

Summary of the consultation session

The purpose of this consultation session was for the Inquiry Chair, Kathryn Greiner, to hear directly from residents, their families and members of the community about their experience with retirement village living.

This is a summary of the issues raised during consultation by residents and others in response to the topics set out in the Inquiry's terms of reference. It does not reflect the views of the NSW Government and does not represent a full transcript of each forum. The order of the topics follows the structure of the session on the day.

1. Marketing activities

The forum participants were asked: based on your experience of marketing activities in the sector, are you satisfied marketing activities are being conducted honestly, transparently and fairly?

Several examples were provided where residents experienced promises made during the sales process that did not eventuate upon entry to the village. One resident raised the example of relying on websites that are updated over time and another gave the example of promises made verbally to prospective residents that can be difficult to challenge at a later stage.

2. Costs, contracts, rights and responsibilities

The forum participants were asked: based on your experience, are retirement village costs, fees and charges and resident's contractual and other rights and obligations clear and understandable for prospective retirement village residents and their families?

Residents raised issues relating to the transparency and fairness of contracts, village budgets and accounts and improved clarity around certain rights and responsibilities of operators and residents. The key themes raised include:

Transparency of contracts

- lead time prior to entry into a village to review the contract and negotiate terms informed by legal advice
- the impact of potential changes in village ownership on contracts in place
- plain-English contracts to ensure that senior citizens understand the terms and conditions
- clarity on the difference between types of fees such as incoming contributions, maintenance fees, and deferred management fees.

Village budgets and accounts

- the ability for residents to appoint an independent auditor with expertise in retirement villages
- the level of information to support costs charged to residents and the responsiveness of operators to such requests for information
- transparency around operator accounting methods and annual budget position result to clarify actual income and expenditure transactions (rather than budget vs expenses)

- timeliness to address annual village budget deficits and the scope to retrospectively charge residents.

Rights and responsibilities

- fairness of arrangements for refurbishment costs especially where residents are also charged deferred management fees
- clarity on 'refurbishment' vs 'fair wear and tear' costs
- clarity to determine responsibility for certain insurance costs and the scope of costs that are paid by residents in relation to a single village (e.g. where they don't relate to home contents)
- clarity on the resident's responsibility for certain insurance items (e.g. buildings used by the operator for profitable business services, loss of profits) particularly under a lease arrangement.

Exiting the village

- the difficulty for residents to find a new lessee where this is required by the operator, especially where the contract terms for the new lessee materially change
- fairness of arrangements concerning capital gain sharing arrangements and exit fees. Under a capital gain arrangement between the resident and operator e.g. 50% of the total sales price the resident may also be required to pay exit fees based on a percentage of the total sales price
- the level of financial protection for lessee residents with unsecured loans that form part of the ingoing contribution to ensure the loan money is available and repayment is accessible to residents in the event of emergency in a reasonable timeframe
- the potential to limit the time period of the former resident's liability for general costs to be paid until the next occupant/sale of the premises occurs.

3. Safety and security in retirement villages

The forum participants were asked: based on your experience, is the built environment of retirement villages maintained and operated in a manner which is safe for residents?

A number of issues were raised including: the right to a smoke-free environment policy; an effective broadcast system in case of emergencies; amenities in common areas to ensure health and cleanliness (e.g. hand sanitisers); and security precautions to include identification of and resident awareness of tradespeople on site.

4. Funding for village maintenance and upgrades

The forum participants were asked: do you have concerns relating to the protections and fair arrangements with respect to building defects and the levy of fees for maintenance of retirement villages?

The issues mainly related to how maintenance and capital works costs are defined and responsibility shared between residents or operators under the *Retirement Villages Act 1999*.

Transparency and consistency around recurrent charges and capital works fund items

- clarification around who has responsibility for operational business costs such as insurances to replace village buildings and facilities used by the operator for optional user-pay services (e.g. restaurant, hairdressing salon). The example of costs charged to residents out of recurrent charges where residents pay a commercial rate to access the service was given
- reporting on recurrent charges as distinct from capital works charges to enable residents to determine the accuracy of cost allocation.

Clarification of definitions such as ‘repair’ vs ‘replacement’

- clarification of certain definitions under the Act that impact the costs paid by residents within a village, for example ‘repairs’ are resident funded while ‘replacement’ costs are operator funded
- transparency around operator decisions to have capital items repaired instead of being replaced
- clarity around the responsibility for certain costs such as the painting of buildings in the village.

5. Dispute resolution mechanisms

The forum participants were asked: to what extent do retirement village disputes resolution mechanisms deliver just, quick and cost effective outcomes for residents and operators?

The general issues raised by residents related to dispute resolution mechanisms included:

- the availability of a retirement village specialist to operators and residents and the residents committee to decide issues (particularly when advice on legislative interpretation is sought prior to taking the issue to a Tribunal for a formal decision)
- the enforcement of a decision once it is made (rather than the dispute resolution process itself), for example where a determination is made against the operator remains unresolved pending litigation to appeal the decision requiring further costs, time and involvement by the resident
- timely, cost-effective mechanisms to resolve disputes such as an ombudsman or expert determination process.

6. General operation of villages

The forum participants were asked: in your experience, to what extent are retirement villages generally being operated honestly, diligently and fairly?

Three main issues were raised relating to the performance of villages, staff conduct and access to legal support by residents.

Management conduct and operation of the village

- the ability of residents to influence the standard of professional service given that the cost of the village manager’s wage is paid by residents
- sector-specific training and qualifications relevant to managing relationships with residents and asset and financial management training to support running the village
- the potential for additional sector-specific knowledge that considers a resident’s needs (e.g. how to access ‘home care’)

- the monitoring of retirement village performance and staff training (for example through an accreditation or other system).

Access to legal support by residents

- several residents raised issues relating to obtaining legal advice to review and dispute contracts including the complexity of the contract, the required level of specialist expertise, and the cost to engage a legal expert.