Tasmanian Association for Residents of Retirement Villages Inc.
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TARRV

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TARRV Submission for Changes to the Retirement Villages Act

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1. A Standard Contract for Prospective Residents

SUBJECT:
There is a need for a standard contract for prospective residents of retirement villages. This could be a Tasmanian undertaking, or done nationally at the instigation of Tasmania.

PROBLEM:
There is huge variation in the form of contracts signed by incoming residents. Some are short and simple, while others are long and complex. It is extremely difficult to compare contracts between villages, and in general they are quite overwhelming for prospective residents. They undermine the ability of many older people to make informed decisions.

While operators say that they recommend prospective residents get legal advice, in practice solicitors are not experienced in retirement villages and do not know what to look for. Their advice is usually simply on the form of the contract, rather than its substance and likely impact on the client. Many disputes and distress that subsequently arise are due to omissions and lack of clarity in contracts. When disputes do arise with village operators, elderly residents are at a huge disadvantage against young, aggressive operators.

THE TASMANIAN R V ACT:
The Tasmanian RV Act says that there must be a contract in writing, and describes in general terms (in Schedule 1) what it must contain. However no standard contract is provided, <u>such as already exists in the real estate industry</u>. This increases the difficulty for solicitors and advisors who wish to gain proficiency in Retirement Village contracts, and makes it harder to compare villages and spot potential difficulties that will come up in practice.

WHAT DO OTHER JURISDICTIONS DO?
Other jurisdictions are looking at standard contracts, and at the possibility of a national standard contract. Victoria has just introduced a standard contract from May 2026.

CONCLUSION & RECOMMENDATION:
A standard contract would help reduce the need for regulation, and the burden of compliance, assisting both the government and operators. A standard contract would assist solicitors who give advice, assist residents by ensuring the “t”s were crossed and the “i”s dotted, increase transparency, and make comparisons between villages easier.

TARRV recommends that the Attorney-General look at Victoria’s lead, and ascertain whether their work might be copied by Tasmania, and perhaps cooperate with Victoria to look into potential standardisation on a national basis.

It should be noted that TARRV has approached one of the largest companies involved in the Australian Retirement Village industry, and they fully support this initiative.

2. An Alternative to a Standard Contract

SUBJECT:
There is a need for a standard contract for prospective residents of retirement villages. However, if a standard contract is not developed, the problems can be prevented by adding more detail to Schedule 1 (Residence Contract) of the Act.

PROBLEM:
There is huge variation in the form of contracts signed by incoming residents. Some are short and simple, while others are long and complex. It is extremely difficult to compare contracts between villages, and in general they are quite overwhelming for prospective residents. They undermine the ability of many older people to make informed decisions.

While operators say that they recommend prospective residents get legal advice, in practice solicitors are not experienced in retirement villages and do not know what to look for. Their advice is usually simply on the form of the contract, rather than its substance and likely impact on the client. Many disputes and distress that subsequently arise are due to omissions and lack of clarity in contracts. When disputes do arise with village operators, elderly residents are at a huge disadvantage.

Without a standard contract, the Act needs to provide specific direction as to what is included in a contract. The current Schedule 1 is limited and insufficient.

THE TASMANIAN R V ACT:
The Tasmanian RV Act says that there must be a contract in writing, and describes in general terms (in Schedule 1) what it must contain. However no standard contract is provided, such as exists in the real estate industry. This increases the difficulty for solicitors and advisors who wish to gain proficiency in Retirement Village contracts, and makes it harder to compare villages and spot potential difficulties that will come up in practice. Schedule 1 is simply inadequate to cover the issues that would be resolved by a standard contract.

WHAT DO OTHER JURISDICTIONS DO?
Other jurisdictions are looking at standard contracts, and the possibility of a national standard contract. Victoria has just introduced a standard contract from May 2026. In the meantime, other jurisdictions are more precise than Tasmania in specifying what must be in a residency contract.

CONCLUSION & RECOMMENDATION:
TARRV notes that, if no standard contract is introduced, Schedule 1 to the ACT Retirement Village Act Regulations could, with slight amendment, be adopted to replace Schedule 1 of the Tasmanian Act. This means it might read as follows:

Schedule 1 Residence contract

Part 1 Matters to be included in residence contract

1 Information to be included in residence contract

A residence contract for a resident in a retirement village must include the following information:

(a) the name of the retirement village to which the contract relates;

(b) the address in the village of the resident's residential premises;

(c) the full names of the parties to the contract;

(d) the signatures of the parties to the contract;

(e) the name and address of an operator of the village who is not a party to the contract;

(f) the name and address of the resident's agent (if any) appointed under the Act;

(g) the date the disclosure statement and the information under the Act were given to the resident (or a person acting on the resident's behalf);

(h) the date the contract is made;

(i) if the operator is the other party to the contract—

(i) the name and address of the operator's agent (if any);

(ii) the date the copy of the contract was given to the resident (or a person acting on the resident's behalf);

(iii) the amount of any ingoing contribution payable by the resident and the date by when it must be paid;

(iv) the amount of recurrent charges payable by the resident as at the date the contract is drafted;

(v) the date from which those charges become payable;

(vi) the amount of any increase in recurrent charges already decided or contemplated;

(vii) the date agreed as the date the resident is entitled to occupy the premises (subject to completion of construction, and not precluding an earlier date if an earlier date is later agreed between the operator and the resident);

(j) a provision reflecting the Act in respect of compliance with village rules by people other than operator and residents;

(k) if a residence contract entitles the resident to the use of a garage, parking space or storeroom—details of the garage, parking space or storeroom.

2 Time for payment of ingoing contribution instalments

(1) This section applies if a residence contract provides that the ingoing contribution must be paid in instalments at intervals stated in the contract.

(2) The residence contract must state the day that the balance of the ingoing contribution is payable.

3 Cooling-off period

(1) A residence contract must include a clause with the heading 'Cooling-off period' printed in bold font.

(2) The clause must—

(a) explain the resident's rights to rescind the contract free of any loss or penalty during the cooling-off period; and

(b) state—

(i) the length of the cooling-off period; and

(ii) the method by which the resident can rescind the contract; and

(iii) the time within which any money the rescinding party has paid under the contract is to be repaid.

(3) A residence contract must include a statement to the effect that the cooling-off period is waived if the resident begins living in the premises.

4 Retirement village legislation

(1) A residence contract must include a clause with the heading ‘Retirement village legislation’ printed in bold font.

(2) The clause must include a statement—

(a) about the existence of the Act and this regulation; and

(b) to the effect that the contract is subject to the provisions of the Act and this regulation.

5 Ingoing contribution

(1) A residence contract must include a clause with the heading ‘Ingoing contribution’ printed in bold font.

(2) The clause must include the following:

(a) if an ingoing contribution is to be paid by instalments—a statement setting out the conditions under which it is to be paid;

(b) a statement about whether interest is payable to the resident while the operator has use of the ingoing contribution;

(c) if part or all of the ingoing contribution is to be non-refundable—a statement to that effect;

(d) a statement about how much of the ingoing contribution the resident will get back if, after the cooling-off period, the resident—

(i) dies before taking up residence in the residential premises; or

(ii) after taking up residence, permanently vacates the premises within the period stated in the contract.

6 Recurrent charges

(1) A residence contract must include a clause with the heading ‘Recurrent charges’ printed in bold font.

(2) The clause must include the following:

(a) the intervals or dates when any recurrent charges are payable under the contract;

(b) how the recurrent charges may be paid;

(c) if recurrent charges payable by the resident are to be amended in accordance with a fixed formula—

- (i) the intervals or dates when recurrent charges are to be amended; and
- (ii) the fixed formula used to decide amendments in the amount of recurrent charges; and
- (iii) the amount of written notice (not less than 14 days) that will be given to the resident to amend the amount of recurrent charges;

(d) if recurrent charges payable by the resident may be amended other than in accordance with a fixed formula—

- (i) the intervals or dates when the operator may propose an amendment of the amount of recurrent charges; and
- (ii) any upper limit by which the operator agrees not to propose an increase; and
- (iii) the amount of written notice (not less than 60 days) that will be given to the resident if an amendment is proposed; and
- (iv) a statement to the effect that the amount of recurrent charges cannot be amended unless affected residents consent to the amendment or TASCAT orders the amendment to take effect;

(e) a statement to the effect that if the resident is absent from the village for any reason for at least the period (of not more than 28 consecutive days) stated in the contract, the resident is not liable for recurrent charges for optional services in relation to the remainder (if any) of that absence;

(f) a statement about whether the resident is liable to continue to pay recurrent charges after permanently vacating the premises and, if so, for what period and under what conditions.

7 Services and facilities

(1) A residence contract must include a clause with the heading 'Services and facilities' printed in bold font.

(2) The clause must include the following:

(a) a description of all services provided or made available to the resident by, or on behalf of, the operator;

(b) a statement about any additional or optional services available to the resident on a 'user pays' basis, and the cost of those services as at the date of preparation of the contract;

(c) a list of all facilities within the village available for the resident's use.

(3) The contract must identify any services or facilities that the development consent for the village requires to be provided for the life of the village.

(4) Representations (if any) about proposed services or facilities made before the contract is entered into—

(a) must be stated in the contract; and

(b) must identify the service or facility; and

(c) must state the date by when that service or facility is to be provided or made available.

(5) The contract—

(a) may distinguish between general services and optional services; and

(b) if it does, must include a statement to the effect that TASCAT has the power to override this determination in the event of a dispute.

(6) The contract must include a statement drawing the resident's attention to the fact that services and facilities may be reduced or (except for those required by the development consent to be provided for the life of the village) withdrawn or otherwise amended, but only if the residents of the village pass a special resolution in accordance with the provisions of the Act.

(7) The contract must make it clear that the resident has no right to compensation if services or facilities are reduced or withdrawn or otherwise amended in accordance with a special resolution of the residents.

8 Fixtures, fittings and furnishings

(1) A residence contract must include a clause with the heading 'Fixtures, fittings and furnishings' printed in bold font.

(2) The clause must list the fixtures, fittings and furnishings that are to be provided in the residential premises.

9 Repairs and maintenance

(1) A residence contract must include a clause with the heading 'Repairs and maintenance' printed in bold font.

(2) The clause must set out the process by which the resident can ask the operator to carry out necessary repairs and maintenance.

(3) The clause must identify all fixtures, fittings and parts of the residential premises that cannot reasonably be cleared or maintained by an elderly person.

10 Alterations and additions

(1) A residence contract must include a clause with the heading 'Alterations and additions' printed in bold font.

(2) The clause must—

(a) state the conditions under which a resident may alter or add to the residential premises; and

(b) include a provision to the effect that the resident may, at any time before permanently vacating the premises, remove any fixture that the resident has added to the premises, provided that they restore the affected part of the premises to its original condition so far as is reasonable and necessary.

11 Operator's access to premises

(1) A residence contract must include a clause with the heading 'Operator's access to premises' printed in bold font.

(2) The clause must set out the circumstances under which the operator, or a person authorised by the operator, may enter the residential premises.

12 Village rules

(1) A residence contract must include a clause with the heading 'Village rules' printed in bold font.

(2) The clause must include a statement to the effect that if a village rule is inconsistent with a term of a residence contract—

(a) the village rule prevails to the extent of the inconsistency; but

(b) if the inconsistent term of the residence contract is a standard term, the term prevails over the rule.

13 Dispute resolution

(1) A residence contract must include a clause with the heading 'Dispute resolution' printed in bold font.

(2) The clause must—

(a) set out the resident's right to apply to CBOS if the resident considers a term of the contract to be harsh, oppressive, unconscionable or unjust; and

(b) draw the resident's attention to the existence of CBOS, and the resident's right to apply for a range of orders from CBOS, including the following:

(i) an order that amends or sets aside a provision of the contract or a village rule that conflicts with the Act;

Note: A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation.

(ii) an order that the operator comply with the Act;

(iii) an order to enforce a provision of the contract or a village rule.

14 Changes in operator

(1) A residence contract must include a clause with the heading 'Changes in operator' printed in bold font.

(2) The clause must—

(a) include a statement to the effect that the terms of the contract are enforceable against an operator of the village; and

(b) if a trustee is involved—set out the conditions on which the trustee is appointed and any rights the resident may have because of that appointment.

15 Ending the contract

(1) A residence contract must include a clause with the heading 'Ending the contract' printed in bold font.

(2) The clause must—

(a) set out the methods by which the contract may be ended, including a list of the grounds on which the resident or operator may apply to TASCAT to end the contract; and

(b) include a statement to the effect that the contract cannot be ended by the operator unless the operator obtains an order from TASCAT.

16 Transfers

(1) A residence contract must include a clause with the heading ‘Transfers’ printed in bold font.

(2) The clause must—

(a) set out the conditions, if any, under which the resident may ask for a transfer to other residential premises within the retirement village, or to other accommodation for older people run by the same operator; and

(b) disclose the general financial basis on which a transfer may be effected.

(3) If the operator of the retirement village has an associated facility in which residential care under the Aged Care Act 1997 (Cwlth) is provided, the clause must also include a statement to the effect that—

(a) places in those facilities are allocated on the basis of a resident’s needs; and

(b) entry is subject to an assessment for admission; and

(c) a transfer to the associated facility cannot be guaranteed.

17 Departure fees

(1) A residence contract must include a clause with the heading ‘Departure fees’ printed in bold font.

(2) The clause must—

(a) state whether a departure fee is payable by the resident on the ending of the contract; and

(b) if a departure fee is payable—set out the method of working out the departure fee; and

(c) include a statement to the effect that no departure fee is payable in relation to any period after the resident permanently vacates the premises.

18 Capital gain or loss

(1) A residence contract must include a clause with the heading ‘Capital gain or loss’ printed in bold font.

(2) The clause must state—

(a) whether any capital gain or loss, or increase in ingoing contribution paid by the incoming resident, is to be shared between the resident and the operator; and

(b) if so—the relevant percentages.

19 Refund of payment to resident

(1) A residence contract must include a clause with the heading ‘Refund of payment to resident’ printed in bold font.

(2) The clause must—

(a) set out in full the method of working out any refund or payment due to the resident on ending the contract, the time for its payment and any relevant conditions on its payment; and

(b) if 2 or more residents are parties to the contract—

(i) state whether a partial refund is payable if 1 resident permanently vacates the residential premises; and

(ii) if so, the circumstances under which a partial refund is payable.

20 Changes to this contract

(1) A residence contract must include a clause with the heading ‘Changes to this

contract' printed in bold font.

(2) The contract must include a statement to the effect that the resident is not obliged to agree to amend the contract, or to end the contract and enter into a new one, because of changes in legislation (unless the legislation requires the amendment or ending) or for any other reason.

21 Annexures

(1) A residence contract must include a clause with the heading 'Annexures' printed in bold font.

(2) The clause must mention the following, which must be annexed to the contract:

(a) a copy of the disclosure statement given to the resident;

(b) a copy of the current village rules (if any);

(c) a copy of a condition report.

Part 2 Matters to be excluded from residence contracts

1 Dispute resolution

A residence contract must not require the parties to the contract to attempt to resolve disputes between them by any process other than the process provided under the Act.

2 Wills

A residence contract must not require a resident to have a will or to tell the operator about the location of a will. Nor may an operator read a will that is provided to them.

3 Insurance

(1) A residence contract must not include a provision under which the resident is required, or agrees, to take out an insurance policy, including contents insurance, ambulance fund or other form of health insurance.

(2) However, the contract may require a resident who uses a motorised wheelchair to take out appropriate insurance in relation to the wheelchair.

4 Legal, accounting and other expenses

A residence contract must not include a provision enabling a resident to be charged individually for legal, accounting or other services incurred by the operator in—

(a) corresponding with the resident or a person acting on the resident's behalf; or

(b) enforcing the contract; or

(c) completing a standard contract without amendment.

5 Absences

A residence contract must not restrict the time a resident may be absent from the village.

6 Penalty terms

A residence contract must not provide that, if a resident breaches the contract or the village rules, the resident is liable to pay—

(a) an increased amount of recurrent charges; or

(b) an amount as a penalty; or

(c) an amount as liquidated damages.

7 Exclusions

A residence contract must not include a provision to the effect that a resident will not have the benefit or advantage of any legislation that may come into force.

8 Recurrent charges

(1) This section applies to a residence contract that makes provision for the recurrent charges payable by a resident to be amended according to a fixed formula.

(2) The formula can only be one that conforms to the Act.

9 Disclaimers

A residence contract must not include a provision removing liability from the operator for any negligent act or omission by the operator, its employees or agents.

10 Entire agreement

A residence contract must not include a provision to the effect that the written contract represents the entire agreement between the parties to the contract.

11 Current value of premises

A residence contract must not include a provision that requires a former occupant to pay the difference between—

(a) any value determined for, or assigned to, the occupant's residential premises (by the operator or otherwise) before a residence contract with a prospective resident in relation to the premises is entered into; and

(b) the amount paid by a prospective resident under a residence contract for the premises.

3. Village Comparison Document

SUBJECT:
When someone wants to move into a retirement village, how can they make comparisons and decide which is most suitable?

PROBLEM:
Retirement villages are enormously varied in how they are set up and operated, and also in respect of ingoing contributions, fees and exit entitlements. It is extraordinarily difficult for prospective residents to make comparisons, or even for their families to make comparisons and advise them.

THE TASMANIAN R V ACT:
The Tasmanian RV Act does not address the issue.

WHAT DO OTHER JURISDICTIONS DO?
Section 74 of the Retirement Villages Act in Queensland mandates the completion of a standard village comparison document in an approved form (Form 3), containing information prescribed by regulation. The document must be kept up to date and prominently available on the village website, and provided to all prospective residents. Queensland also mandates provision of a Prospective Costs Document.

In May 2026, Victoria also moved to address this obvious problem, when they mandated a "Retirement Village Information Statement". Like Queensland, they now require this document to be up to date, and on the operator's website. The Victorian Statement says in its preamble: "*Prospective tenants can use information statements to compare retirement villages on a like-for-like basis.*"

CONCLUSION & RECOMMENDATION:
TARRV recommends adopting a standard information document in the Victorian and Queensland manner.

While it may be thought potentially burdensome, in fact large operators would likely welcome regulation, because it helps prospective residents make a decision, increases transparency, and means fewer disputes later. In fact some operators are already introducing these statements voluntarily, simply because they are needed.

Adopting the Queensland and Victorian model would also help prevent operators from moving to an "expressions of interest" sale system, which is banned under the Residential Tenancy Act, but (oddly) not banned under the Retirement Villages Act, even though most retirement villages actually grant tenancy agreements rather than title.

4. The Need for an Ombudsman or Advocate

SUBJECT:
There is a need for a Retirement Villages Ombudsman or Residents' Advocate in Tasmania.

PROBLEM:
There is a lack of understanding of retirement village law and good practice, both among operators and solicitors. For their part, residents are minnows in a sea of sharks, with little understanding of their rights and suffering a huge power imbalance when it comes to standing up to young and aggressive operators, who seem to see retirement villages simply as profit sources and a soft target.

THE TASMANIAN R V ACT:
The Tasmanian RV Act provides for many powers of the "Director". However this is the Director of Consumer Affairs and Fair Trading. There is no position created for someone who is a specialist in the R V Act, or who can advocate for residents or represent them in a dispute.

There is a Tasmanian Ombudsman, but he has to cover a wide range of Acts, none of which is the Retirement Villages Act or the Residential Tenancies Act.

WHAT DO OTHER JURISDICTIONS DO?
In the past, Tasmania has had advocates, such as the Insurance Advocate who came under Workplace Standards Tasmania. This person advised and represented vulnerable people, particularly in matters such as workers compensation.

Victoria has a Commissioner for Residential Tenancies. Legislation has just been passed to expand her role to include retirement villages, and she is now setting up an advisory panel to advise her on retirement villages.

New Zealand's *Retirement Villages Act 2003* provides for a Retirement Commissioner to monitor the effects of the legislation and increase education on retirement village issues. The Commissioner also has powers to select and maintain a list of persons who are approved for appointment to a disputes panel.

Western Australia has a Commissioner, whose role includes retirement villages amongst responsibility for other Acts. The Commissioner investigates matters relating to or affecting retirement villages, and disseminates information and publishes reports and provides advice to consumers on the provisions of the Act. The Commissioner investigates and attempts to resolve complaints by residents and administering bodies. However, unlike the Tasmanian R V Act, the Commissioner is specifically empowered to litigate on behalf of a resident. This is an important element in addressing the imbalance of power between resident and operator.

Both in New Zealand and Western Australia, the Commissioner is required to make reports to the respective Minister on matters investigated.

CONCLUSION & RECOMMENDATION:
TARRV asks that the Attorney-General appoint a Resident's Advocate within Consumer Affairs. This Advocate might reasonably cover the Residential Tenancies Act, as well as the Retirement Villages Act, and perhaps also aged care. The Advocate would be able to provide a brief to the Director for prosecution.

A Tasmanian Advocate, or ombudsman, would assist, support and advocate for older people who suffer an enormous power imbalance against young aggressive operators, and often are not be able to navigate the tribunal system to get a fair hearing.

5. Village funds to be used for Village purposes

SUBJECT:
Recurrent charges raised from residents for the village must be used for village purposes.

PROBLEM:
The Act is silent on what funds should be established in the accounts, who contributes to them, and how they are to be used. Villages are increasingly being seen as an easy profit source and a soft target. In one case, an operator has cleaned out all the village bank accounts and sold the previously not-for-profit village as a real estate speculation to an entrepreneur, inviting him to raise fees and make a profit. This means residents will be charged again for maintenance for which they have already paid. Other operators are increasingly using villages as a profit source to fund other activities.

The treatment of depreciation is part of this problem. If depreciation is included as an expense in the village budget, and used to justify or increase recurrent charges, then residents have paid for the depreciation, and therefore improvement/replacement of the capital items. The funds raised <u>must</u> be used for the purpose for which they were levied, or returned to the residents.

THE TASMANIAN R V ACT:
The Tasmanian RV Act recognises the existence of recurrent charges in Section 14 and 14A. However, while it recognises that they exist, and regulates how budgets are presented and limits fee rises, it does not define them or regulate how the funds raised can be used.

Nor does it mention depreciation, or regulate when and how this provisions can be included and treated in the accounts.

WHAT DO OTHER JURISDICTIONS DO?
NSW covers the problem quite well. Their Retirement Villages Act 1999 Section 97 <u>bans</u> the use of recurrent charges to fund "construction of a new building or a new stage of the retirement village", or "depreciation of items of capital" or "the refurbishment of vacant residential premises within the retirement village". However, capital *maintenance* may be provided for in a recurrent fees budget, in which case a provision may be set aside for the unexpected, or an item may be foreshadowed with expected cost and quotes obtained. If any capital maintenance is expected to go on past the budgeted year, then a capital maintenance/works fund <u>must</u> be established. **Where a capital maintenance/works fund is set up, it must be used for the village or returned to the residents.**

The ACT (Section 141 - 143) is similar to NSW, <u>banning</u> the charging of depreciation to residents via recurrent charges and providing for a return to residents of unused funds.

CONCLUSION & RECOMMENDATION:
A provision is urgently needed in the Tasmanian R V Act to ensure that the budgeted expenditure funded as recurrent charges from residents, is appropriate and actually used for their village or returned to residents. In addition, interest received from funds raised from residents, perhaps including interest from the ingoing contribution, should always form part

of the income declared and included in the annual budget.

TARRV also believes that depreciation needs to be specifically covered in the Act. The Act needs to acknowledge that not all villages are the same, but in villages that have Deferred Management Fees (and usually a large ingoing fee), capital items must be separated from maintenance costs. Depreciation is a charge against the property, which is owned by the operator. It is not a maintenance cost. It is covered by the ingoings and DMFs, and must not be charged to residents. The Tasmanian Act needs to outlaw inclusion of depreciation in the income and expenditure statement presented at the AGM, except in the small number of villages which are self-contained entities with low ingoings and no DMFs.

Further, where depreciation has been improperly charged to residents, it should be refunded to the residents. Where it is reasonably included, in a small number of villages, it must be only used for the purpose raised – village improvements, replacements and maintenance.

6. Ban on Converting NFP to For-Profit

SUBJECT:
Most Tasmanian retirement villages were set up as not-for-profit, however they are now being converted into profit-making enterprises, or profit-making subsidiaries of large NFP corporations.

PROBLEM:
Elderly people move into a retirement village for security, predictability, and low maintenance and cost. Villages usually achieved these desired outcomes by registering as not-for-profits (NFPs) and charities. This attracted donations, volunteer operators and government grants. However, with rising property values, and in the absence of regulation, retirement villages have recently drawn the attention of entrepreneurs as potential profit-making concerns. Elderly residents seen as a soft target, unable to resist the speculators.

Even when an NFP is bought by another NFP or charity, the transaction does not replace like-for-like. The purchasing entities, though they may be NFP, have become large corporations, with volunteer operators replaced by employees and highly-paid executives. These purchasers reduce services and benefits to maximise profits, whether for speculative gains or to subsidise other operations, or finance new ventures. Elderly residents lose their security, predictability, and low maintenance and cost.

One mechanism that speculators use is to replace life tenancies to annual rentals at market or near-market value as each resident leaves. This removes security and affordability, and insidiously undermines the retirement village. When all units become rentals the village can be de-registered as a retirement facility and the facility converted to general accommodation or redeveloped. Essential retirement accommodation gradually disappears.

THE TASMANIAN R V ACT:
The Tasmanian RV Act does not address this problem in any way. It may be that Consumer law is relevant, but so far has not been invoked.

WHAT DO OTHER JURISDICTIONS DO?
This issue is not addressed by other jurisdictions.

CONCLUSION & RECOMMENDATION:
TARRV urges the Attorney-General to urgently take expert advice on how to restrict the takeover and change of nature of retirement villages. Some 1.5 million Australians live in retirement villages and need protection from profit-driven entrepreneurs, else this form of accommodation will rapidly become unattractive and many elderly people will become reliant on state-provided accommodation, or forced by the cost of retirement villages to remain in existing accommodation that has become unsuitable, before transferring directly to aged care.

7. Recurrent charges payable after vacating

SUBJECT:
Are former residents still liable to pay maintenance (recurrent) fees after vacating their unit and handing in their keys?

PROBLEM:
While most operators cease billing, some do not, continuing to charge until the unit is resold. The situation is often unclear in the contract. Solicitors giving advice to potential residents do not look at this, as neither solicitor nor potential resident realise it is a potential problem. It is therefore necessary to specifically address it in the Act or Regulations.

THE TASMANIAN R V ACT:
Section 11 covers vacating premises, and Section 11 (3) provides that liability for "*any personal service*" will cease on departure. "*Personal service*" is defined to mean any individual service, not maintenance fees levied on all residents.

Section 12 provides that the operator will "*take all reasonable steps for resale or reoccupation of the residential premises*". It also provides a 6-month limit to how long an operator may take before repaying an ingoing contribution entitlement, regardless of whether the premises remain unsold, <u>but does not refer to maintenance fees</u>.

Schedule 1 (f) states that a residence contract must "*state any fee or charge which will continue to be payable if the resident is absent from the retirement village or ceases to reside in the retirement village.*" This should cover the situation, but does not specifically mention maintenance (recurrent) fees and is therefore not always understood to do so. Nor does it provide any limit on how long the fees can be levied.

WHAT DO OTHER JURISDICTIONS DO?

1. **The ACT**
   The ACT R V Act Sections 210 & 211 specifically address recurrent charges, to which description maintenance fees would obviously belong. The Act differentiates between "*registered interest holders*" (Section 210) and former occupants who are <u>not</u> registered interest holders (Section 211).
   Registered interest holders (as defined in the ACT Act) are liable for 100% of recurrent charges for 42 days after vacating, and thereafter for a proportion of recurrent charges equivalent to their share of the capital gain specified in their contract.
   Former residents who are <u>not</u> registered interest holders are only liable for recurrent charges for 42 days after vacating.
   In both cases of course, the liability ceases if the premises are re-sold or re-let before the 42 days.
2. **NSW**
   The NSW R V Act Sections 152 & 153 are much the same as the ACT Act, and also specify the 42-day cut-off period for both registered interest holders and former residents who are not registered interest holders. The term "*registered interest holder*" is a little more clearly spelled out, being a person who is the registered proprietor of land, the owner of a lot in a strata scheme, or the proprietor of a lot in a community land scheme. It also

includes persons who own shares in a company title scheme that gives rise to a residence right, and those who have a residence contract in the form of a registered long-term (i.e. 50+ years or life) lease that includes a share of at least 50% of any capital gain.

3. VICTORIA

The Victorian R V Act Section 38B provides that a "*non-owner resident*" is liable for "*maintenance charges*" on vacant premises up to 6 months after ceasing occupation, unless otherwise specified in their contract or by agreement.

The Victorian Act specifies that a "*non-owner*" is a person who does not own the land under their premises.

4. WA

The WA R V Act Section 23, similarly to the Victorian Act, refers to persons who do not have title to their premises. Unlike the Victorian Act, the WA Act shifts the period for which former residents are liable to a period specified in the Regulations, unless their contract specifies an earlier cessation. These regulations are being redrawn and will be tabled in 2026. The intent is to ensure that the liability of former residents to maintenance fees is set out in either the contract or in the Regulations, and a termination statement lists all fees and charges clearly.

5. QLD

The QLD R V Act Section 104 lays out what happens on vacating in their state. It differs from the others.

In QLD the operator may only charge maintenance fees for the balance of the financial year. Even then, the initial period is 90 days, after which the former resident and the operator each pays a share proportionate to the share each shall receive from the ingoing paid by the next resident, as provided for in the residence contract, up to a limit of 9 months. Like the other states, this is the default position set out in legislation where the arrangement is not specifically set out in the residence contract. In other words, the contract prevails, as in other states.

In QLD there is an additional protection, in that if the operator has not sold the residence within 6 months, the former resident may place it with a real estate agent (Section 64). Also, the operator must promptly tell the former resident of all offers, and if asked, all enquiries and what steps they are taking to promote the sale (Section 65).

6. NT

The NT Act is short and does not address this matter.

CONCLUSION & RECOMMENDATION:

The lack of uniformity in Tasmanian practice, and the frequent failure to be specific in contracts, suggests that a provision needs to be made in the Act or Regulations.

TARRV suggests that an absolute limit of 90 days be provided in the Tasmanian Act for recurrent fee charges after a resident vacates their premise, without the complication of working out a share after the 90 days. In addition, there should be a specific mention of recurrent or maintenance fees in Schedule 1(f).

TARRV also, in passing, is impressed with the QLD Act Sections 64 & 65, which help protect residents from delays in reselling or reletting their former premises, and commends them to CBOS for inclusion in the Tasmanian Act.

8. Who pays the insurance excess on a claim?

SUBJECT:
Can residents be forced to pay the excess on an insurance claim – either through fees or individually?

PROBLEM:
While the excess on an insurance claim is not an issue in most villages, some have sought to place the cost unreasonably on residents through maintenance fees or directly onto an individual resident. Clarification and direction are needed in contracts, in the Act or by Regulation.

THE TASMANIAN R V ACT:
Under Section 20 of the Act, a scheme operator must insure, and keep insured, the retirement village to its full replacement value. However the Tasmanian Act doesn't specifically refer to communal property, or exclude strata units or private property such as contents. Nor does it refer to payment of an excess when making a claim.

Yet excesses are referred to in Section 14A(2)(b)(ii)(C) of the Tasmanian RV Act, which allows an increase in fees above CPI when it can be justified by an increase in insurance premiums, or insurance excesses paid.

DISCUSSION:
Many insurance policies include an excess. An excess is the amount an insured has to pay towards the repairs/replacement of an insured item if they make a claim on the policy.

An insurer may allow a policy holder to choose an amount of excess which can reduce or increase the cost of insurance. Generally, a lower excess results in a higher insurance premium, whilst a higher excess results in a lower insurance premium. Some insurance policies have a standard excess amount. An insurance policy may either require the scheme operator to pay an excess to the insurer or may reduce the insurer's liability under the policy by the amount of the excess.

Most retirement villages will have three (perhaps should be required to have three?) funds in their accounts – a general services charges fund (funded by residents), a maintenance reserve fund (funded by residents) and a capital replacement fund (funded by the scheme operator, presumably from sales and DMFs).

Retirement village insurance forms part of the general services provided by the scheme operator, so the cost of village insurance premiums is paid by residents through their general services charge. However payment of excesses may be treated differently.

In Queensland, the department issues a guidance that insurance excess payments should be paid from the general services charges fund. A scheme operator may increase the annual total general services charge above the Consumer Price Index (CPI) limit if it is attributable to an increase in insurance premiums or insurance excesses paid.

If a substantial rise in insurance cost is due to insurance excesses paid, then even though the premium would have been lower, the cost of insurance may go above CPI and justify an increase in the general services charge. However this would likely disappear the following year, and lead to a reduction in insurance costs. It is important that operators do not carry the one-off cost rise into subsequent years by way of a permanent increase in the general services charge. In this case, a CPI increase in fees the following year may not be justified.

Looking back at which fund should cover an excess payment, it may sometimes be that the general services charge fund is not appropriate. It might depend on the terms of the insurance policy.

Queensland government guidance says that where an excess is required to be paid by the scheme operator directly to the insurer, then the excess may only be paid from the general services charges fund. That is because the excess is not an amount paid by the scheme operator for the replacement or repair of retirement village capital items.

Queensland says that there may be some circumstances where an insurance excess may be paid from the maintenance reserve fund or capital replacement fund. It would depend on the terms of the insurance policy and the circumstances of the claim.

Where an insurance claim is made and the insurer pays the scheme operator or the supplier/repairer the claimed amount less any excess amount, and the operator is therefore responsible for paying the excess amount directly to the supplier/repairer, then that amount payable by the scheme operator may be categorised as a payment for repair or replacement of the retirement village's capital items. On that basis, it may be paid from the maintenance reserve fund or capital replacement fund.

If the excess was paid for the purpose of repairing a village capital item, it would be paid from the maintenance reserve fund.

If the excess was paid for the purpose of replacing a village capital item, it would be paid from the capital replacement fund.

Thus the guidance in Queensland shows that an excess would <u>not</u> normally paid by any individual, but would usually be part of the maintenance budget. However, while not part of the Queensland guidance, it should be noted that if the insurance claim is as a result of a deliberate or negligent act of the resident, the resident could reasonably be expected to pay the excess – assuming a claim was accepted by the insurer.

RECOMMENDATION:
Clarification and direction are needed in the Tasmanian Act or Regulations. It needs to be specifically stated that an individual resident can only responsible for an excess if they have been grossly negligent or caused damage deliberately.

TARRV has received advice from an insurer that charging an excess to a resident may be illegal, and is certainly not proper. The excess is paid by the insured, and the insurance company has no relationship with the resident. The insured party cannot palm off their liability to a third party. The insured party (i.e. the operator) should have a fund to cover excesses. TARRV believes that if no fund exists, the excess should be paid from the maintenance budget, or a once-off levy utilised.

It should perhaps also be stated in the Act or Regulations that, where an operator opts for a large excess in order to reduce the premium, an above-CPI rise in the recurrent fees in one year should, if no large excess is incurred in the following year, and all other things are equal, lead to a below-CPI rise the following year.

9. More on Insurance

SUBJECT:
Two other minor insurance problems have arisen, due to operators seeking to shift as much cost as possible onto residents. One concerns the definition of full replacement value on an insurance policy, while the other relates to circumstances where an operator elects not to make an insurance claim.

PROBLEM:

(i) Section 20(1) of the Act states that the operator must insure the village for "*full replacement value*". Section 20(2)(d) refers to "*reinstatement of property to its condition when new.*" It is naturally understood that this would include fixtures and fittings owned by the operator, however it is not explicitly stated, and one operator has forced residents to repair/replace fittings/fixtures owned by the operator.

(ii) Though Section 20 (1) of the Act states that an operator must fully insure a village, it does sometimes occur that the operator will choose not to make a claim – perhaps in order to gain a benefit on future premiums, or because the excess would be more than the claim is worth.

WHAT DO OTHER JURISDICTIONS DO?
Like Tasmania, most other jurisdictions talk of insuring for "full replacement value" without seeing any necessity to specifically mention that this includes fixtures and fittings – see NSW Act Section 100, ACT Section 145 and NT Section 37. The only state to clarify this aspect of insurance is Queensland, which specifically states:

> **Division 8 Insurance**
> **109 Definitions for division 8**
> In this division—
> ***building*** includes improvements and fixtures forming part of the building, but does not include fixtures installed by a resident removable by the resident at the termination of a residence contract.

Other states do, however, implicitly include fixtures and fittings throughout their Acts, such as NSW Section 41A and ACT Section 63, which prohibit residents from interfering with fixtures and fittings without the written consent of the operator. The obligation on operators to insure their property clearly includes their fixtures and fittings, and it only becomes necessary to specifically include them because at least one operator has sought to evade their responsibility. Similarly, no jurisdiction contemplates a situation where an operator elects not to claim on an insurance policy, and then charges the resident.

CONCLUSION & RECOMMENDATION:
TARRV recommends that in Section 20 of the Act, the expressions "full replacement value" and "property" should specifically include fixtures and fittings owned by the operator.

TARRV further recommends that Section 20 should state that, if an operator chooses not to make an insurance claim, such as because the cost of reinstatement would be less than the insurance excess, the operator shall reinstate the property from the maintenance works or other fund of the village.

10. Building Standards

SUBJECT:
Retirement villages need to be built suitable for purpose.

PROBLEM:
Retired people have specific needs when it comes to accommodation. While building regulations exist for disabled accommodation, they do not exist for retirement villages in Tasmania. Elderly people often have disabilities, but even when they don't, their accommodation needs to allow for their age and prospect of increasing frailty. The elderly are liable to falls, for example, and do not have the strength or agility of younger people. They often have arthritis and other degenerative conditions, while still capable of independent living.

THE TASMANIAN R V ACT:
The Tasmanian RV Act does not mandate any building rules for retirement villages. The closest reference is in Schedule 3 – a suggested checklist that includes a recommendation to consider whether the premises will be suitable if one becomes disabled.

WHAT DO OTHER JURISDICTIONS DO?
No Australian jurisdiction provides for minimum construction standards for retirement villages. This is a considerable oversight, considering that we are approaching 1.5 million retirement village residents!

CONCLUSION & RECOMMENDATION:
TARRV recommends that the Act or Regulations mandate that retirement villages must be fit for purpose, perhaps with a grandfather clause stating that existing villages need not be brought up to standard until such time as they are renovated, and that "fit for purpose" is defined to include such things as:

Internal

- Bathrooms should have non-slip floors.
- Bathroom/toilet doors should be fitted with sliding doors, or doors that open outwards; this ensures ready access to the room in the event that a resident is lying on the floor and blocking the door.
- Shower recesses should have hand-rails, both under the shower head, and on the side wall providing safe access / egress. In addition, there should also be a hand-rail at the front end of the shower, and a suitable fixture for the placement of towels for accessing without needing to step from the shower.
- Showers should have somewhere for users to put their 'essentials', not only soap, but also shampoos and the like, so that those things do not need to be put on the floor, and the user having to bend down to get them (note how important this is for residents subject to bouts of vertigo, as are many older residents). That could be by a recess in the wall, or a fitting fastened to the wall at an appropriate height.
- Provision should also be made for the fixing of hand-rails on either side of toilets. Not to say that hand-rails need to be fitted at the time, but the fixtures should be installed so that it will be a simple matter for the rails to be fitted, as required.
- Bathrooms must have a 'Duress/Emergency' button. The button should be located at a height that can be reached by a person who has fallen and cannot get back up. Several years

ago there was an incident at a retirement village where a male resident had fallen in the bathroom, suffered a broken hip joint and was not found for 3 days. He did survive.

- Where the residence has steps and/or ramps leading to different levels, then there should be hand rails on those steps and ramps.
- Doors should be appropriately wide enough for wheelchair access and egress. Indeed, all doors should be of a width that is appropriate (legally compliant) for wheel-chairs.
- The internal door communicating between the garage and the residence should have a deadlock fitted; the deadlock should be keyed alike to the residence front door.
- Ideally, garage entrance doors should be fitted with the (new) locking bars, such that the locking bars are automatically activated when the door closes.
- Cupboards and appliances should be suitable/accessible e.g. not too high or low.

External

- Footpaths and ramps must conform to the standards applicable to disabled persons. All roading should conform to Australian Standard 1428.1-2009 and the Local Government Association endorsed Standard Road Drawings.
- Footpaths should be maintained clear of all trip hazards.
- Pedestrian crossings to be clearly marked.
- Speed limits on all roads in the village, with signs and speed humps to encourage compliance.
- The speed limit in the Village is to be set by the Operator in conjunction with residents and/or their Resident Committee, having regard for the specific conditions in that Village, and shall be subject to the approval of the Commissioner for Transport.
- Speed limit signage, and traffic control measures (e.g. speed humps) should be installed as appropriate. (Note that speed limits in multiples of 10 are legally enforceable; speed limits ending in 5 are merely recommendations, not limits and are thus not legally enforceable.)

11. Errors in R V Act Urgently Needing Correction

SUBJECT:
There are two minor errors in the Act that could have major implications and need to be corrected quickly.

PROBLEM:
Error One:
The new Section 14A of the Tasmanian Retirement Villages Act, in (2)(b)(i), provides that an increase in recurrent charges over CPI must be approved by a meeting of "residents and tenants". However tenants do not pay recurrent charges – they pay rent. This means that the tenants are voting for a fee rise that only applies to residents! The same error occurs with levies in 14C. There is both a conflict of interest, and the potential for operators to thwart the intention of the Act by prevailing upon tenants to support an increase on residents.

Error Two:
Section 8(3) of the Act provides that a resident who needs to move to a high care facility and cannot afford the cost, may apply to the operator, and the operator <u>must</u> provide, a refund of the resident's ingoing sufficient to cover the cost. However, this assumes that the resident is entitled to repayment of ingoing! This assumption is clear from the reference to Section 12 made within (8)(3)(f). Section (8)(3) seems to overlook the fact that some villages do not work on the system of sale or repurchase of a unit. They charge a lower ingoing, which is not repayable (after a certain period), and is essential for the maintenance of the village. Many, if not most, residents end up going into care, and application of this provision to villages that do not have refundable ingoing could bankrupt them.

Error Three:
Section 14 regulates meetings, particularly AGMs. However there is a glaring omission. Residents are not explicitly given the right to move and pass motions. In one case, an operator failed to answer questions properly, and the residents moved a motion that further information be provided, which passed. The motion was ruled invalid by the operator, and <u>then not minuted</u>.

WHAT DO OTHER JURISDICTIONS DO?
In respect of Error One, NSW makes the situation clear by providing in their Section 107 that <u>only those affected</u> by the above CPI increase may vote.

107 Residents' consent to variation

(1) A variation does not take effect under section 106 unless—

(a) the residents whose recurrent charges will be affected by the variation consent to the variation, or
(b) the Tribunal orders under section 108 that the variation take effect.

Errors Two and Three do not seem to have arisen in other jurisdictions.

CONCLUSION & RECOMMENDATION:
Error One is easily remedied by deleting the words "and tenants" from 14A(2)(b)(i), or by

making a provision similar to that in the NSW Act.

Error Two is easily remedied by removing the ambiguity in Section (8)(3) with a change in para (e) to add after the word “operator” the clause “, part or all of which is repayable”, or by adding a para (3)(g): “*Subsection (3) (f) only applies to ingoing contributions (or part thereof) that are refundable under the residence contract.”*

Error Three is easily remedied by specifically enacting that the residents may move a motion at an AGM, and it must be minuted. If the motion is subsequently ignored, the residents have a proper record to take to CBOS or TASCAT for arbitration.

12. Expressions of Interest

SUBJECT:
The “sale” price of units in retirement villages has always been a set amount. Recently however, a large operator in Tasmania has begun advertising for “Expressions of Interest” (via a real estate agent) without disclosing a “sale” price, and then forcing the “purchaser” to keep the amount paid confidential.

PROBLEM:
Historically, all retirement village operators in the State of Tasmania have offered available units at a fixed price – often these prices are listed on an operator’s website (or available by enquiry). In this way a potential retirement village resident knows exactly what entry costs they are committing to. Without price disclosure, before and after sales, a potential resident has no basis for comparing villages, and a valuer has no proper basis for valuations.

While units are often offered for “sale”, they are not actually sales – the “purchaser” does not get title. In most retirement villages, payments made in consideration of occupancy of a retirement village unit are really an interest free loan to the operator by the occupier. The resident is then granted a life tenancy.

Yet despite residents of retirement villages actually being tenants, and expressions of interest being banned under the Residential Tenancy Act, they are not banned under the Retirement Villages Act.

Many retirement villages have waiting lists for interested potential residents. It is assumed that a person’s position on a village waiting list determines their opportunity to enter an available unit when one becomes vacant. The expectation is that the particular village manager will contact said waiting-list potential resident in order of waiting. Should the person not be ready to take up an offer at the time, then the village manager would offer the unit to the next person on the waiting list etc.

The operator who is now offering units to potential residents under the “Expressions of Interest” system, via a real estate agency, appears to be issuing an invitation for such an expression of interest to up to half a dozen potential residents at a time. Such offers may NOT be to people on a village’s waiting list.

This practice is of significant concern to both TARRV and to potential village residents in Tasmania for the following reasons:

1. It prevents potential residents from comparing entry costs among operators.
2. Traditionally, operators have also offered residents the option of what are known as type A or Type B lease agreements – one of these two options gives residents a portion of the capital gain should they leave a village/go to a nursing home/or die during their tenancy. In such a case, not knowing the sale price, the resident or their estate has no idea as to whether they’re getting the agreed percentage of capital gain and, possibly, no way of checking. They would either be relying on the operator’s good graces or would need to seek legal assistance to ascertain the information sought – an additional expense to the resident or to their estate.

3. The use of a real estate agency for this practice also leaves open the question of who pays the real estate agent's commission – Is it the operator? Or the tenant?
4. Unsuccessful bidders have no access to the sales bidding figures other than a simple statement from the operator or its agent that a particular bid was unsuccessful, and are not made aware of the actual offer that's been accepted. Bidders who have made a reasonable offer (based on their due diligence) fail to secure the unit offered.
5. Valuations, on which capital gains are shared and other villages set sale prices, become inaccurate due to incomplete data.
6. Unsuccessful bidders, assuming they were even given an opportunity to bid, have no idea whether the traditional waiting list order of preference is being adhered to.
7. The operator using this system is not bound to accept the highest or any offer made (this is the advice TARRV committee members have received from the respective operator's village managers). This leaves the method of sale open to abuse.
8. It appears that, in two recent cases of the application of this practice, extremely aged residents have been selected ahead of younger applicants. This is designed to give a more rapid turnover of units, and maximise profit.
9. Apart from circumventing waiting lists and being discriminatory on the basis of age, the practice outlined in point 8 above will lead, in the longer term, to fewer able-bodied people being able to participate in village communal activities, and will likely restrict participation in such activities, and in village governance/organisation through residents' committee participation. It effectively thwarts formation of Residents' Committees, as given by right under the Retirement Villages Act.

WHAT DO OTHER JURISDICTIONS DO?
The matter is not addressed by other jurisdictions – perhaps because no operator has introduced expressions of interest in those jurisdictions.

CONCLUSION & RECOMMENDATION:
It seems highly desirable to legislate to outlaw this form of unit lease sale by operators by way of an amendment to the Tasmanian Retirement Villages Act to bring it into line with the Residential Tenancy Act.

Note that the Residential Tenancy Act 1997, Division 2, clause 16B reads as follows:

16B. Rental properties to be advertised and offered at fixed rental price

(1) The owner of residential premises –
(a) must not advertise the premises for rent, or offer the premises for rent, at a price that is not a fixed price; and

(b) must not invite a prospective tenant to make an offer to become a tenant of the premises at a price higher than a fixed price advertised or offered by the owner.

13. More on Increasing Recurrent Charges

SUBJECT:
There are a number of small amendments needed to clarify the manner in which recurrent charges may be raised and applied.

PROBLEM:
Three problems have arisen in practice, after the passage of the recent Amendment Bill:

i. The new Act provides for increases after presentation of audited accounts. In practice this means that the meeting to approve an increase for the current year, being the AGM, is held in October or November. Some operators then seek to backdate the increase to the beginning of the financial year.
ii. Some operators are not telling prospective residents of planned or approved increases in recurrent fees, or of planned works that would increase fees.
iii. Residents at an AGM can feel constrained about voting their true feelings, when the operator and other residents can see their vote – such as by a show of hands.

THE TASMANIAN R V ACT:
The Tasmanian RV Act needs clarification.

WHAT DO OTHER JURISDICTIONS DO?
The problem of increases being backdated does not arise in jurisdictions that provide for a budgetary meeting prior to the end of the financial year, as increases have already been explained and provisionally agreed upon. However the NSW Regulations Section 24 states that a rise cannot be implemented sooner than 60 days after a notice of intention to raise charges by more than CPI – which means, in practice, that a rise can occur less than 60 days after a meeting that approves the rise.

CONCLUSION & RECOMMENDATION:
In respect of approved recurrent charge rises, after discussion with TARRV one large operator has re-evaluated their practice and accepted that backdating is an incorrect interpretation of the intent of the Act, and changed their practice.

To ensure all operators comply, TARRV recommends that Section 14A (3) be amended by adding the words "*, and may only be applied from the month following the meeting unless provisionally approved at a budgetary meeting of residents held prior to the current financial year, or approved for the current year at the meeting of residents and tenants held the previous year*".

To ensure incoming residents are made aware of known future fee rises, TARRV recommends that Section 6 (3) (e) include, after the words "in the retirement village", the words "*, including any anticipated capital or maintenance costs that would increase recurrent fees, or a planned or previously approved rise in recurrent fees*".

TARRV also recommends an amendment to Section 14A (2) (b) (i), such that after the words "residents and tenants voting" are added the words "*by secret ballot*". <u>Note that the words "and tenants" should be removed pursuant to a previous TARRV recommendation in this submission</u>. TARRV notes that one large operator recently agreed to a secret ballot at their

AGM and received 95% approval for their 40% fee increase – showing that laying out the facts before residents, trusting to their judgment and allowing a secret ballot did not disadvantage the operator.

14. Resident Committees

SUBJECT:
Section 16(7) protections for Residents' Committees are proving insufficient.

PROBLEM:
Whilst Resident Committees are provided for in the Retirement Villages Act, some operators are either ignoring the Act or finding ways around it in order to obstruct the committees. On one occasion, an operator sacked a committee. Another act of interference was to refuse to allow a committee to use the village hall for meetings.

CONCLUSION & RECOMMENDATION:
TARRV recommends a minor rewrite of Section 16(7) to read as follows:

(7) An operator must not –

a) Discourage or prevent the appointment of a committee under this section; or
b) Interfere with the composition of a committee; or
c) Unreasonably refuse to permit meetings of a committee within the village shared facilities; or
d) Unreasonably refuse to meet with a committee; or
e) Otherwise obstruct a committee in the performance of its functions.

15. Introducing Budget Meetings

SUBJECT:
The practice of some operators to backdate rises in recurrent fees has highlighted the fact that Tasmania does not require, or allow for, budget meetings of operators and residents prior to the beginning of the financial year.

PROBLEM:
Section 14(A) of the Retirement Villages Act provides for increases in recurrent fees after presentation of audited accounts. In practice this means that the meeting that approves an increase is held in October or November, and the increase would usually apply from the following January or July.

Although most AGMs in which budgets are presented are held in November, operators often decide to apply it from the beginning of the current period. This means that they levy the increase from well before it was approved, or require residents to make up the instant shortfall created by a fee rise that is backdated.

To clarify this issue, the Act should, as suggested in a separate part of this submission, clarify that the increase can only apply from after approval. To apply from the month following the AGM that approved it seems reasonable, and indeed, after consultation with TARRV, one large operator has re-evaluated their practice and accepted this as a sensible interpretation of the intent of the Act, and advised residents of the change accordingly.

The alternative, subject to canvassing operators on the issue, would be to provide for budget meetings between operators and residents prior to the beginning of the financial year. If this budget meeting provisionally approved the budget, it could be applied from July 1st and ratified (perhaps with minor amendments) at the AGM.

THE TASMANIAN R V ACT:
The Tasmanian RV Act does not address this problem.

WHAT DO OTHER JURISDICTIONS DO?
NSW and the ACT both address the issue by requiring budget meetings.

The NSW Act includes as follows:
112 Proposed annual budget
At least 60 days before the commencement of each financial year of a retirement village, or such other time as may be prescribed by the regulations, the operator of the village must supply each resident of the village with a proposed annual budget itemising the way in which the operator proposes to expend the money to be received by way of recurrent charges from the residents of the village during the financial year.

While the ACT Act states:
159 Proposed annual budget
(1) The operator of a retirement village must give each resident in the village a copy of the proposed annual budget for each financial year for the village—
(a) on a day, at least 30 days before the beginning of the financial year to which

the budget relates, agreed to by the operator and the residents; or

(b) if no day is agreed—at least 60 days before the beginning of the financial year to which the budget relates; or

(c) if a regulation prescribes another time—at the prescribed time.

Maximum penalty: 50 penalty units.

Note If a form is approved under s 263 for this provision, the form must be used.

(2) An offence against this section is a strict liability offence.

(3) If the operator operates more than 1 retirement village, the operator—

(a) may give a combined proposed annual budget in relation to 2 or more villages; but

(b) when giving the budget to each resident and each former occupant of a particular village, must include a separate budget for that village.

(4) If the retirement village is subject to a units plan, the operator must ensure that a copy of the general fund budget for a financial year, required for the annual general meeting of the owners corporation under the Unit Titles (Management) Act 2011, section 75, is given to the residents of the village at the same time as the copy of the proposed annual budget for the year.

(5) A regulation may make provision in relation to—

(a) matters that must be dealt with in a proposed annual budget; and

(b) matters that must not be financed by way of using amounts received for recurrent charges.

(6) The proposed annual budget must be accompanied by a notice that includes the following:

(a) a statement to the effect that the operator of the retirement village—

(i) must seek the residents' consent to spend the money in the way set out in the budget;

CONCLUSION & RECOMMENDATION:

TARRV makes no recommendation in respect of this matter at this time, preferring that CBOS first canvasses the views of operators. TARRV believes that a budget meeting could reasonably be held up to 30 days before a financial year, as in the ACT, rather than the 60 days required by NSW, but also believes that, while budget meetings should be formally recognised under the Act, they should not be mandated. Most operators may find it simpler to just go with an AGM and apply a fee rise from January.

16. Capital Gain

SUBJECT:
In the past, most residents were entitled to at least part of the capital gain on reselling their unit. Now operators are moving to new contracts without a capital gain payout. This provides operators with windfall profits. Where capital gain is still addressed, the method of calculation of that gain varies.

PROBLEM:
In villages with Deferred Management Fees (“DMFs”), it was usual for residents to gain all or part of the capital gain on their unit when they moved out and it was “resold”. Operators are becoming increasingly greedy and some are eliminating that return of capital gain to the resident, in order to maximise profits.

DMFs should easily be sufficient for an operator. If the operator also takes the capital gain, then inflation substantially reduces the real amount given back to the resident or the resident’s estate when they leave or die. Longterm residents who move to a nursing home often find their refund has been so diminished by DMFs and inflation that they have insufficient to pay for their expected nursing home accommodation.

In calculating the capital gain, it should simply be the difference between the ingoing contribution paid by the outgoing resident and the new ingoing contribution being paid by the new resident. This is clear and fair. However at least one operator is now using the difference between the ingoing contribution, and a valuation of the unit prior to refurbishment, with the valuation being done by an employee of the operator. This is a clear conflict of interest, and if the actual sale price is not revealed, it has a redolence of potential fraud.

THE TASMANIAN R V ACT:
The Tasmanian R V Act does not address capital gains.

WHAT DO OTHER JURISDICTIONS DO?
NSW defines capital gain to be the difference between the purchase price and the next purchase price, less any costs, with the costs to be shared in the same proportion as the capital gain.

The ACT copies the NSW model, with an addition that the operator commits an offence if they, in effect, promise that a purchaser will enjoy a capital gain.

Queensland mandates that capital gain is addressed in a contract, and that a valuation take account of any capital gain sharing in a contract.

SA, Vic and WA do not address capital gains in their Acts.

CONCLUSION & RECOMMENDATION:
TARRV believes that the Act should make a share of capital gain mandatory for all new

contracts, and it should be calculated as difference between the ingoing contribution and the new ingoing contribution (less a share of renovation costs). This accords with the practice of one of the largest operators, Respect Group Ltd.

TARRV believes that capital gain should really go 100% to the resident, however a compromise to 50% may be necessary.

TARRV further believes that if the difference between the ingoing contribution and a valuation on exiting the unit is specified in a contract, the valuer must be a Certified Valuer, independent of the operator.

17. The Confused Status of Renters

SUBJECT:
Many retirement villages have tenants, rather than just residents. Their status and the rules governing them are confused.

PROBLEM:
With outside rental returns historically high, many operators are taking advantage by renting out units, rather than "selling" them when a vacancy arises. This is causing much confusion among operators, who will not admit that they do not understand the law with respect to tenants, and use bluff and bullying to simply do what suits them. TARRV believes that some operators are signing tenancy contracts under the Residential Tenancy Act, rather than the applicable Retirement Villages Act.

Do tenants need to be retired? Do they need to be over a certain age? What form of contract should they be given? Operators are confused, or take advantage of the ambiguity in the Act. What recourse do residents have if an operator moves in noisy, aggressive young people? This can become a way for property speculators to force out the elderly and deregister a village to make speculative gains.

Should tenants get the same services as residents? This is not spelled out either. Nor is it clear how rental receipts should be treated in the accounts that are used to calculate maintenance fees.

Then there is Section 14(A) of the Retirement Villages Act, which says that a meeting of "residents and tenants" must approve an increase in recurrent charges – but those charges only apply to residents! So why do tenants have a vote? Was it intended that tenants would also enjoy the CPI limit on rental increases? This is not stated in the Act and, in practice, operators give short-term rental leases under the Residential Tenancies Act, rather than the Retirement Villages Act, and raise rents as much as they like on renewal – or don't renew a lease and raise the rent to the new tenant under a new contract.

THE TASMANIAN R V ACT:
The Tasmanian Retirement Villages Act Section 5 (1)(a) says that the Act applies to tenants. Similarly, the Residential Tenancies Act Section 6 (2) (ga) says that the Residential Tenancies Act does not apply to "*a residential tenancy agreement that is a residence contract within the meaning of the Retirement Villages Act*". That is clear, though apparently not understood by some operators. Section 7 (1) gives operators the right to refuse entry to people who are not retired, though it doesn't preclude others.

The definitions within the Act state that a retirement village is "predominantly" for retired people, and a retired person is one who is over 55 and no longer in full-time employment. The Act makes no provisions for restricting who operators can bring in, nor for preserving the character and nature of a village.

WHAT DO OTHER JURISDICTIONS DO?
Under their Section 174 (3), NSW prohibits the letting or subletting of premises to someone

who is not retired, however, strangely, this binds only a resident who is renting out their premises, and does not bind an operator.

The ACT is similar, and under their Section 229 (3) a resident who rents out their vacant premises, can only do so to retired people. Strangely, an operator is not similarly bound.

CONCLUSION & RECOMMENDATION:
TARRV believes that some measure is needed to preserve the character of villages. Operators should not be prevented from entering into tenancy agreements, but should be restricted to offering them to retired people over 55, and should use an appropriate contract, rather than just using a Residential Tenancy Agreement.

TARRV also believes that consideration should be given to restricting rent rises to CPI, in the same way as for residents. Failure to do so gives an incentive to operators to convert life tenancies to short-term rentals, and to stop providing units to the elderly.

How rental income is treated in the village accounts also needs careful consideration. And finally, TARRV recommends that a bulletin be sent out to operators that, along with other issues, sets out the intention of the Act in relation to tenants.

18. CBOS Conflict of Interest/Failures

SUBJECT:
Operators will bully elderly residents into submission if not corrected by authority. CBOS seems reluctant to be that authority. While CBOS staff are friendly, it does appear that CBOS management puts the interests of operators above those of consumers/residents. It may be that there is a conflict of interest, where limited resources and expertise make it easier to side with delinquent operators.

EXAMPLE 1:
Gary Hosking is a resident of Glenara Lakes, a village owned by Southern Cross Care. When they announced a 51% fee rise, he sent a list of questions to the operator, but received no reply. At the village AGM of 2022 he repeated the questions and was pointedly ignored by the CEO. When another resident asked why she wouldn't answer, she became angry and closed the meeting. Under the Act as it was then, the operator was clearly required to answer questions, to properly explain fee rises, and only allowed to raise fees to the extent that was "reasonable" in view of their stated costs.

Mr Hosking subsequently spoke to Consumer Affairs and was told he had to make a formal complaint to the Director, which he did. However his complaint was rejected without explanation.

Mr Hosking appealed 7 December 2023 to a magistrate against a decision of the Director of Consumer Affairs and Fair Trading. In an outrageous waste of resources, Consumer Affairs briefed Counsel and may have spent tens of thousands of dollars, rather than tell the operator to answer the questions! Southern Cross Care joined the matter through a senior staff member. After much discussion the matter was adjourned to 24 January 2024 for a decision as to whether Mr Hosking had appealed to the correct court. Remember, all this was happening simply because Southern Cross Care steadfastly refused to answer questions about a rise in recurrent charges, contrary to the Act! And since the complaint began, they had sacked the CEO who caused the problem!

At the adjourned hearing, detailed submissions were considered as to whether a Magistrate's Court, or a Court constituted by a Magistrate, was the proper court to hear the appeal. It was decided that it was not and Mr Hosking therefore could not be heard. He was told that he may bring the matter again in the correct court.

Subsequently, Consumer Affairs insisted that Mr Hosking's appeal had been dismissed, apparently making out that his appeal had no merit, rather than it being brought in the wrong court. The matter is still not resolved, and CBOS has never explained why they would not support, or even properly respond to, a legitimate consumer complaint. Nor why they would expend considerable resources to protect a non-compliant operator, and an operator's officer who was subsequently sacked!

EXAMPLE 2:
Another example relates to the difference between "explaining" and "demonstrating".

Southern Cross Care (Glenara Lakes) refused to demonstrate (i.e. substantiate) the reason for a rise in recurrent charges above CPI.

The operator asserted that simply <u>stating</u>, or <u>explaining</u>, that a recurrent charge rise above CPI is due to increases in expenses pursuant to Section 14A (2) (b), is sufficient to comply with the Act, and it appears that CBOS has supported this erroneous interpretation.

However Section 14A (2) (a) orders that the operator must submit: "*a written explanation that <u>demonstrates</u> that the increase in recurrent charges is reasonable in the circumstances*". (Emphasis ours).

The Act could have simply asked for a "written explanation", but it goes further, asking for "*a written explanation <u>that demonstrates</u>*". The difference may not be understood by a junior employee of an operator, but it is quite clear in law and should be to CBOS.

Explaining and demonstrating are fundamentally distinct actions.

To explain a decision is to articulate the reasoning, considerations, and context that led to a particular outcome. This often involves outlining the relevant facts, values, and principles that were weighed, thereby making the decision-making process intelligible to others.

In contrast, demonstrating a decision typically involves providing <u>tangible evidence</u> or examples to clarify how a decision was reached.

There are many examples in statutory interpretation and case law, and they are easily found. Such as *Dasreef Pty Ltd v Hawchar* (2011) 243 CLR 588, where the High Court of Australia explained that an expert opinion was insufficient, and even experts had to show that their opinion was substantiated by pertinent facts. Similarly, if an operator asserts that their increase of recurrent fees is due to insurance, for example, it is not enough to rest on the assertion. They must show the invoices, or at least provide the figures!

EXAMPLE 3:
At a recent AGM, Southern Cross Care ("SCC") said that Launceston rates were up by 5.9% and used this to justify an increase in maintenance fees. But Retirement Villages don't pay rates! They only pay for services, and are <u>exempt</u> from the general rate. When this was questioned by residents, SCC wrote to residents to say that they had consulted CBOS, and CBOS had agreed with them, not the residents. If this is true, CBOS has misinterpreted the law and failed to investigate. Nor have they sought the residents' or TARRV's view on the matter.

EXAMPLE 4:
CBOS insists that complaints be brought within 6 months. There is nothing in the Act to time-limit complaints, and sometimes delays are unavoidable. So what is CBOS's authority to insist that complaints are made within 6 months? There is no such authority. In fact, there is only a time limit that requires CBOS to respond within 6 months. <u>It binds CBOS, not a complainant</u>.

EXAMPLE 5:
An issue at Derwent Waters was brought to CBOS's attention in October 2024. CBOS advised in January 2025 that the person dealing with the matter had been busy. Subsequently there has been no further communication or action.

The original complainant was Mr Joe Christie Johnson, who is a retired senior police officer.

TARRV provided CBOS with an expert and authoritative report done by Mr Ian Cornelius at TARRV's expense, which found that the operator was not compliant with either the Retirement Villages Act or the Strata Titles Act. He is a recognised expert who has driven legislative change in the past, and was available to CBOS to discuss his report.

CBOS has failed to address this matter in any meaningful way, despite its statutory obligation to respond within 6 months.

EXAMPLE 6:
At Lady Clark, the operator dismissed the village residents' association! This is a major breach of the Act, yet CBOS accepted and later referred to the "dismissal" as though it was lawful!

EXAMPLE 7:
CBOS asked for TARRV's assistance in compiling a list of retirement villages.

The list was completed, but CBOS refuses to show it to TARRV. Why the secrecy? TARRV could check it for accuracy and help keep it up to date.

CONCLUSION & RECOMMENDATION:
TARRV believes that legislative reforms can assist, but in the meantime asks for a proper response from CBOS to these and ongoing matters.

Delinquent operators need to be corrected by CBOS, and perhaps an advisory be circulated to all operators to ensure these issues do not arise again.

19. DMFs and Ingoings

SUBJECT:
There is much variation in the financial information given out at AGMs. Operators view Deferred Management Fees (DMFs) and Ingoing Contributions as their own funds, which is not correct.

PROBLEM:
Residents pay an ingoing contribution. That is universal and is (partly) the definition of a retirement village. Most operators then take what they call "Deferred Management Fees" out of the ingoing annually, for a period set under the resident's contract.

That ingoing is really a reducing liability to the operator, yet they treat it as their own. The ingoing is really residents' money they hold in trust. They make money out of the ingoing, such as with interest, yet do not declare it and take it for themselves.

There are no directions in the Act as to how DMFs and Ingoing Contributions are used. In the past they were often used to make up shortfalls in the village budget, helping to provide affordable accommodation to the elderly, but this has quietly changed. Now they are often used to prop up other operations, or to fund other developments.

THE TASMANIAN R V ACT:
The Tasmanian Act does not cover these issues specifically, though Section 14(5)(c) does say that income from "any source" should be declared. However it is ambiguous.

WHAT DO OTHER JURISDICTIONS DO?
DMFs are more commonly known as Departure Fees in legislation.
NSW covers them extensively, but without covering anything relevant to this discussion.
NSW also mandates that ingoings are held in trust until a contract is signed.
QLD says ingoings may be used for capital replacement, but capital replacement cannot otherwise be charged to residents.
WA does not reference DMFs or Ingoings.
VIC has nothing relevant.

CONCLUSION & RECOMMENDATION:
TARRV recommends that the balance sheet presented at an AGM should show the whole operation of the enterprise, with the retirement village section separated out. Mary Ogilvie already shows their nursing home figures in their accounts presented to residents, so why wouldn't others do so too?

TARRV believes that there should be full disclosure of how <u>all</u> funds generated by the village are used, including DMFs and Ingoing Contributions.

TARRV further believes that since Ingoing Contributions are held in trust for the resident, the income they generate should be income to the village and shown in the profit and loss presented at an AGM and used in the calculation of maintenance fees.

20. False Representation of Ownership

SUBJECT:
Some operators have become slack about how they advertise and introduce premises to prospective residents, representing the transaction as a sale and purchase.

PROBLEM:
Operators are increasingly advertising units within retirement villages as “for sale”, implying ownership for the prospective “purchaser”. Unless the village is a strata title occupancy, there is no ownership, only a lifetime lease. This often confuses elderly prospective residents, and has potentially huge implications for them and their estate when they leave the village or die, expecting to receive full “sale” proceeds less the DMFs. TARRV believes it is imperative that transparency in the presentation of advertising is essential and that operators and real estate agents involved are accurate when they tout for new residents.

THE TASMANIAN R V ACT:
The Tasmanian Retirement Villages Act and Regulations are silent on this issue.

WHAT DO OTHER JURISDICTIONS DO?
The matter is covered in the NSW Regulations:
Representations about ownership of units
An operator must not make any representation to a prospective resident that the prospective resident will acquire ownership of a unit within the retirement village, unless the operator intends to enter into a contract with the prospective resident following the purchase of a strata-titled, community-titled or company-titled unit in the retirement village.

CONCLUSION & RECOMMENDATION:
TARRV recommends copying the NSW Regulation, either in our Act or Regulations.