.

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) governs the occupation and operation of villages.

This arrangement and the consumer protections afforded have been working and the industry remains perplexed about the need for legislation given there has been no Tribunal cases in the ACT.

As part of our member survey, we have determined that retirement village operators in the ACT have currently earmarked around \$204 million in new investment in the ACT. This investment creates jobs, seniors housing with broader social and economic benefits, and adds to the economic base of the Territory.

The potential impact of this new legislative burden is a reduction in the industry's investment and in addition, the timing of that investment.

With over 2300 Canberrans in retirement villages, future investment plans, and no tribunal cases to date - it raises the question - why are we trying to fix something that is not broken?



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We would welcome the opportunity to meet with you to discuss our concerns in more depth. We stand ready to work with you to ensure continued investment in affordable accommodation options in the ACT.

Yours sincerely

[Redacted signature]

[Redacted name]

Retirement Village
Association

[Redacted signature]

[Redacted name]

Aged and Community
Services Association of
NSW and ACT

24 February 2011

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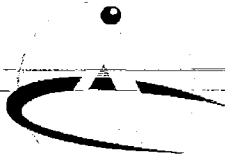
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RVA and ACSA Submission on the ACT Retirement Villages Bill 2011

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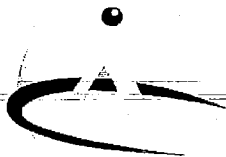
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Executive Summary

The Retirement Village Association and Aged and Community Services Association of NSW and ACT (ACSA) would like to thank you for the opportunity to again provide written comments regarding the regulation of retirement villages in the ACT.

We are particularly pleased that we are now at a stage where the Government has the opportunity to fully consider the impact on the community of this legislation.

You can find further information about our organisations at Attachment A.

This Submission is a joint RVA and ACSA Submission as both peak bodies are deeply concerned about the *Retirement Villages Bill 2011*. Both organisations are committed to ensuring positive outcomes for village residents, the retirement village industry and the ACT community. Happy residents are the cornerstone of the industry. Our own surveys highlight greater than 96% satisfaction by people in villages, which would be the envy of any industry.

In July 2010 and September 2010, the RVA and ACSA provided submissions to Mary Porter MLA. These Submissions are at Attachment B for your information. We are attaching these Submissions as many of the issues raised remain in contention with the current legislation, which in our view is poorly conceived given the paucity of issues raised by residents in the Territory.

From these Submissions you will note our consistent written commitment to an outcome that promotes consumer protection and robust fair trading practices. What is also critical with our ageing community is an investment climate that will encourage continued growth and the provision of much-needed seniors housing in the ACT.



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Since the Submissions we provided to Mary Porter MLA in July 2010 and September 2010, we have met with her to express our concern that the current Bill does not address the issues previously raised. It should be noted that Mary Porter MLA has undertaken to respond to the outstanding issues with the reasons for their exclusion in the current Bill.

In addition, the RVA has written to the Chief Minister to implore the Government to undertake an economic and regulatory impact statement. The industry contends that this Bill should not be considered until the facts about its impact are properly assessed and debated. The flow on impacts of this Bill will be very significant and have the potential to switch off investment in what is already a very difficult market that has been greatly impacted by the global financial crisis.

Introduction

It is important that this Submission provide context regarding the current operating environment in the ACT for the retirement village industry.

The current system is working

Currently, the system is working. There has not been a tribunal case in the ACT and nor have there been large numbers of residents agitating for legislation. In fact, many residents are concerned about the compliance burdens that naturally follow legislation and just how much of these new costs will be passed on to them by operators.

The RVA and ACSA acknowledge that there has been a minority of residents that believe because there is legislation in other jurisdictions there should be legislation in the ACT. There is no evidence to suggest that the current system is not adequate and nor has there been any attempt to modify or reform the current system before reaching for legislation. There is also, importantly, no evidence to suggest that legislation in other jurisdictions produces better outcomes for village residents.

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As you will see from previous Submissions (Attachment B), the RVA and ACSA believe that there are relatively simple reforms to the Code that could be undertaken to enhance existing consumer protections. The RVA and ACSA firmly believe this should be implemented prior to considering legislation.

Retirement village industry

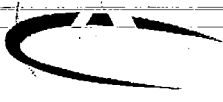
In the ACT there are 28 retirement villages containing 1429 units and accommodating around 2300 Canberrans. Nationally there are 1,900 villages, accommodating 160,000 people.

This means that on a national basis over 5% of the population over 65 years of age live in a retirement village. Some States like Western Australia and South Australia have much higher penetration rates, and also a more flexible and balanced regulatory environment.

Even if we assume a 5% penetration rate in the ACT (as it is nationally), there could be as many as 29,000 people living in retirement villages in the ACT. Put another way, this would require as many as 150 or more new villages that could be constructed to meet current demand. This would result in a construction value in the order of \$4 billion that would be significantly impacted by what will be the most onerous legislation in Australia (as it is currently drafted).

This Bill will have a major negative impact on future investment and jobs in the ACT economy and mean that older people will have little choice in how to access accommodation that is fit for purpose for their needs.

However, our ageing population, particularly evident in the ACT, and a greater acceptance of village living, could result in around 8% of the population living in retirement villages, which would drastically increase the need for new villages. This assumes constant demand from seniors for village living. The consequence of this is the need for new retirement



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villages in the ACT. For this to occur, the retirement village industry requires an investment climate that stimulates expansion.

For further information about the community benefits of retirement village living see Attachment C.

Summary of Recommendations

The following is a list of recommendations contained within this Submission.

Recommendation One

That the ACT Government formally respond to previous RVA and ACSA Submissions to Mary Porter MLA (Attachment B) to ensure a robust understanding by all parties of the current environment and Government objectives in regulating the retirement village industry.

Recommendation Two

That the ACT Government, in concert with the ACT retirement village industry, complete a RIS prior to debate on the Retirement Village Bill in the Legislative Assembly and that the results of this RIS be made public.

Recommendation Three

That the ACT Government review the *Retirement Villages Bill 2011* and seek to simplify the legislation in order to significantly reduce the compliance burden on the industry – and thereby the negative impact this will have on ACT seniors and the broader community.

Recommendation Four

That the ACT Government undertake, in concert with the ACT retirement village industry, an assessment of the likely investment impact of the



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Retirement Village Bill 2011 to determine the social and economic costs to the ACT - and whether any perceived benefits of the current legislative approach outweighs these costs.

Recommendation Five

That the ACT Government amend the Bill where specifically recommended and establish a round table with industry, residents and government to carefully consider those aspects where the drafting and intent of certain provisions is not clear to determine how best to amend the Bill.

Recommendation Six


That the ACT Government works with the Federal Government to:

- Ensure the Australian Housing and Urban Research Institute is resourced to measure the demand for, and supply of, aged friendly housing for seniors in the ACT.
- Enable the National Housing Supply Council to continue its annual 'State of Supply' report.

Recommendation Seven

That the ACT Government:

- Lead a renewed partnership between all governments and industry to work together to develop more age friendly and integrated housing communities.
- Consider planning reforms such as retirement village zoning to encourage investment.
- Work with industry, including the RVA and ACSA, in a creative collaboration to deliver more and better seniors housing.



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Recommendation Eight

That the ACT Government:

- Transfer policy responsibility for retirement villages and associated legislative instruments to the Community Services Directorate to ensure a whole of government focus.

Recommendation Nine

That the ACT Government:

- Reform the stamp duty payable on seniors housing such as retirement villages to encourage senior choice in accommodation.
- Encourage the Federal Government through the Council of Australian Governments to remove current pension and assets testing disincentives to free up equity for seniors to invest in their future housing and care needs.
- Investigate ways that ACT seniors can be supported in financial literacy and in accessing the independent financial advice they need to make decisions about their future. This would include information about the impact of housing decisions on their overall financial position.

Response to Previous Submissions

As discussed previously, the RVA has provided two Submissions to Mary Porter MLA and these are at Attachment B.

The current Bill before the Assembly does not fully address the issues and concerns raised in these submissions by the retirement village industry. Both the RVA and ACSA spent a significant amount of time and resources putting forward practical suggestions for reform.

Prior to any debate in the Legislative Assembly, it is contended that the issues canvassed in these Submissions be formally responded to by the



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Government. If there are suggestions in these Submissions that cannot be implemented, the industry would like the opportunity to understand the rationale and to respond.

The RVA and ACSA will work with the Government to deliver a balanced and fair Code. Similarly, after extensive policy work and analysis, should the Government determine that a legislative approach is in the community's interest, the RVA and ACSA will work with the Government to ensure this legislation is balanced and fair – and will deliver on the Government's objectives.

Recommendation One

That the ACT Government formally respond to previous RVA and ACSA Submissions to Mary Porter MLA to ensure a robust understanding by all parties of the current environment and Government objectives in regulating the retirement village industry.

Regulatory Impact Statement

Regulatory impact statements (RIS) are a rigorous way for governments to analyse the most efficient and effective way of regulating to produce the greatest net benefit to society.

Unlike normal policy and regulatory development processes of the Government, the current Retirement Villages Bill has not been fully assessed. This assessment should be undertaken and the results publically released before the Bill is debated in the Legislative Assembly.

The RIS should assess the current Bill to determine whether:

- Legislation is necessary to achieve desired government outcomes and deliver greatest benefit to the community.
- The legislation is simple and avoids unnecessary restrictions.
- It employs the minimum regulation necessary to achieve its objectives.

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- The legislation imposes an unnecessary burden on those affected and whether it is unduly prescriptive.
- As drafted, it is performance and outcomes focused.
- It is easy to understand, fair and can be consistently enforced.
- It enshrines some flexibility in dealing with special circumstances.
- It addresses particular problems that cannot be addressed in another way such as reforms to the current Code.
- It is clear and concise and is appropriately mindful of the compliance burden imposed.
- It is a response that is proportionate to the problem – particularly in this case where there is no demonstrable problem existing in the ACT.

In essence, the RVA and ACSA contend that other government legislation is subjected to this type of scrutiny and therefore this Bill should not be debated and supported by the Government until a RIS has been undertaken.

We contend that it is incumbent on the Government to assess the risks, costs and benefits to the Government, business and the community before supporting this Bill. In addition, the results of the RIS should be made public to enable debate.

The RVA and ACSA stand ready to work with the Government through the provision of data and other facts that will assist the Government in undertaking a robust RIS.

Recommendation Two

That the ACT Government, in concert with the ACT retirement village industry, complete a RIS prior to debate on the Retirement Village Bill in the Legislative Assembly and that the results of this RIS be made public.



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Compliance Cost Burdens

The RVA and ACSA believe that once a full RIS is undertaken by the Government, the extent of the onerous and unnecessary compliance costs inherent with the current Bill will be identified and understood. There is no doubt this Bill will impact on the future of the industry in providing affordable and appropriate seniors accommodation in the ACT.

This Bill will add to the bureaucracy of running retirement villages. Additional time and resources will have to be dedicated to ensuring documentation and policies and procedures are compliant.

Compliance costs

In preparing this Submission, the industry in the ACT has undertaken a survey of all operators and determined the following compliance costs:

- The total up-front cost of the industry becoming compliant will be between \$650,000 and \$750,000. This estimate does not include personnel costs.
- There will be an annual ongoing compliance cost to the industry of approximately \$500,000.

The immediate impact of these costs will be a reduction in capital expenditure earmarked for upgrading existing facilities. This will result in a loss of jobs in the ACT and poorer infrastructure for retirement village residents. These costs will impact on the services the industry provides to residents - the RVA and ACSA believe this is not in the community's interest.

Compliance costs and who pays?

Unfortunately, the impact of this Bill will fall on retirement village residents. Each operator will work to minimize the impact and each

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operator is likely to pass on the compliance costs in different ways. Ultimately, it is ACT village residents that will pay for this legislation.

There are a number of different ways that operators will work to defray the compliance costs associated with the legislation and these are as follows:

- Personnel and residents. Our industry survey showed that operators will try to absorb the new paper work and compliance obligations within the current staff base. There will be reduced availability of staff for village residents and therefore a reduced service offering.
- Passing on costs to residents. The financial costs associated with this legislation will very likely be passed onto residents. This is likely to occur in different ways but the options available to operators are as follows:
 - Increased unit prices. Future sales of village units in the ACT are likely to see an increase in the asking price. This does not assist with current affordability pressures, nor does it assist seniors to downsize and free up existing standard residential stock for future generations. Further, it does not assist seniors in funding their future care needs – the burden of which will inevitably fall on the Government.
 - Increased exit fees. Residents will be very concerned about this prospect but some operators feel that they will not have a choice. The Government, and the broader community, should also be concerned as it will impact on an older person's ability to pay for their future care needs.
 - Increasing ongoing maintenance levies. Again, this will concern residents and it will impact on the affordability of the retirement village product in Canberra.

To re-iterate our first recommendation, a robust RIS will identify the onerous compliance burden built into this legislation and this cost should be known prior to debate on the Bill.



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Recommendation Three

That the ACT Government review the *Retirement Villages Bill 2011* and seek to simplify the legislation in order to significantly reduce the compliance burden on the industry – and thereby the negative impact this will have on ACT seniors and the broader community.

Reduced Territory Investment

Any changes to the regulatory environment mean that business like operators of retirement villages have to reassess. RVA and ACSA members are currently reassessing their investment plans as a consequence of the *Retirement Villages Bill 2011*.

As background, retirement villages are a difficult asset class through which the property industry makes very modest profit. The very nature of the partnership agreement between the operators and residents is about ensuring mutual financial benefit.

Our members can make greater profits and quicker profits through developing standard residential stock, which does not serve the interests of many older people as well as retirement villages. Standard residential stock is developed more quickly, the upfront costs are less, and the investment recouped immediately upon sale. This is not the case with retirement villages meaning investment is more risky, requires large up front debt and equity and return timeframes are very long (10 years or more in many cases).

As part of our member survey, we have determined that retirement village operators in the ACT have currently earmarked around \$204 million in new investment in the ACT. This investment creates jobs, seniors housing with broader social and economic benefits, and adds to the economic base of the Territory.



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The potential impact of this new legislative burden is a reduction in the industry's investment and in addition, the timing of that investment.

Canberra's population is ageing and there is a need now for more appropriate and affordable seniors accommodation. There are long lag times associated with the building of retirement villages, villages are in demand in the ACT, and they are currently affordable. The industry, and ultimately the Government, will not be able to meet future demand should investment stall.

A rigorous RIS will determine the likely impact on investment in the ACT and this will enable the Government to fully consider the social and economic impact of the *Retirement Villages Bill 2011*.

The ACT industry stands ready to work with the Government through the provision of information that will assist with the RIS being undertaken.

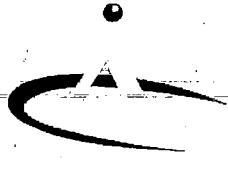
Recommendation Four

That the ACT Government undertake, in concert with the ACT retirement village industry, an assessment of the likely investment impact of the *Retirement Village Bill 2011* to determine the social and economic costs to the ACT - and whether any perceived benefits of the current legislative approach outweighs these costs.

Specific Drafting Concerns

There are drafting issues with the *Retirement Villages Bill 2011* that the RVA and ACSA believe need to be addressed.

It is obvious that the current Bill cherry picks provisions from legislation in other jurisdictions such as Queensland and New South Wales (NSW). The Bill as it currently stands does not promote harmonization and is not cohesive.



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Further, given that this Bill has not been the subject of a normal public policy process and a RIS has not been undertaken, this is not surprising. Nevertheless, these issues do need to be addressed prior to the any debate in the Legislative Assembly on this Bill.

As further context, the final report of the Productivity Commission, *Caring for Older Australians*, recently provided to the Federal Government, provides a comprehensive analysis of the retirement village industry regulatory environment. This report recognises that the current regulatory environment is stifling investment and needs to be addressed should seniors housing continue to be developed.

In addition, the Federal Government's Advisory Panel on the Economic Potential of Senior Australians also points to the need for reform of the current regulatory environment. The Panel notes that the current regulatory and taxation environment is stifling investment in seniors housing in parts of the country. The retirement village industry believes the ACT risks experiencing the decline in investment experienced in other parts of the country such as NSW and Queensland.

The RVA and ACSA support these findings and recommendations and encourage the ACT Government to look closely at these reports before determining that a legislative approach is necessary – or that the current Bill is necessary.

The following is a table that outlines RVA and ACSA's concerns with the current Bill. It makes some re-drafting recommendations and observes that in some areas, the Government and industry would benefit from discussing the intent of certain sections.



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Section by Section Analysis of the Bill

Item	Section	Issues / Recommendation
1.	S12 Application for registration	<p>This Section is inflexible, does not reflect existing arrangements, and does not encourage operators to work with residents to enable them to access a Village should they choose.</p> <p>A Scheme to be registered should not limit the form of village contract to be utilised in a Village. Village operators are now adopting multiple forms of tenure / terms to accommodate different resident needs.</p> <p>For example, some operators conduct both rental units under the NSW Act as well as standard for loan/lease in the same village. The registration process should not operate in a manner to limit flexibility in forms of village contracts that can be used. The Queensland model of a PID operates in a manner to be so restrictive that it has difficulty recognising rental contracts and makes it difficult to change the form of village contract from time to time.</p>
2.	S14 Power to ask for information etc from applicants and others	<p>The industry contends that a process to effectively 'qualify' a prospective village operator is appropriate to ensure only persons of good reputation and capacity are able to conduct the business. In a retirement village setting this is appropriate given the cohort of residents.</p> <p>Having said that, the industry is concerned that the process of qualification outlined in the Bill may act as a deterrent to new entrants. It may, by default,</p>



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		consolidate and protect incumbent operators. This could have the unintended consequence of stifling variety, new products and ultimately competition.
3.	S15 Transferring registration	<p>The ability of an operator to transfer and organise its business affairs is a critical part of the conduct of the operations of a business.</p> <p>A number of larger portfolios have been established as a result of smaller operators / developers developing their model, selling to another operator and then ultimately being purchased by an institution.</p> <p>Examples of this include the Glen Group in NSW that was consolidated and then sold its interests to the AMP Group.</p> <p>Another example is the Salvation Army Southern Region being acquired by the Macquarie Bank group. More recently Sakkara Group established a portfolio that was formed from smaller operators, sold to Aevum Ltd and then ultimately acquired by Stockland Group Ltd.</p>
		<p>There is no doubt there should be disclosure to residents of prospective operators of the village. However there should not be a power granted to residents to restrict the ability to transfer. That would constitute a significant restriction of development of the industry and would fly in the face of the one of the objects of the Act.</p> <p>There is also a definitional issue in relation to change in control particularly for villages held by listed corporations.</p> <p>The obligation should not be to 'apply' to the Commissioner but more correctly to inform. The ability of a resident to object generally and further to have 60 days within which to object will affect the ability of operators to transfer their villages and will</p>



		<p>again restrict the ability to develop the diversity of the industry.</p> <p>The only basis upon which a transfer of registration could be refused is if the transferee is a person that would not otherwise qualify as a scheme operator under s13(2). To the extent that Government wishes to protect residents from a former operator paying outstanding refunds, this is addressed in the notice mechanism raising the issue and the transferee and transferor responding to the issue but not acting to stop any transfer. It would probably be in the best interest of a resident that if an operator can't pay a refund then it is better that the next operator can pay and does buy the facility.</p> <p>The RVA and ACSA contend that at a minimum the following amendments need to be made to this Section.</p> <ul style="list-style-type: none"> • 15 (2) – replace “apply” with “notify” and insert “its intention” following fair trading. This would then read as follows – <i>(2) The scheme operator must notify in writing to the commissioner for fair trading its intention to transfer the registration of the scheme for the retirement village.</i>
		<ul style="list-style-type: none"> • 15 (3) (a) (i) – replaced “asked” with “notified” and after fair trading insert “of its intention”. This would then read as follows – <i>(i) that the operator has notified the commissioner for fair trading of its intention to transfer the registration of the scheme for the village;</i> • Delete 15 (3) (iv). • Insert 15 (3) (c) “A resident who has received



notice under (a) above, may within 30 days of receiving the notice give notice to the operator and the Commissioner raising any concerns they may have to the transfer".

- 15 (4) should then read as follows - (4) *On application, if the transferee is a person described in s13(2) and is satisfied as to the matters set out in (5) below the commissioner for fair trading will within 60 days of an application, —*

transfer the registration of the scheme for the retirement village to the person named in the application;

- 15 (4) (b) - delete.
- 15 (5) should consequently read as follows - (5) *The commissioner for fair trading in considering the transfer in the registration of a scheme for a retirement village will consider the following matters—*

(a) the commissioner is satisfied that—

- (i) the scheme operator for the village has complied with subsection (2); and*
- (ii) the person to whom the scheme is to be transferred is—*
 - (A) at least 18 years old; and*
 - (B) not prohibited from operating a scheme for a retirement village under section 94 (Offence—operating retirement village schemes etc while insolvent); or*

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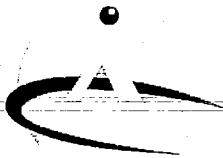
		<p>(C) <i>not prohibited from operating a scheme for a retirement village under section 95 (Offence—operating retirement village schemes etc with relevant conviction); and</i></p> <p>(iii) <i>the transferor and transferee have provided a response to any notice issued under subsection (3).</i></p> <p>(6) <i>If the commissioner for fair trading transfers the registration of a scheme for a retirement village, the commissioner must record the transfer in the retirement village scheme register.</i></p> <p>(7) <i>In this section:</i> resident <i>includes a former resident who has not received an exit entitlement to which the former resident is entitled under the former resident's residence contract.</i></p>
4.	S19 Residence contracts generally	<p>This section seeks to limit any other clauses to 'no less beneficial'. It is contended that this is too subjective a test. The better test is to ensure there is no provision made contrary to the provisions of the Part. Otherwise if the Act changes in the future, confusion is potentially created.</p> <ul style="list-style-type: none"> It is recommended that 19 (2) be amended to read – (2) <i>Nothing in this part prevents 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 not contrary to the provisions in this</i>



		<i>part.</i>
5.	S20 Meaning of residence contract	This section uses the term or expression 'person' rather than 'resident'. This is potentially confusing. It potentially enables a person, not a resident, to use the village facilities. There are likely other unintended consequences and it is recommended that the Government redraft this Section.
6.	S 21 Form and content of residence contracts	S21 (a) (vii) – insert “-if applicable” at the end. It should be noted that some operators choose to fund this component of capital works themselves without committing to a fund. The objective of this clause is transparency and this is transparent.
7.	S23 Residence contracts – guidelines	The RVA and ACSA believe that it is a useful concept to have the language of village contracts consistent so long as the Act does not limit the variety of provisions that could be agreed to within a contract/s.
8.	S31 Offence – failure to notify end of cooling-off periods to certain circumstances	<p>It is unduly harsh than an operator commits and offence for failing to notify of the later event. This Section should be re-drafted to say that a notice must be issued otherwise the contract could be unenforceable or may be rescinded by the resident within the settling in period without penalty.</p> <ul style="list-style-type: none"> It is recommended that the Section re re-drafted so that it reads as follows: <i>A scheme operator for a retirement village must: —</i> <i>(a) if the cooling-off period for a residence</i>



		<p><i>contract for the retirement village starts on a day that a later event happens;</i></p> <p><i>(b) give the resident under the residence contract, as soon as practicable after the event happens, written notice of—</i></p> <p><i>(i) the date the later event happens; and</i></p> <p><i>(ii) the date the cooling-off period ends.</i></p> <p><i>If the operator fails to issue the notice, the resident may rescind at any time without penalty.</i></p>
9.	S32 Residence contract may be rescinded during cooling-off period.	<ul style="list-style-type: none"> Given the above change to S31, it is recommended that S32 read as follows – <i>A resident of a retirement village may, by written notice to the scheme operator for the village, rescind a residence contract in relation to the village before the cooling-off period ends or during the settling in period if the operator fails to issue a notice under s31.</i>
10.	S34 Offences – failure to deal with instruments assigning property during cooling-off period	<p>This Section is unclear regarding the problem it is seeking to address or the resident rights seeking to be protected. The RVA and ACSA would welcome a discussion with the Government about this Section to determine why it has been included.</p> <p>As it is drafted, it could relate to the transfer of items to a resident or it could be the transfer of an interest in the property itself.</p>



		<p>If the intention is to stop operators from selling items of equipment to residents then seeking to buy them back at the end of the contract, it is recommended that the Section be drafting along the lines of the following –</p> <ul style="list-style-type: none"> <i>The Operator must not sell items of equipment to residents with a provision that the operator may repurchase the equipment upon departure of the resident. Any contract that contains such a provision is of no effect.</i>
11.	S41 Offences – failure to hold and repay ingoing contributions	<p>The RVA and ACSA would welcome discussion with the Government regarding this Section as this potentially has significant investment implications for the sector. It may be, however, that this is simply poorly drafted. Until the RVA and ACSA are clear on what the issue is that it is trying to address, we are unable to recommend a specific form of words to deal with the problem is it seeking to address.</p>
		<p>The effect of this provision is that money paid under a village contract cannot be paid to the operator until after the cooling off period. Given all trustees operate under instructions from their clients, to have the trustee liable under the Act for having committed an offence is inappropriate.</p> <p>Further, the effect of this provision means financiers will need to wait until the end of the cooling off period.</p> <p>The provision effectively operates to provide a resident a form of deposit security to receive back</p>

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		their ingoing contribution until the end of the cooling off period. This is in spite of the fact that the resident receives the benefit of some occupation and use of village facilities during this time.
12.	S53 Ending residence contracts – scheme operators	<p>This could be amended and improved by the addition of the following words at the end of S53 (2) (c) –</p> <ul style="list-style-type: none"> <i>In this regard, the resident agrees the operator may contact the resident's medical practitioner to obtain details of the resident's care needs.</i> <p>There are also some significant problems with this provision.</p> <p>This provision has been drafted so that it is similar to the Aged Care Act. It is designed to ensure that if a person is not able to remain in a facility, the provider must have an alternative. The difficulty is that under this Act, the village operator is not a person under the control of the Aged Care Act but is being directed to this Act to ensure they can identify an appropriate aged care facility. This is something a village operator may not be able to do.</p> <p>The proper course is to determine if the person can remain in the village and if they cannot to then terminate the agreement.</p>
13.	Division 4.9 Exit entitlements	The RVA and ACSA contend that the first part of this Division over-emphasises offences being committed for certain things not being done by an operator, which actually might simply have occurred as a result of administrative error.

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		<p>This appears unnecessary when an alternative for a failure by an operator to provide these items is for the resident to approach the Commissioner and to make a specific request. If after that request, the operator does not fulfill their obligations, then one could legitimately say that an offence has occurred.</p> <p>It is recommended that this Division be re-drafted.</p>
14.	S59 Offence – failure to pay exit entitlements to residents who own units	<p>This provision seeks to use the language of s180 of the NSW Act relating to the obligation to repay amounts for registered interest holders however it has the effect of requiring repayment of such amounts within 6 months.</p> <p>The NSW legislation recognises the right of the resident to be paid under their contract when a future event occurs namely the unit being re- leased. This provision seeks to set that aside and introduces a mandatory 6 month buy back provision. This does give rise to adjustments for capital gains or calculations of departure fees based on next price. It is recommended that the Government use the relevant provisions from the NSW Act.</p> <p>Further, the effect of this Section is similar to the effect of s60 below - that is repayment is to be within 6 months of vACSant possession at the latest.</p> <p>It is recommended that this Section be re-drafted or deleted.</p>
15.	S62 Orders for payment of exist entitlements on sale of units	<p>This provision cannot properly work if the form of contract relies upon a future incoming price to be determined. Either the provision allows for a determination to be made on an amount</p>



		<p>independently determined, which is extremely difficult and problematic, or it should be removed.</p> <p>It is recommended that this Section be removed.</p>
16.	S63 Enforcing residence contracts	<p>The effect of this provision is that it could make former scheme operators or parties to the residence contract, liable for future problems. This is inappropriate and flies in the face of the practice of a business being sold and the purchaser taking on all responsibilities. In circumstances where the village has a charge to secure performance, that the Commissioner is involved in the transfer of the village and so can vet the purchaser, then this provision is excessive. In relation to residence contracts, the effect of the provision is to ensure all residence contracts are in fact assigned or novated or if the land is registered that the transfer is registered.</p>
		<p>It is recommended this current section be replaced simply with –</p> <ul style="list-style-type: none"> • <i>A residence contract in relation to a retirement village is enforceable against the owner of the land to which the village relates, the scheme operator or the current scheme operator on the title or the party liable under the contract.</i>
17.	S65 Meaning of public information document	<p>The RVA and ACSA and our members in the ACT are committed to ensure that village residents are provided with the information necessary to make an informed decision / choice. We are committed to transparency and fairness. We also believe that sometimes the more information an operator provides to resident, the more confusing and</p>



		<p>potentially problematic this decision process becomes.</p> <p>This provision as drafted seeks to bring in elements of the Queensland PID format. The difficulty of that format is that the document becomes very cumbersome. As an alternative, it may be sufficient to provide all the information requested but to provide a mechanism for updates or modifications to the PID to be by way of a simpler document similar to a 'Request' Document used in the LPI in NSW.</p> <p>If a PID is to be prepared, then noting the Inquiry Document is used, the process of having the PID registered and kept up to date (but not provided to each prospective resident) and having the Inquiry Document as the disclosure statement to form part of the contract may be a compromise to reduce the bulk of paper provided to residents. And to reduce confusion and compliance costs.</p> <p>That is, have the PID operate similar to a registered dealing in the LPI in NSW that a person is directed to can refer to. At the very least, the PID should be allowed to be electronically available and an operator has satisfied the obligation to disclose if they identify a website to which the PID is located. That concept already exists in the realm of financial services where a Product Disclosure Statement can be provided by way of internet link.</p> <p>The alternative is to use a form of disclosure statement as is done in Victoria or NSW to reduce the bulk.</p> <p>In the interests of future village residents in the ACT, the RVA and ACSA believe this Division should be re-drafted.</p>



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18.	S72 Offence - failure to correct inaccuracies in public information documents	It is recommended that this be re-drafted to enable operators the opportunity to change information.
19.	S101 Meaning of capital improvement	<p>The use of a definition that is linked to the Taxation Act is inherently difficult and only opens up the whole issue to argument.</p> <p>In circumstances where this Act compels the establishment of a capital replacement fund then the distinction between maintenance and replacement becomes irrelevant.</p> <p>It is simpler that the village operator is responsible for all maintenance and replacement but is allowed to use general service charges plus the proportion of funds paid into the capital replacement fund to meet all the cost of maintenance and replacement.</p> <p>This can be combined to form a capital works fund to</p>
		<p>which the residents and operator contribute. In essence, the form of the NSW Act before the final changes were made to the establishment of the capital works fund.</p> <p>Sections 102 - 108 appear to try to stop refurbishment being passed to either fund. It is difficult to draw the line between a request and a need. If a resident does not request the improvement it may still be in the best interest of the village and the other residents that some improvement occur by way of replacement.</p> <p>Otherwise both the operators and residents run the risk of deterioration of value and unnecessary ongoing higher maintenance cost i.e. better to redo the kitchen as a whole for a new resident rather than</p>

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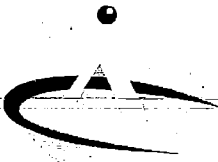


		<p>spend ongoing maintenance for an old fit-out.</p> <p>It is recommended that the Government and the industry work together to ensure this Section meets the objectives of the Government, residents and industry.</p>
20.	<p>S142 Working out and paying general services charge for former residents</p>	<p>This provision again links the ongoing liability to a maximum period of 6 months. This may be inappropriate and insufficient and does not reflect the sharing of gain between the resident and operator.</p> <p>It is recommended that the Government and the industry work together to ensure this Section meets the objectives of the Government, industry, and residents.</p>
21.	<p>S166 Classification of expenditure</p>	<p>The RVA and ACSA would welcome a discussion with the government about why this provision seeks to classify expenditure. This is essentially an accounting concept and we are unsure as to why this is included in the Bill.</p> <p>It is therefore recommended that this also be a point of discussion between government and industry to determine the intent of this provision and whether it could be better drafted.</p>
22.	<p>S168 Creating charges over retirement village land</p>	<p>It is contended that the drafting of this section creates an inflexible business and investment environment for the retirement village industry in the ACT and will potentially have unintended consequences for the community.</p>



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		<p>Within this Bill, there needs to be an ability to differentiate land that has more than one function e.g. a residential aged care facility on site (co-located with a retirement village). In NSW, the process allows for the shading out of non-retirement village land and this Bill much also allow for that.</p> <p>It is recommended that Government re-draft this section to allow for diversity and choice in use of land / facilities for ACT seniors. This is going to become incredibly important over coming years.</p>
23.	Division 10 Residents participation	<p>Village operators and residents are a partnership. Both seek to gain from a well operating village with increasing unit values. Hence, the RVA and ACSA believe that strong communication channels between operators and residents are essential.</p> <p>This Division simply envisages that communication will occur between resident committees and operators. Sometimes this works very well although sometimes a small group of residents can dominate and not act in the interests of the whole village population.</p>
		<p>It is recommended that a provision be inserted to enable an operator to call a meeting with all residents at any time. Communication should not be limited to the residents committee.</p>



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Recommendation Five

That the ACT Government amend the Bill where specifically recommended and establish a round table with industry, residents and government to carefully consider those aspects where the drafting and intent of certain provisions is not clear to determine how best to amend the Bill.


ACT Opportunities

The Australian retirement village story is a successful one and the industry has grown despite any support or overt policy framework delivered by governments. There are, however, emerging challenges for the industry that if addressed will ensure retirement village living and all its advantages for seniors will continue to be provided. Importantly, it will ensure the industry will be in a position to keep up with demand from ACT seniors.

It is clear that retirement villages will continue to represent an essential component of housing for seniors in the future. Even based on current penetration rates nationally, a projected growth of five million people aged 65 and over in the next 40 years would require an additional 2,800 villages to meet demand.

Should retirement village housing stock not be available, there would be four clear socio-economic drawbacks:

1. 300,000 or more residents would have to be housed in standard residential stock that in many cases would be too large and too difficult to maintain. This would exacerbate existing shortages of stock available to younger families heightening intergenerational inequities.



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2. Those 300,000 or more residents would likely experience heightened social isolation contributing to poorer quality of life.
3. A greater need for more investment by government in health care, public housing and home-based care – a significant proportion of which is currently provided by retirement villages.
4. Direct and indirect economic impacts (employment, investment in infrastructure).

The Advisory Panel established by the Federal Government on the Economic Potential of Senior Australians acknowledges that there are barriers affecting the supply of housing for seniors and the RVA endorses the commentary and evidence it has provided to the Federal Government.

Barriers that need to be addressed are:

- Availability and affordability of suitable housing including problems with developer access to appropriate land.
- Downsizing or moving to more appropriate housing is discouraged by financial disincentives and a lack of clear and accessible advice.
- Regulatory burdens imposed by State and Territory legislation.
- Taxation treatment of retirement village investment.
- Difficulties in unlocking existing senior wealth. Developer access to capital and investment disincentives.

These provide an opportunity for the ACT Government to take pro-active action and planning to ensure ACT seniors have access for affordable and appropriate housing.

Measuring senior housing demand and supply

As discussed above, Australia and the ACT face a looming challenge in providing appropriate and affordable accommodation for our ageing population. The RVA has presented some analysis above of the recent



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retirement village construction trends and made some evidence based predictions on the potential impact should this continue.

This evidence is not dissimilar to the data emerging on the housing industry generally. The final Australian Bureau of Statistics figures released in January confirmed a weak quarter for both new housing and major alterations and additions activity in September 2011.

Seasonally adjusted residential building work done fell by 1.6 per cent to an annualised level of \$45.5 billion in the September 2011 quarter. New residential building work fell by 1.9 per cent in the September quarter. In addition, the value of major alterations and additions work done, which accounts for around 20 per cent of total renovations activity, eased by 0.2 per cent.

The RVA contends that in order for any government to properly plan the extent of seniors housing that is needed into the future, that there should be ongoing and comprehensive work on measuring housing demand and supply.

Recommendation Six

That the ACT Government works with the Federal Government to:

- Ensure the Australian Housing and Urban Research Institute is resourced to measure the demand for, and supply of, aged friendly housing for seniors in the ACT.
- Enable the National Housing Supply Council to continue its annual 'State of Supply' report.

Improving access to land and planning reform

The RVA contends that lack of access to cost effective land is one of the key impediments to increasing the supply of seniors housing in the ACT.

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Whilst the RVA believes that the issue of seniors housing is so significant that a nationally driven, Commonwealth- lead set of planning targets (for a set quota of housing to meet demand in specific areas) would best ensure seniors are able to access appropriate housing across Australia, there are some immediate steps the ACT Government can take to drive further investment in retirement villages.

Planning reforms that are targeted towards the delivery of seniors housing would assist the industry to deliver a wider range of products.

Such reforms could include:

- Initiatives to speed up planning timeframes.
- Adding a requirement for land purchasers to include a percentage of land development targeted to seniors housing.
- Allowing different zonings for retirement villages to be accommodated in association with other relevant uses (for example, retail, commercial, mixed use).
- Allocating surplus public land specifically for seniors housing.
- Setting seniors housing targets.
- Providing other incentives to developers of seniors housing (i.e. increasing height limits, lowering car parking requirements, floor space ratio incentives) in other or linked developments.
- Governments working with industry to deliver inner urban solutions where the development of villages is most difficult and costly, including investigation of surplus government or brownfield sites that could accommodate seniors living.

The removal of barriers such as stamp duty (see below) will also assist with increasing seniors housing supply and will encourage more efficient use of existing housing stock.

The RVA stands ready to work with the ACT Government in a creative collaboration to deliver more and better seniors housing.



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Recommendation Seven

That the ACT Government:

- Lead a renewed partnership between all government and industry to work together to develop more age friendly and integrated housing communities.
- Consider reforms such as retirement village zoning to encourage investment.
- Work with industry, including the RVA, in a creative collaboration to deliver more and better seniors housing.

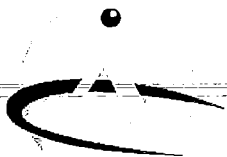
Retirement villages as part of aged care continuum

As you can see from the attachments to this Submission, retirement villages provide many benefits to ACT seniors and the wider community.

There are more seniors living in retirement villages than there are in residential care. The average age of retirement village residents is increasing and more and more seniors want to age in place. This will drive government policy responses.

To meet this growing trend, retirement villages and governments need to work together to deliver innovative accommodation and care solutions. The RVA contends that this will require a whole of government response – from planning, home design, active ageing initiatives, community care, and health services.

The RVA proposes that, like elsewhere in the country, the ACT Government recognise the important role of retirement villages in the aged care continuum. An important element of this would be to transfer policy and regulatory responsibility for retirement villages to the Community Services Directorate. This would ensure a whole of government approach to providing ACT seniors with new and integrated solutions to all issues.



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Recommendation Eight

That the ACT Government:

- Transfer policy responsibility for retirement villages and associated legislative instruments to the Community Services Directorate to ensure a whole of government focus.

Assisting ACT seniors to downsize

Housing is often seen as the fourth pillar of Australia's retirement income system, after pension income, voluntary savings and superannuation (Yates and Bradbury, 2009)¹.

The RVA agrees with the Federal Government's Advisory Panel's assessment that:

Much of the wealth of the current cohort of ageing Australians is locked up in ways that cannot be used to meet challenging circumstances, primarily as residential property, often in the post-war housing stock of a single house on a suburban block²

Given the ageing population, all governments in Australia need to consider new and creative ways to support seniors to downsize from standard residential homes.

It is in the interest of retirees as they will no longer, for example, have the same home maintenance issues and nor will they have to potentially modify their existing home to cope with changed circumstances. There is also ample evidence to show that making the decision earlier makes it

¹ Advisory Panel on the Economic Potential of Senior Australians., *Realising the economic potential of senior Australians; enabling opportunity.*, Commonwealth of Australia., 2011., page 19.

² Advisory Panel on the Economic Potential of Senior Australians., *Realising the economic potential of senior Australians: enabling opportunity.*, 2011., page 3.



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easier for seniors to adapt to the change and enjoy the resulting new lifestyle.

Implementing new and creative ways to support seniors to downsize is also important for governments and the broader community. It frees up standard residential stock for future generations, it should assist with housing affordability issues, and should ACT seniors make the decision earlier and be in appropriate accommodation, they are more likely to live independently longer.

The Federal Government has received two pieces of significant advice about the ways in which seniors should be supported in downsizing to appropriate accommodation and to free up their existing equity to provide for their future care needs. The PC report and the Advisory Panel have both observed that there are disincentives in the system that should be removed.

Key issues that the RVA believes need to be addressed are the existing stamp duty arrangements, a focus on pension entitlement rather than overall financial position, and a lack of readily available and accessible advice for seniors in planning for their retirement and their future needs.

Stamp duty

Stamp duty on properties adds to transaction costs and there is no doubt that this suppresses the number of transactions in the housing market. It can act as a deterrent to seniors making the decision to move to more suitable housing and can, in effect, reduce the supply of appropriate and affordable senior housing.

The RVA contends that there is a need to reform the stamp duty payable on seniors housing such as retirement villages to encourage senior choice in accommodation.

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Pension disincentives

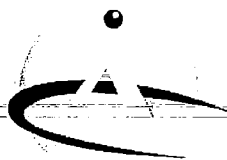
As the Federal Government's Advisory Panel has observed, the current retirement system provides a focus on pension entitlement rather than the overall financial position of Australian seniors. This is a further barrier to seniors accessing housing to maintain independent living. This means that a senior may be concerned that their pension entitlement will be reduced due to the increase in assessable assets derived from any gain in downsizing.

The RVA is cognisant of the fact that this issue is primarily a Federal issue and not a matter for the ACT Government. On the other hand, should change occur, the benefits will flow to the ACT Government. There are the village style living benefits as per the attachment, and the broader economic and social benefits such as freeing up residential stock for younger generations, and providing greater accommodation and care choices for ACT seniors.

Removal of the current pension and assets testing disincentives would provide the opportunity for seniors to contribute to their future housing and care needs.

In addition, the RVA contends that there is a need to ensure that Australian seniors have access to appropriate financial advice to enable to make decisions before or upon retirement. Advice regarding the pension access should be readily available.

There remains an opportunity for the ACT Government to lend its support to calls for a change to the pension asset test and to use forums such as COAG to press for reform.



Aged & Community Services
Association of NSW & ACT
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Recommendation Nine

That the ACT Government:

- Reform the stamp duty payable on seniors housing such as retirement villages to encourage senior choice in accommodation.
- Encourage the Federal Government through the Council of Australian Governments to remove current pension and assets testing disincentives to free up equity for seniors to invest in their future housing and care needs.
- Investigate ways that ACT seniors can be supported in financial literacy and in accessing the independent financial advice they need to make decisions about their future. This would include information about the impact of housing decisions on their overall financial position.



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Attachment A

The Retirement Village Association: Key Facts

The Retirement Village Association (RVA) is Australia's peak body for the retirement village industry. The RVA represents over 800 villages and associate members nationally.

Membership consists of retirement village operators, managers, owners, developers, investors, and industry specialists across Australia.

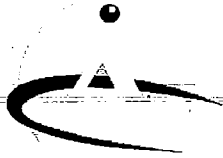
Members include FKP Aveo, Lend Lease Primelife, Australian Unity, Hindmarsh Group, IRT.

The RVA has five regional offices located in Brisbane, Sydney, Melbourne, Adelaide and Perth.

As the leading industry voice, the principle 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.
- Support and promote the benefits of retirement villages as 'the preferred choice of lifestyle for senior Australians'.

The RVA is made up of around 60% of for-profit operators and 40% not-for-profit operators.



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Economic modeling by KMPG-Econtech shows the retirement village sector contributes up to:

- \$4.7 billion in turnover across the Australian economy, comprising the operations of retirement villages and in the broader economy.
- \$2.8 billion to Australia's GDP.
- 30,000 jobs across retirement villages, construction and other sectors supporting retirement villages³

³ KPMG., Retirement Village Association., 24 October 2011



Aged & Community Services
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Aged and Community Services Association of NSW and ACT: Key Facts

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

ACSA 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. ACSA supports a regional network comprising 12 Regional Committees across the NSW and the ACT.

ACSA represents 21 of the 28 villages in the ACT.

The role of ACSA 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.



Aged & Community Services
Association of NSW & ACT
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Attachment B

Previous submissions on the ACT regulatory environment

(See separate documents)

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Attachment C

Individual and Community Benefits of Retirement Villages

Ageing in place	Villages support individuals to continue living independently for as long as possible, which is what seniors want. This also results in delayed entry to hospitals and residential care.
Connection	Villages enable access to social networks with significant health and wellbeing benefits.
Support services and senior friendly facilities	Villages offer services, site monitoring and other forms of care in purpose built facilities.
Quality of life focus	Villages focus on quality of life and encourage physical and mental activity.
Active ageing	Villages provide access to on-site facilities and programs that encourage activity, healthy lifestyles, and connectedness. These facilities relieve pressure on local community services.
Community benefits	Villages maintain and enhance the character of the local community by establishing multiple close networks e.g. health, exercise, volunteering.
Safety	Villages provide a safe and monitored environment e.g. call systems, 24 hour monitoring and first aid.
Senior friendly infrastructure and design	Villages provide senior friendly infrastructure that relieves pressure on families, carers and government resources.



Retirement Village Association



Aged & Community Services
Association of NSW & ACT
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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>

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>

<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>

		<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>

12.	S72 and S73 Resident may set the sale price of the unit and appoint a selling agent	<p>Issue:</p> <p>We do not see the need for scheme operators to be licensed agents as we are selling our "own" real estate.</p> <p>Recommendation:</p> <p>Remove the provision for the need for a selling agent.</p> <p>Issue:</p> <p>We do not support the option for residents setting the sale price.</p> <p>Recommendation:</p> <p>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:</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>
14.	S80	<p>Issue:</p>
	<p>Relatives may continue to live in units</p> <p>S81 Relative may enter into residence contract</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>Amend S81(2) to read that the scheme operator <i>may</i> enter into a residence contract with the relative.</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>

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.	S103(1)(c) Tax on amounts paid	<p>Issue:</p> <p>Drafting error.</p> <p>Recommendation:</p> <p>This should read "under section 101(1)(d)" referring to tax on interest.</p>
17.	S105 & S118 Capital replacement reserve and maintenance reserve reports	<p>Issue:</p> <p>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:</p> <p>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>
18.	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>
19.	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>
20.	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>

21.	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>
22.	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>
23.	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>
24.	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>
25.	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>

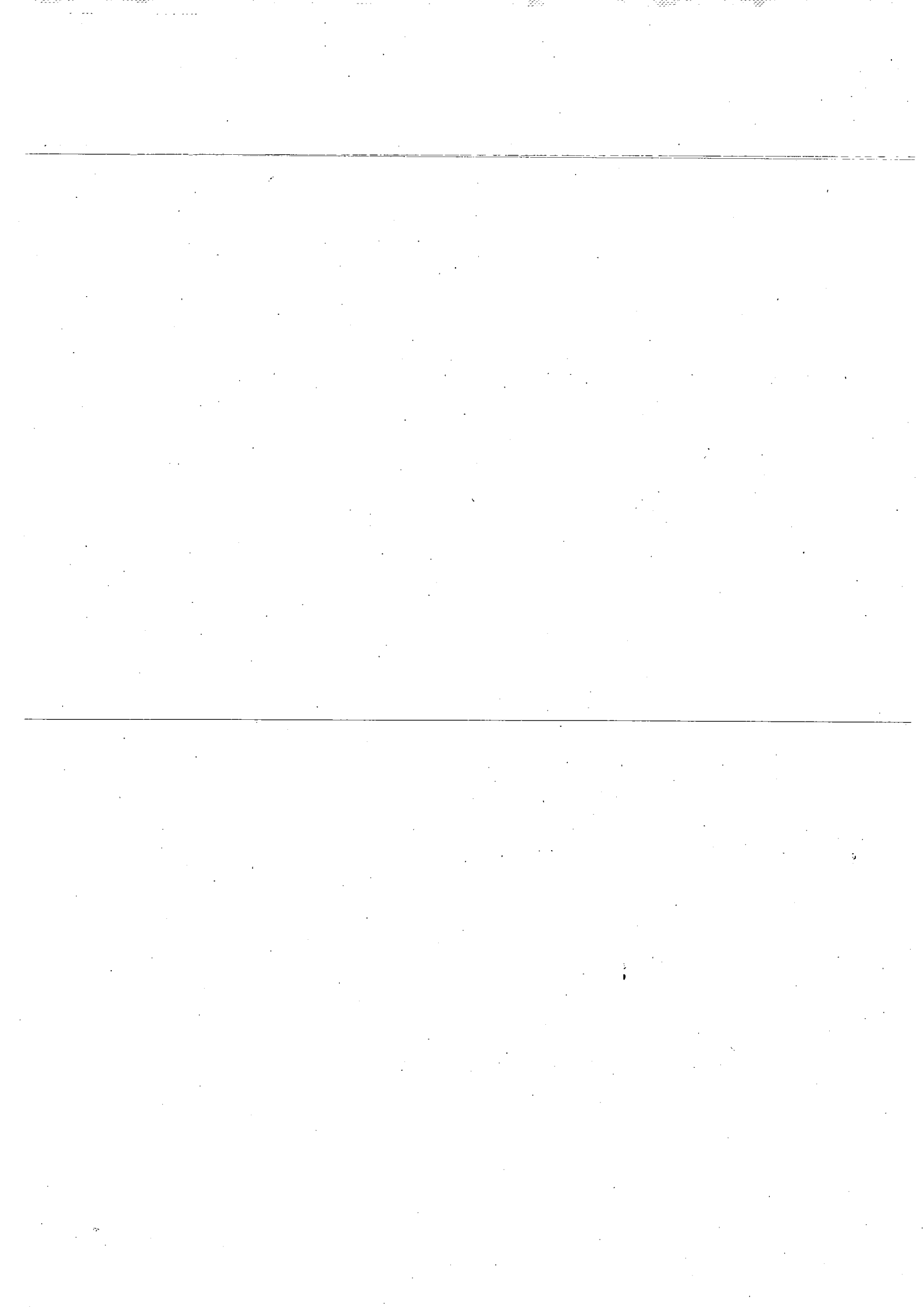
26.	S146(b) Have annual financial statement audited	<p>Issue:</p> <p>There needs to be clarification of what audit means.</p> <p>Recommendation:</p> <p>Adopt the NSW legislation description ie that the accounts for the village are audited annually by a person qualified to audit accounts for the purposes of the <i>Corporations Act 2001</i> of the Commonwealth S118(1).</p>
27.	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>
28.	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>
29.	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>
30.	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>

31.	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 <i>Retirement Villages Act 1999</i> – "A vote of the residents on a matter referred to in subsection [(1)(c)(ii)] does not bind the operator of the village".</p>
32.	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>
33.	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>
34.	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>
35.	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>

<p>36.</p>	<p>S182 Dispute resolution – referral to mediation</p>	<p>Issue: 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: Adopt an interim step for dispute resolution between tier one – the resident and operator meets to discuss, and tier two – application to ACAT. 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>
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Disclaimer

This submission has been prepared by the Retirement Village Association (RVA) Ltd and Aged & Community Services Association of NSW & ACT (ACS) Inc. 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 Inc.



White, Stephanie

From: White, Stephanie
Sent: Thursday, 5 April 2012 4:23 PM
To: Hosking, Kim
Subject: FW: Retirement Villages Bill 2011
Attachments: Ms A. Playford.pdf

Hi Kim,

I was just going over the subs for Retirement Villages and realised I forgot to send you the RVRA and RVA subs as requested.

Attached is the 2 page RVRA sub, the RVA sub will follow shortly...

Happy Easter,

Steph

From: [REDACTED]
Sent: Friday, 17 February 2012 2:52 PM
To: White, Stephanie
Cc: Quinton, Peter
Subject: Re: Retirement Villages Bill 2011

Attn: Ms Alison Playford
Mr Peter Quinton

Dear Ms White,

Thank you for your correspondence of 6 February 2012.

I have much pleasure in attaching the submission regarding the Retirement Villages Bill 2011 on behalf of the ACT Retirement Village Residents Association Inc.

I will be sending hard copies to Ms Playford and Mr Quinton.

Kind regards

[REDACTED]
ACT RVRA.

ACT Retirement Village Residents Association Inc.

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

Ms Alison Playford
Deputy Director-General (Justice)
Justice and Community Safety Directorate
ACT Government
Attn: Mr Peter Quinton



ACT RVRA

Dear Ms Playford

Retirement Villages Bill 2011

Thank you for giving me the opportunity to present to the ACT Government the views of the ACT Retirement Village Residents Association Incorporated in relation to this Bill.

The Association strongly supports the Private Member's Bill as tabled by Ms Mary Porter in the ACT Legislative Assembly on 16 November 2011. The Bill is the result of a number of years of consultation by Ms Porter with ACT Retirement Villagers, their families and the Retirement Villages Industry.

Retirement Villages have become an important part of the Australian Capital Territory, particularly as its population ages. When the Retirement Villages Industry Code of Practice was developed in 1999, under the Fair Trading Act of 1992, there were far fewer Retirement Villages and, therefore, fewer residents.

The development of the industry, which now includes 28 Villages with approximately 2000 residents in Independent Living Units, requires Legislation which protects the interests of residents, managers and operators.

Legislation, which covers all aspects of multi-million dollar developments, will enhance the quality of life for residents and protect the investments of both the Not-for-Profit and Private Development sectors.

Residents are also investors in these Retirement Villages, as, for most of them, entering a retirement village requires the investment of most of their available assets, usually from the sale of their home. The protection of this investment becomes a vital issue, as it will probably be required to be used for their future care.

All of the Australian States have moved to legislation so as to regulate effectively this large and growing industry. In the substantive report, "Caring for Older Australians", produced as a result of the Productivity Commission Inquiry, to which we made submissions, Recommendation 12.5 requires State and Territory Governments to "pursue nationally consistent retirement village legislation under the aegis of the Council of Australian Governments."

The ACT RVRA believes that, without appropriate legislation, the residents of the Australian Capital Territory will be seriously disadvantaged.

Furthermore, Legislation enacted in the ACT will give both residents and management protection and the ability to have a financially secure, properly administered industry. Currently the Code of Practice does none of this, as its scope is severely limited and there are no enforceable penalties for non-compliance.

The Committee of the ACT Retirement Village Residents Association has very much appreciated the workshops, consultations and submission process as developed by Ms Porter. We feel she has consulted widely, so as to effect the best outcomes for residents and protection for the industry. The Committee is composed of members who have significant experience and talent, which has enabled us, we believe, to genuinely represent Retirement Village residents in the Territory.

We will be joining with the various State Retirement Village Resident Associations in forming a National Association with a view to enhancing village life, not only for our members, but for all residents in retirement villages.

I must emphasise that the ACT RVRA Inc considers that the Retirement Villages Bill 2011 is a vital piece of legislation for the Australian Capital Territory and will complement the other pieces of Legislation which have been enacted and which support the health, welfare and well-being of the older citizens of the ACT.

Our support for this Bill relates also to the need for all parties, residents, management and operators, to clearly understand their respective rights and responsibilities – the Bill will be a huge step forward in achieving this.

Kind regards


ACT Retirement Village Residents Association Inc.


17 February 2012.

(567A)

White, Stephanie

From: Anderson, Erin
Sent: Wednesday, 4 April 2012 11:35 AM
To: White, Stephanie
Subject: FW: Retirement Villages legislation

From: Field, Julie
Sent: Tuesday, 3 April 2012 5:36 PM
To: Playford, Alison; Anderson, Erin; Quinton, Peter
Subject: FW: Retirement Villages legislation

FI

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

From: Durkin, Mary
Sent: Tuesday, 3 April 2012 5:33 PM
To: Field, Julie
Subject: RE: Retirement Villages legislation

Thank you!

From: Field, Julie
Sent: Tuesday, 3 April 2012 5:32 PM
To: Durkin, Mary
Subject: RE: Retirement Villages legislation

Hi Mary

Someone is getting you an early version of our cabsub so you can have an in-confidence sneak peak, in case it assists. It should come to you shortly. Minister has not signed off on it yet, so it is very much confidential and not to be quoted or otherwise relied on.

Thanks for the heads up.

Julie

Julie Field Executive Director
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From: Durkin, Mary
Sent: Tuesday, 3 April 2012 5:22 PM
To: Quinton, Peter
Cc: Field, Julie; Mahanay, Cate; Playford, Alison
Subject: Retirement Villages legislation

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I had a meeting with Joy Burch yesterday and mentioned that I am meeting with Mary Porter tomorrow regarding the Bill. I noted that I still needed to read it in a bit more detail but that I had a couple of initial concerns. Joy is meeting soon with the Retirement Villages Association people and noted to her adviser that she will need to get a briefing on the legislation before that meeting. Just a heads up as CSD may end up coming to JACS asking for some thoughts. Sorry!! ☺

Mary

564



GOODWIN
THE BETTER LIFE CHOICE

21 March 2012

Mr Peter Quinton
Legislation and Policy Branch
Justice and Community Safety
GPO Box 158
Canberra City ACT 2601

RECEIVED
23 MAR 2012 LPS

First by email

Dear Peter,

Thank you for the opportunity to meet and discuss the Retirement Villages Bill ACT (the Bill).

We thought there may be value in providing some additional information in respect to our specific concerns and furnish you with some additional information regarding market composition for the industry in the ACT.

As discussed, Goodwin Aged Care Services (Goodwin) believes the existing Retirement Villages Code of Practice operates effectively and provides both consumer protection and a mechanism for resolving disputes. To the extent that there is a view that legislation is required or considered necessary we urge the ACT Government to consider model legislation that is cognisant of the different models that exist in the industry and the preference(s) of the ACT Government in ensuring viability and sustainability in the jurisdiction.

Goodwin believes that the new Australian Consumer Laws have significantly enhanced consumer protection and to that extent any previous concerns regarding "unfair contracts" in respect to retirement living may be resolved through the application of these relatively new legislative arrangements.

The Bill in its current form imposes considerable additional compliance costs that operators will have little choice but pass on to clients. Goodwin estimates the additional costs may be between \$500 and \$1000 per annum per residential unit. This sum may not appear significant; however, this cost will be significant to a client group that is mostly reliant on fixed pensions. Of greater concern is that no tangible benefit will be offered, conversely we believe there will be an adverse impact as explained below.

Operational arrangements associated with the proposed management of the Capital Replacement Fund and Maintenance Reserve Fund is unclear. There may be serious consequences for operators of retirement villages if it is necessary to establish Trust funds. The operation and structure of the Trusts proposed in the Bill is not clear nor are the consequences related to investment options and disbursements from such trusts.

GOODWINLIFESTYLE
ACTIVE INDEPENDENT LIVING

GOODWINCARE
NURSING CARE ACCOMMODATION

GOODWINCOMMUNITY
HELP AND SUPPORT AT HOME

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One consequence of having such funds could be that existing residents may seek to have a disproportionate amount of the fund spent at any one time – they may have no inclination to put funds aside that will not benefit them. In short we believe the creation of these funds will lead to conflict between operators and residents as each party could be deemed to have a conflict in respect to the amount that is collected and the manner in which it is spent.

Goodwin has suggested that if there are concerns with the solvency or ability of an operator to meet outgoings or the cost of repaying "loan and license" agreements a preferred option may be the establishment of a "prudential standard" as applied to bed licenses in the aged care sector of the industry.

The Bill stipulates that a Quantity Surveyor be engaged in a number of different circumstances, for example where a sum in excess of \$50,000 is proposed to be spent on maintenance or a related project. This will add significantly to costs (which would be passed on to residents) and add to the complexity of arrangements to effectively administer a village. Additionally having appropriately qualified and experienced Quantity Surveyors available might be problematic given current shortages in the construction industry.

Goodwin believes the penalty regime is disproportionate to the severity of the identified breaches identified in the Bill. Minor indiscretions attract significant fines. Real concern rests with the size of providers in the industry and their ability to either defend claims or to secure insurance on reasonable terms. Once again there is a concern that impact of either the cost of insurance or risk associated with defending actions will impact on both retirement living operations and cross subsidised residential aged care operations.

We hold further concerns in respect to transitional issues. For example how will the new legislation deal with existing contracts – the current contract are governed by the Code of Practice which we assume will cease to exist under any proposed new legislation. Once again two sets of contracts will add considerable to the administrative burden associated with the effective management of contracts.

As referred to above there needs to be a recognition that cross subsidisation between the operation of retirement villages and residential aged care operations is a common method of providers effectively covering shortfalls in the costs associated with residential or nursing home care. If existing arrangements are altered there may be issues for the security of tenure for those in residential care with some providers.

The current charging regime at Goodwin is principally based on two payments by residents. The first is a General Services Levy which is very similar to a body corporate fee and these funds are used for the day to day running of the village and for minor repairs and maintenance. The other fee is a Deferred Management Fee which is deducted from the resident loan at the end of the loan period (that is when the resident vacates their unit). These funds are used for capital replacements and for the ongoing major maintenance of our buildings.

Goodwin, as an owner operator, has strong incentives to build to a high standard and to put a comprehensive maintenance and refurbishment program in place as we need to ensure that the asset is in excellent condition for its economic life. This is in contrast for example to a developer who may build a village but who sells the property thereby passing the management and operation to a third party. The developer does not have the same imperative as an owner operator to ensure that the initial build is of such a high standard. The Bill appears to actively discourage owner operators and rather promotes a body corporate or unit title scheme; we believe these arrangements will involve less desirable outcomes than those achieved by loan license arrangements where the operator retains ownership of the property.



I have attached a document to this letter that provides information regarding the composition of the retirement living and residential aged care industry in the ACT. You will see that the industry is dominated by five or six larger providers with Goodwin being the largest. Therefore should the ACT Government be of mind to pursue regulation we strongly recommend that a working party consisting of the primary providers of retirement village living and residential aged care participate in developing a new Bill.

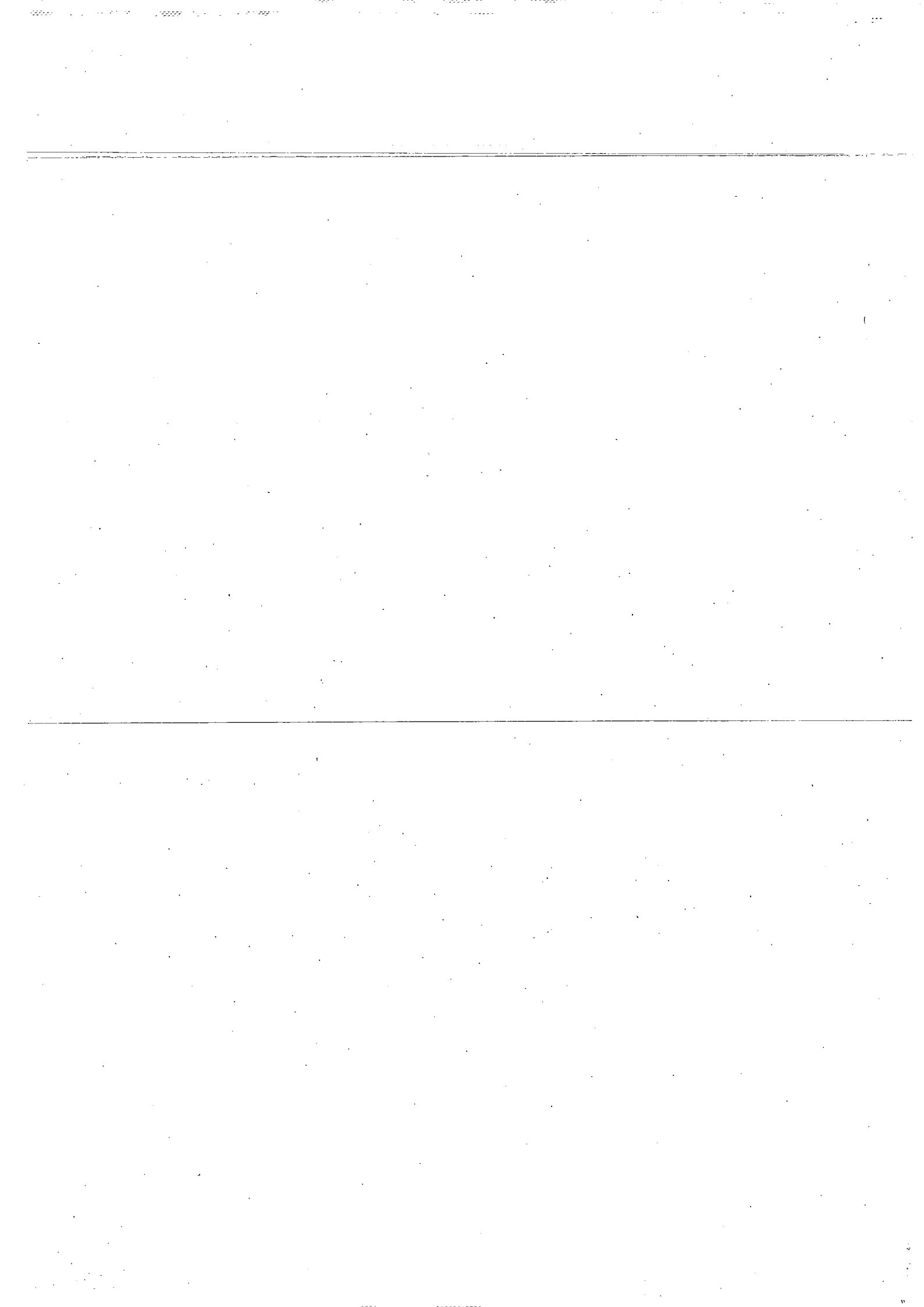
The investment by Goodwin in the Canberra community is significant as is the investment by the industry as a whole. We need to ensure that the regulatory environment in which the industry operates is complementary in achieving a fair balance between providers, residents and the Governments role as the ACT's land manager and consumer protector.

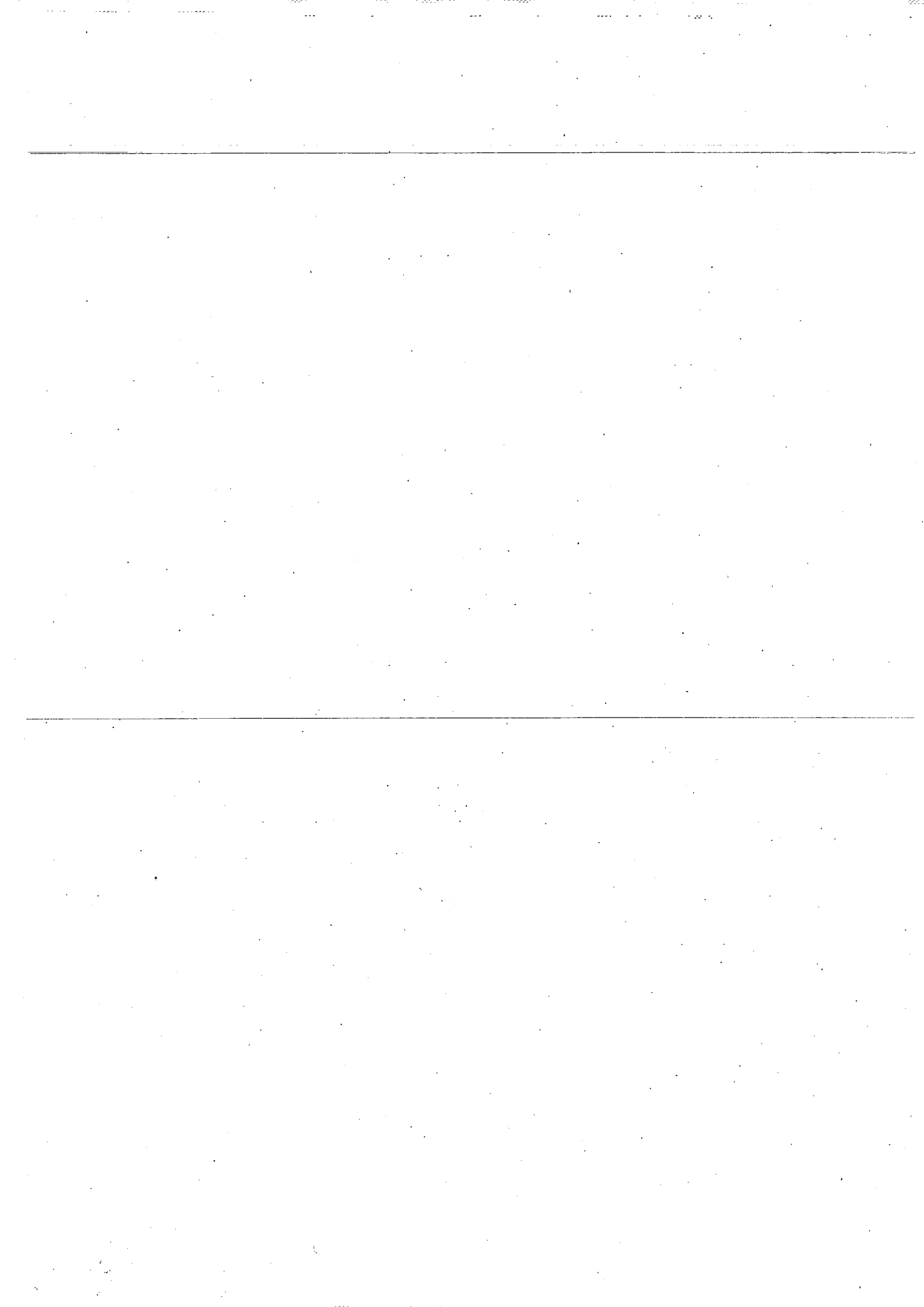
I hope the information in this letter is of assistance. If we can be of further assistance please do not hesitate to contact either Jim Purcell or I.

Yours sincerely
Goodwin Aged Care Services Limited



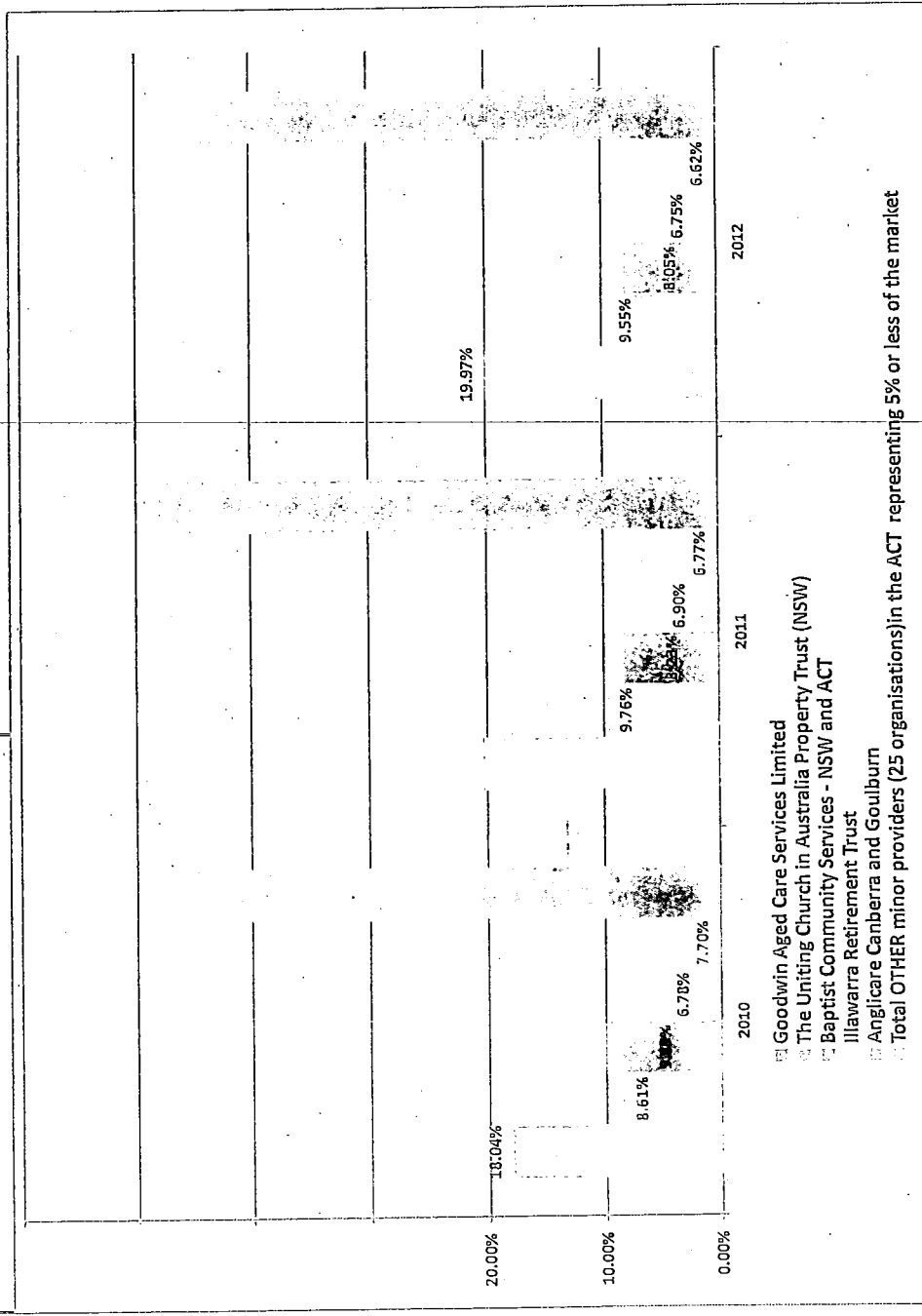






Comparative Market Share
2010 to 2012

Provider Name	2010	2011	2012
Goodwin Aged Care Services Limited	18.04%	20.41%	19.97%
The Uniting Church in Australia Property Trust (NSW)	8.61%	9.76%	9.55%
Baptist Community Services - NSW and ACT	9.89%	8.23%	8.05%
Illawarra Retirement Trust	6.78%	6.90%	6.75%
Anglicare Canberra and Goulburn	7.70%	6.77%	6.62%
Total OTHER minor providers (25 organisations) in the ACT representing 5% or less of the market	48.98%	47.94%	49.06%





White, Stephanie

From: Manuel, Tania
Sent: Tuesday, 20 March 2012 12:27 PM
To: White, Stephanie
Subject: retirement villages QTB

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 Retirement Villages Bill 2011 (the Bill) on 16 November 2011.

My Directorate is currently considering the Bill and ways, if any, that the current Bill may be improved.

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 introduced the Retirement Villages Bill 2011 in the Assembly on 16 November 2011.

If 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 last 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, which last met on 9 March 2012, consisting of residents and village management. This Committee met on and discussed a 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.

LPB staff met with Parliamentary Counsel's Office prior to the introduction of the Bill in November 2011 and made a number of recommendations about how the exposure draft of the Bill may be refined. Some of the recommendations were implemented.

Since the Bill was introduced, Peter Quinton has met with property lawyers to discuss aspects of the Bill. Many of the property lawyers were unaware that the Bill had been introduced, and had not considered the legal ramifications of the Bill.

Tania Manuel
Senior Manager

White, Stephanie

From: Martin, Victor
Sent: Friday, 16 March 2012 12:24 PM
To: Quinton, Peter; White, Stephanie
Cc: Harlen, Suzanne; Brockway, Emma
Subject: FW: Retirement Villages

I had provided some material prepared by Suzanne on the eve of its introduction.

Victor...

Victor Hugo Martin | A/g Senior Manager
Phone 02 6205 0245 | Fax 02 6205 0937
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From: Martin, Victor
Sent: Monday, 14 November 2011 2:27 PM
To: Georges, Sandra
Subject: FW: Retirement Villages

Some additional material on this issue.

Victor Hugo Martin | A/g Senior Manager
Phone 02 6205 0245 | Fax 02 6205 0937
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From: Harlen, Suzanne
Sent: Monday, 14 November 2011 2:08 PM
To: Martin, Victor
Subject: FW: Retirement Villages

From: Harlen, Suzanne
Sent: Monday, 14 November 2011 11:24 AM
To: Martin, Victor
Subject: RE: Retirement Villages

Hi Victor

Please find comments on the RV Bill, as discussed.

1. All strict liability offences in the Bill – if they are offences of strict liability, should state this fact.
2. Clause 21 – offence for noncompliant residence contracts (100 p/u). The maximum penalty does not seem appropriate for this type of offence (failing to include certain provisions in a contract). Instead, the Bill should outline what terms will be implied into any Retirement Village contract. See for example standard residential tenancy terms as provided under the *Residential Tenancies Act 1997* and standard sale of property terms under section 11 of the *Civil Law (Sale of Residential Property) Act 2003*.

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3. Clause 24 – offence for entering contract where scheme not registered (540 p/u). The maximum penalty for this type of offence is far too high. The offence is one of strict liability with no fault element. A maximum penalty of 100 penalty units for the more serious offences in the Bill is more appropriate. For lesser offences 50 penalty units is appropriate. The penalty scheme in the *Civil Law (Sale of Residential Property) Act 2003* should provide guidance.
4. Clauses 56, 68, 69 etc – similar issue to Clause 24 as maximum penalty for this strict liability offence is too high.

Please let me know if you'd like me to have a closer look.

Cheers
Suzanne

From: Martin, Victor
Sent: Friday, 11 November 2011 4:33 PM
To: Harlen, Suzanne
Subject: FW: Retirement Villages

Victor Hugo Martin | A/g Senior Manager
Phone 02 6205 0245 | Fax 02 6205 0937
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From: Quinton, Peter
Sent: Friday, 11 November 2011 3:35 PM
To: Martin, Victor
Subject: Retirement Villages

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
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If it has been sent to you in error, please delete it and notify us.

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Submission No B	2012/0424
Schedule No	
Date Rec'd Minister's Office	15/3/12

To: Attorney-General

From: Executive Director, Legislation Policy Branch

Subject: Meeting with Ms Porter, MLA re: Retirement Villages Bill 2011

Critical Date: 15 March 2012 You are meeting with Ms Porter on this date

- DDG of 14.3.12

Recommendation

1. That you note the contents of this brief.

Background

2. Ms Porter, MLA introduced her private member's bill, the Retirement Villages Bill 2011, on 16 November 2011. *
3. You agreed in briefing no. B201101232 to JACS writing to key stakeholders, seeking their views about the Bill.
4. Ms Alison Playford, Deputy Director-General of JACS wrote to stakeholders in February, including the Retirement Villages Code of Conduct Committee, the Retirement Villages Residents Association (RVRA), the Retirement Villages Association (RVA) the Property Council, Master Builders' Association and the ACT Law Society.
5. The Directorate has since received submissions from the RVRA, RVA/Aged & Community Services Association of NSW & ACT Incorporated, the ACT Law Society, Lend Lease, Property Council and Andrew's Townhouse Residents' Committee.
6. LPB staff have met with the Retirement Villages Code of Conduct Committee (constituted by resident representatives and industry) to discuss aspects of the Bill that may be of concern to key stakeholders.
7. LPB staff have also met with executive officers of Goodwin, a company that provides a range of retirement village (through lease-licenses) and aged care accommodation options for residents, and has plans to build a \$70 million independent living centre at Crace.
8. You are meeting with Ms Porter at 11:00am on Thursday, 15 March 2012.

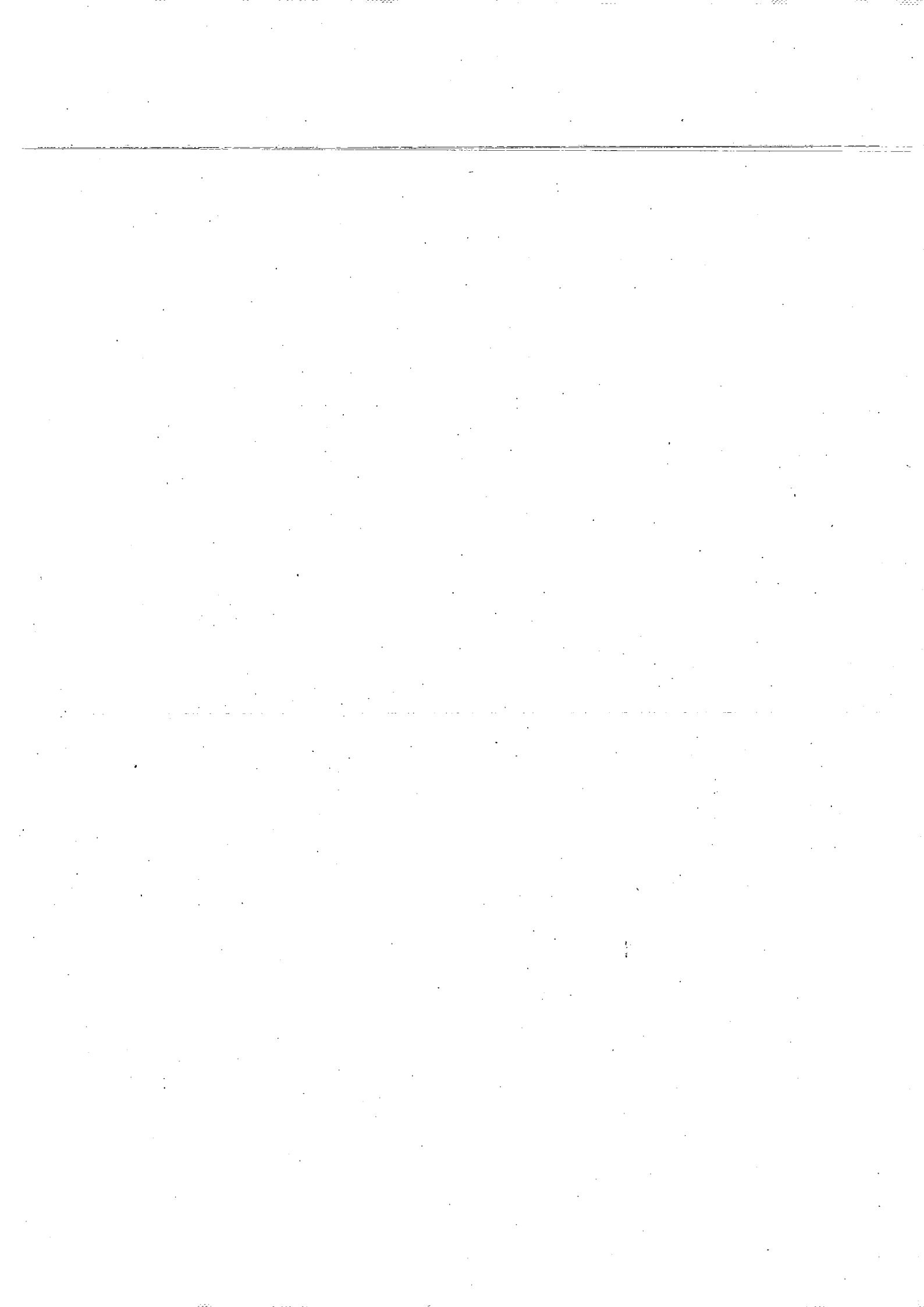
Issues

Stakeholder views

9. The RVRA have indicated consistently that they support the Bill in its current form, however further consultation with residents may be required to ensure the Bill adequately protects their interests.
10. The RVRA mentioned in a recent meeting between LPB staff and the Code of Conduct Committee that they would contact Government representatives to meet (no contact has yet been made).
11. Industry stakeholders, including the RVA, have maintained that the Bill will stifle development and impose regulatory and cost burdens which will be passed onto residents

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through increased fees.

12. The Law Society has raised similar concerns to that expressed by industry stakeholders.

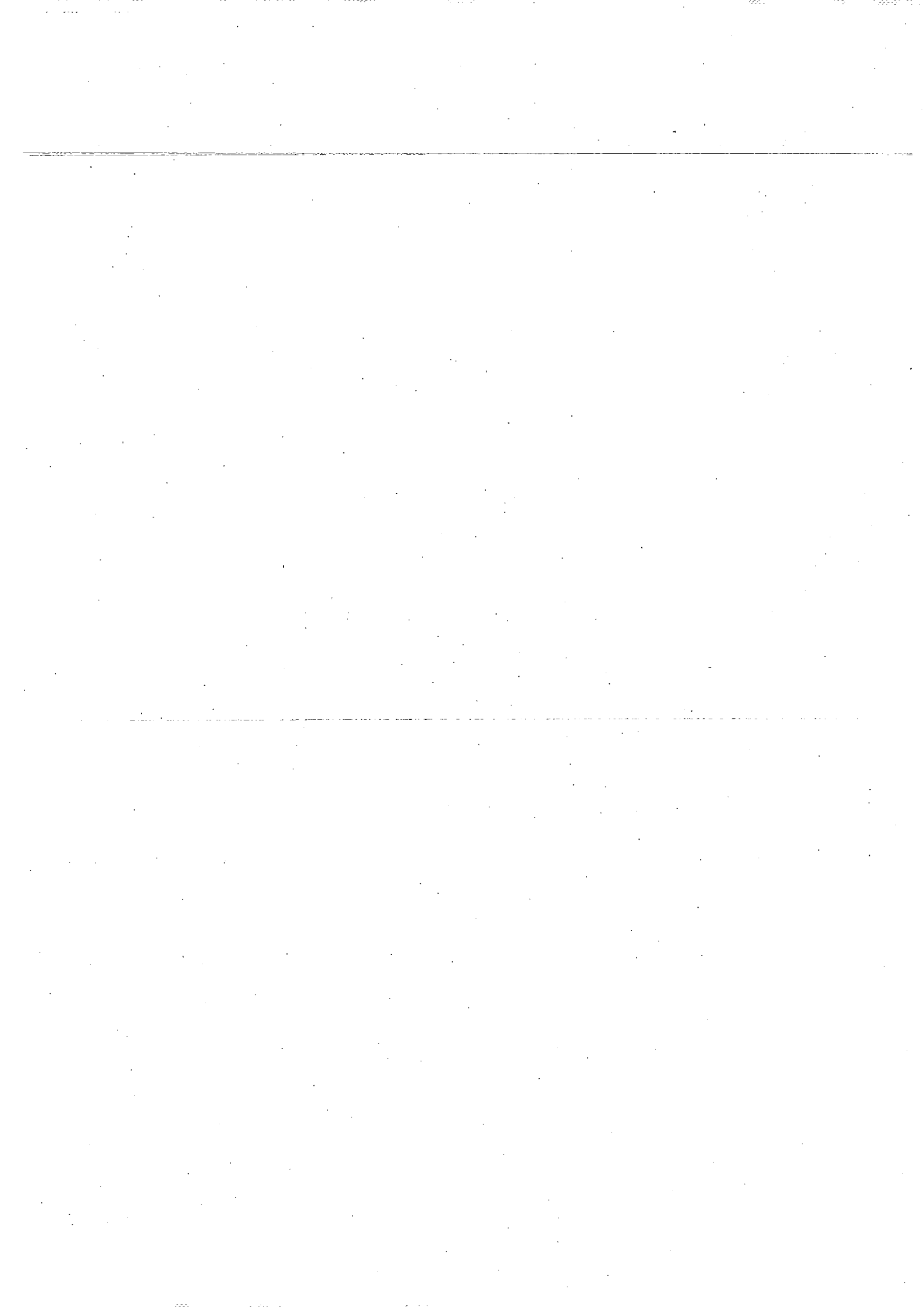
National reform

13. MCCA indicated that nationally uniform legislation for the regulation of retirement villages would be considered following the Commonwealth's response to the Productivity Commission's report "Caring for Older Australians".
14. The report had recommended that uniform legislation should be pursued through the aegis of COAG.
15. The Commonwealth stated in August 2011 that it would be considering the Productivity Commission's recommendations as part of its broader ageing agenda.
16. LPB staff have been in contact with the Commonwealth Minister for Ageing, the Hon Mark Butler MP's office. His advisor stated that nationally uniform legislation for the regulation of retirement villages was not being actively pursued at this time.

Issues with the Private Members Bill

Loan-licence agreements ➔

17. In the ACT there are a range of different contractual arrangements in place with respect to retirement village schemes:
18. One type of retirement village scheme operates under a licence agreement between the operator and residents which provides the resident with a right to live at the premises and certain services for a fee.
19. A second type of retirement village scheme is unit titled land, with the resident holding the Crown lease while the retirement village scheme operator is granted an encumbrance over the land to secure payment of outstanding management fees or services levies.
20. A third type of retirement village scheme, such as those operated by Goodwin, use a loan-licence agreement. The resident pays an entrance fee, a deferred management fee which is payable at the end of the agreement, and a periodic general services levy. At the end of the loan-lease agreement, the resident often shares the capital gain less any unpaid fees and deferred management fees. Deferred management fees are paid to the owner for their discretionary application (in fact, the fee is used for the capital improvement of the scheme – much like a unit title sinking fund, but it is also used to meet management expenses, supplementing service delivery costs and cross subsidising the cost of aged housing programs).
21. The Bill will potentially have serious repercussions for retirement village schemes operating under loan-licence agreements.
22. The Bill would require that money received for capital improvements to be paid into a trust account for the benefit of residents, and makes it an offence on the part of the scheme operator to fail to do so.
23. Firstly, under a loan-licence arrangement, a deferred management fee is presently owned by the operator (having been received from previous residents).
24. If, under the Bill, that money is required to be placed into a trust account (where the trustee is the scheme operator and the beneficiaries are the current residents) there will be a change in the beneficial ownership of the money (which would amount to an acquisition of property).
25. The other likely consequence is that residents may demand that money in trust be used on improvements of an immediate nature, rather than being saved for future capital costs. This



may jeopardise the long-term viability of retirement village schemes. This will, most likely, result in increases to general services levies to meet the shortfall.

26. In addition, for scheme operators such as Goodwin, the acquisition of the pool of management fees into a trust account would divert resources away from aged care accommodation options for residents.
27. This problem may be avoided by exempting the operation of the capital improvement trust account provisions in relation to loan-licence agreements.

Costs and Regulatory Burdens

28. Apart from the more obvious costs of registration for retirement village scheme operators, the Bill may cause significant increases in business costs.
29. Various provisions in the Bill attract large penalties (including for failure to provide certain information to residents, even where the information has been previously provided, and even when the enquiry is casual). Other than the cost impact the offence provisions themselves may have on the industry, it is likely that the existence of the penalty provisions will be relied upon by insurance companies to charge higher premiums for director and officer insurance.
30. This may be negated by including a defence provision for the penalties in respect of failure to provide information, such as where information has been previously provided or made publicly available (perhaps through a public web site).
31. The penalty provisions themselves will also need to be reviewed to ensure they are not excessive.
32. Further, the Bill requires quantity surveyors' reports for the capital replacement reserve fund and the maintenance reserve fund to be obtained prior to deciding any budget, where for the previous financial year \$50,000 or more was collected in service charges for either fund.
33. This requirement is onerous as many maintenance decisions involve sums over \$50,000 and already involve an internal decision chain. The involvement of an additional cost at this point (a quality surveyor report would typically cost \$1,000 and may take some time to obtain) is difficult to justify. The ceiling should be increased to apply to significant expenditure.
34. Thirdly, the Bill provides for dispute resolution by ACAT. Section 200 of the Bill requires the ACAT to refer the parties to a registered mediator (even where the dispute might be resolved by low cost conferencing, or where one of the parties may be unlikely to attend mediation). Mandatory requirements such as this are likely to impose a high cost on the ACT Government (the ACAT will be required to meet the cost of mediation, including failed mediation) without foreseeable benefit and the requirement should be removed.

Retrospectivity

35. Section 501 of the Bill provides that an existing contract is a residence contract under this Act – expressly giving the Bill retrospective effect. As the Bill will introduce new provisions into existing contracts, it may have the effect of acquiring property otherwise than on just terms. Removing the retrospectivity of the provisions completely may ameliorate this.

Financial Implications

36. The Bill creates new functions for ORS and ACAT but provides no source of funding for the new functions.

Internal Consultation

37. ORS has been consulted about this proposal.



External Consultation

38. Feedback on the Bill has been received from a number of organisations and LPB has, particularly, met with the owners of Goodwin (a loan-licence scheme).

Benefits/Sensitivities

39. The RVRA strongly support the Bill. Industry strongly opposes the Bill.

Media Implications

40. Not relevant for this briefing.

Julie Field

70552

14/3/2012

Action Officer Stephanie White Phone 77207

AGREED/NOT AGREED/NOTED/DISCUSS

Simon Corbell MLA 15/3/12

Performance Assessment

- Satisfactory
- Unsatisfactory

This requires detailed

work to produce

govt amendments - pls

proceed with his

work.

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