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RETIREMENT VILLAGES: TIME FOR A CHANGE?

Dr Lucy Craddock and Ms Andrea Blake

Queensland University of Technology

ABSTRACT

In retirement, many Australians relocate to a less onerous form of home occupation. Some downsize their house, or move to a strata title complex. Others, attracted by lifestyle perceptions, move into a retirement village. However, research shows Retirement Village documentation is complex and more analogous to commercial leasing than home ownership. The most recent government review by New South Wales, confirms the need for change. This paper identifies the current retirement village tenure models generally available in Australia. By comparing the various State/Territory systems the authors draw conclusions regarding the adoption of standardised documentation and uniform Australian Retirement Village legislation.

KEY WORDS Residential tenancies, Retirement Villages, Land tenure, Property rights

Contact details

Dr Lucy Craddock
LLB, LLM (TechLaw), SJD (QUT), Solicitor
Lecturer
School of Law, Faculty of Law, QUT
C/- GPO Box 2434, BRISBANE QLD 4001
l.craddock@qut.edu.au

Andrea Blake
LLB, Bach of App. Sc. (Property Economics) QUT, Registered Valuer
Senior Lecturer, School of Civil Engineering and Built Environment
Science and Engineering Faculty
GPO Box 2434, Brisbane, Qld, 4001
a.blake@qut.edu.au

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ABSTRACT

In retirement, many Australians relocate to a less onerous form of home occupation. Some downsize their house, or move to a strata title complex. Others, attracted by lifestyle perceptions, move into a retirement village. However, research shows Retirement Village documentation is complex and more analogous to commercial leasing than home ownership. The most recent government review by New South Wales, confirms the need for change. This paper identifies the current retirement village tenure models generally available in Australia. By comparing the various State/Territory systems the authors draw conclusions regarding the adoption of standardised documentation and uniform Australian Retirement Village legislation.

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INTRODUCTION

Reflecting an international trend, the number of Australians aged 55 years or over accounts for 25.6% of the population. (ABS 2011) Many Australians look to change their home in retirement by down-sizing, either in house or garden size or both; or moving into a strata title unit complex to enable them to continue to enjoy lifestyle benefits (i.e. use of a swimming pool) without the associated maintenance obligations. Others look to move into a retirement village ('RV') as many of the lifestyle benefits offered by a RV usually is not present in a strata title complex. Age, however, is no longer a relevant factor for determining who will seek the benefits of RV living. As Western Australian data shows, many retirement villages throughout Australia welcome, or are specifically targeted to apply to, those aged 55 years and over rather than those at retirement age. (ABS, 2006b) As such retirement villages are increasingly being designed to satisfy a particular standard of living.

Many prospective residents, however, fail to appreciate that RV tenure is not the same as their existing home ownership or that the fees associated with RV living are not the same as those of a strata title complex. (Craddock and Blake, 2012) The potential for confusion was commented upon by McMurdo J in *William v Carlyle Villages* who observed that "[t]hose entering into contracts to reside in retirement villages are usually elderly and sometimes anxious to speedily finalise their new residential arrangements.... The requirements of the Act, the public information document and contracts may appear daunting to prospective residents."

Difficulties in understanding RV documentation and processes are further exacerbated by the fact that property laws, including RV laws, are State/Territory-based. While conveyancing and RV practice and protocols across the various jurisdictions are similar there are differences. In addition, there is no consistency across the States/Territories as to the preferred tenure type. (Craddock and Blake, 2012) These differences lead to a level of confusion which is exacerbated when retirees choose to relocate to another State/Territory either to be closer to family or because of the warmer climate (ABS 2009-10) and consequently move away from the land tenure system with which they are familiar.

This paper commences with a review of current literature. In keeping with legal research methodology, it then identifies and discusses the legal issues pertaining to the RV sector. As the disclosure and contract obligations of the relevant RV laws apply only to those complexes which are deemed to be an 'RV village' under the relevant legislation, this paper does not consider retirement-style villages which may be established under a different legislative structure. These, generally, are addressed by the respective strata title legislation.

Disputes occurring within the sector have also been analysed to determine the most commonly contested issues for residents against village proprietors. It is acknowledged that there are limitations with the analyses of litigated disputes due to the mandatory dispute resolution provisions that are in place in the sector for each state and territory of Australia. Whilst the mandatory dispute resolution process and voluntary mediation process may encourage early resolution of disputes, the processes themselves raise issues. The confidentiality of mediation in particular, as opposed to the openness of litigation, limits the public data available to prospective residents.

The paper then reflects on the outcomes of current State/Territory reviews before examining the common forms of RV models used throughout Australia. From this analysis conclusions are drawn as to the optimum outcomes for retirement village disclosure and contracts in Australia. These outcomes are considered in the context of the sector in Queensland however, these conclusions will have wider application throughout Australia.

CURRENT LITERATURE

Although there are examples of academic writings in the area of RVs, the extent of academic attention over the past decade has been limited. To date much of the academic writing in the area of RVs from a property perspective has been focused around appropriate valuation methodologies and the valuation process for RVs. This includes studies by Elliot, Earle & Reed (2002) and more recently McAuliffe (2010). The Australian Housing and Urban Research Institute (AHURI) also has maintained a focus on aged care and the role of self contained independent living units within the context of public housing and rental accommodation. (NcNelis, 2004) More recently Csesko and Reed (2008) focused on the ability of residential aged care facilities in Victoria to meet long term demand; and Craddock and Blake (2012) considered the impact of tenure related issues on the desirability of RV living in Australia and in Queensland (Blake and Craddock, 2010).

Other studies examined the push/pull factors influencing prospective residents' decision-making processes. (Earl 2004) Stimson and McCrea (2004) identified that the most common push factors were health issues and the need for greater assistance; death of a spouse; problems in maintaining the home; the need for a lifestyle change; and a desire to be close to family. The pull factors were identified to include the built environment and affordability; location and convenience of location; and maintenance of existing lifestyle and familiarity.

Studies also have considered consumer issues for residents. These have included evaluations of issues relevant for independent senior living (Jones *et al*, 2003), and satisfaction with village lifestyle. (Kennedy and Coates, 2008)

There has been very little academic attention and analysis of retirement village contracts and other legal obligations on the RV proprietor. The recent NSW review and (impending) adoption of a mandatory standard form RV contract has provided the impetus to consider this issue and the possibility of an Australian uniform standardised RV contract and law.

OVERVIEW OF THE RETIREMENT VILLAGE SECTOR

Each State and Territory has enacted specific legislation relevant to RVs establishment and operation. The various laws, as detailed in Table 1, seek to promote consumer protection and best-practice standards. This is achieved by providing a statutory framework within which the RV industry may operate in an attempt to provide greater certainty to all participants. The most recently enacted laws are those of the ACT, which was enacted in August 2012.

Table 1: Retirement Village Legislation

State	Legislation
ACT	<ul style="list-style-type: none"> • <i>Retirement Villages Act 2012</i>
NSW	<ul style="list-style-type: none"> • <i>Retirement Villages Act 1999</i> • <i>Retirement Villages Regulation 2009</i>
NT	<ul style="list-style-type: none"> • <i>Retirement Villages Act 1995</i> • <i>Retirement Villages Regulations</i> • <i>Retirement Villages Code of Practice</i>
Qld	<ul style="list-style-type: none"> • <i>Retirement Villages Act 1999</i> • <i>Retirement Villages Regulations 2010</i>
Vic	<ul style="list-style-type: none"> • <i>Retirement Villages Act 1986</i> • <i>Retirement Villages (Contractual Arrangements) Regulations 2006</i> • <i>Retirement Villages (Records and Notices) Regulations 2005</i>
SA	<ul style="list-style-type: none"> • <i>Retirement Villages Act 1987</i> • <i>Retirement Villages Regulations 2006</i>
Tas	<ul style="list-style-type: none"> • <i>Retirement Villages Act 2004</i> • <i>Retirement Villages Regulations 2005</i>
WA	<ul style="list-style-type: none"> • <i>Retirement Villages Act 1992</i> • <i>Retirement Villages Regulations 1992</i>

The definition of ‘retirement village’ is used consistently throughout Australia to mean a complex of dwellings where older, or retired, members of the community reside or that which is used for the purpose of a retirement village scheme. (Sec. 10 ACT; Sec. 5(1) Qld; Sec. 5 NSW; Sec. 3 NT; Sec. 3 Vic; Sec. 3 SA; Sec.3 Tas; Sec. 3 WA) While there is no statutory definition of a resident’s unit or ‘self contained independent living unit’ (‘SCILU’) in practice these include stand-alone villas, duplexes, townhouses, units and apartments. (Cradduck and Blake, 2012) Where the purchaser is a couple, rights of occupancy generally are joined, with an ongoing right to the survivor of the two after which time, generally, the SCILU forms part of the survivor’s estate for succession law purposes.

As McAuliffe (2010) describes a RV typically operates by residents ‘buying’ their SCILU from the village operator. In freehold villages, this usually occurs by direct purchase from the current resident or village operator. However, this also may be tied to a licence-back

arrangement, whereby a lease is granted back to the village operator in exchange for a license to occupy or sublease to the SCILU occupant. In this instance some form of documentation and/or consent from the village operator is required. In any event, most acquisitions occur at a discount when compared to the market value for similar accommodation in a more traditional non-RV environment. In exchange for the discounted price the residents agree to pay an exit fee, also known as a Deferred Management Fee (DMF), to the village operator when they leave the village for whatever reason. The DMF may be calculated either as a percentage-of-entry fee or the achieved resale figure.

Residents also may be able to participate in any capital gain or losses that have accumulated during their residence upon 'sale' to a new resident, as well being liable to pay other approved fees and charges (McMullen and Day 2007 as cited in McAuliffe 2010). Where the residents have passed on, these fees and gains/losses vest in their estate. Professional experience shows that it is only during the administration of the deceased estate of the last surviving parent that many adult children realise their parents did not *own* their SCILU.

RECENT LEGISLATIVE REVIEWS

Across Australia the RV industry has been subject to several governmental reviews in the last three years. A consistent theme resulting from those reviews is that, irrespective of legislated disclosure requirements RV contracts need to be more user friendly. (WA, 2010; CVA, 2011; NSW, 2012; Qld 2011) As submitters to the various reviews identified, some of these issues could be resolved through the adoption of standard form contracts. Although other sectors of the property market, such as commercial leasing, are without standard form contracts the distinction between this sector and the RV sector is significant with participants in the commercial leasing market generally possessing a superior level of business acumen and documentary literacy. There is a significant gap between the level of documentation presented to prospective RV residents and the low level of documentary literacy of the average Australian. (ABS, 2006)

Compulsory disclosure requirements

Compulsory pre-disclosure requirements in each Australian jurisdiction do not lessen the complexity of the documentation. Professional practice and judicial observation (*Williams' Case*) shows these requirements merely provide additional paperwork which the resident is required to understand. Keogh (2002) noted that the nature of contracts between residents and operators/owners accounted for between 80 and 90% of all matters litigated in the RV sector. It is therefore interesting to note that as a result of the Western Australian review in late 2010 the WA government did not take the opportunity to mandate for standardisation of RV documents. It opted instead to introduce a two-stage disclosure process (one for those who merely expressed an interest in the RV and the other for those serious about becoming a resident) (WA, 2010, p. 14) and to encourage industry "*to develop more comprehensible and readily comparable contracts*". (WA, 2010, p. 25)

Standardised contracts

Although Sec. 67 of the ACT Act enables a standard form contract to be prescribed by regulation, no regulations as yet exist. Previously Consumer Affairs Victoria, noting – "*prescribed contracts would be too complicated and could restrict the market*", elected not to consider the adoption of standardised contracts as part of its review. (CAV, 2011, p.15) The South Australian review also does not consider the possible standardisation of

contracts, its issues for review being restricted to matters relevant to vacation of units, certain specific management practices, offences and tribunal jurisdiction and auditing standards. (SA, 2011) The Australian Capital Territory's specific RV legislation, which is yet to be enacted, also does not mandate standard conditions prescribing instead only the minimum requirements for RV contracts. (*The Retirement Villages Bill 2011* (ACT) Sec. 19(1))

Tasmania only introduced its current legislation in 2005. This is similar to the other States/Territories in that while it prescribes the matters that must be addressed in a RV contract (such as type of occupation, ingoing contribution, fees and charges and termination) (Sec. 6(1) Tas, 2005) and states that "*residence contract should, so far as is reasonably practicable, be expressed plainly*" (Sch. 1, Tas 2005) it does not mandate the adoption of a standard form contract.

In Queensland the Transport, Housing and Local Government Committee is currently undertaking a review of the *Retirement Villages Act 1992*. The responsible committee is scheduled to report the findings of their review on 30 November 2012. The review commissioned by the former Bligh government, which called for submissions in August 2011 (DOJ, 2011), has not produced a report and now appears to be subsumed by the current review. It appears that the Queensland review was not focussed on issues of standardisation of contracts but rather was concerned with issues arising on the deregistration and closure of a RV. Pre-disclosure as an issue was raised but done in the context of raising awareness of residents' rights, obligations and responsibilities and how this may improve their understanding of matters related to a RV closure.

In late March 2012 the NSW Office of Fair Trading ('NSW OFT') commenced a targeted and specific review of RV contracts when it released a standard form contract for public consultation. (NSW Gov, 2012) The outcome of this review by way of amending legislation was not available at the time of submission of this paper. Consultation for this review was specifically targeted to considering and addressing issues relevant to the standardisation of RV contracts and proposed a model contract. (NSW Contract, 2012) A noticeable step forward is the proposed prescribed cover pages, which in five pages specifies the key elements of the contract including financial matters, fees and charges. Most importantly, the NSW Contract details on the front page the tenure interest relevant to the SCILU and whether this is registered in the Titles Office.

While additional terms will be permitted, proposed amendments to the NSW RV law will stipulate these must not conflict with the NSW Contract. Further, the NSW Contract itself, including the first five pages, is only 14 pages long and, in comparison with existing PDSs and contracts, appears to be a straight forward and written in plain English. As the consultation only closed on 18 May 2012 the consultation report, and final version of the NSW Contract, is not yet available. However, anticipating that the final version will not differ greatly from the draft, it is safe to say that NSW is taking the lead in Australia in its regulation of RVs, and protection and promotion of consumer rights.

CURRENT RV TENURE MODELS

Although subject to jurisdiction specific laws, throughout Australia the primary tenure types for SCILUs are generally leasehold, freehold, loan/licences and rentals. While this section refers to Queensland legislation to describe the land tenure types that may be applicable to

SCILU development, all other States and Territories have similar legislative provisions. Any significant variations to the Queensland position have been highlight.

Freehold

Freehold interests in SCILUs are established under strata titling legislation; in Queensland this is the *Body Corporate and Community Management Act 1997* (Qld) ('BCCM'). Under the BCCM separate titles are issued for each SCILU. Residents have indefeasible title upon registration of their transfer. (Section 184) Craddock and Blake (2010) note that indefeasibility offers protection by way of a State guarantee of title backed by a State compensation system. This system will, in specified circumstances provide compensation to parties deprived of their interest in land which would include interest in a SCILU (Part 8, Div. 2, Subdivision C, *Land Titles Act 1994*). The essence of the State guarantee of title is not that the rightful owner of land who is wrongfully deprived of it will have it returned, but that they will be monetarily compensated for their loss. Although the benefits of security of title are evident, McGovern and Baltins (2002) note that it is not without cost. That is that the freehold resident will be responsible for payment of the statutory and utility charges and the purchase transaction will attract State stamp duties and transfer fees.

A pure freehold RV, however, is rare. Even when the SCILU is freehold tenure, the RV usually is operated on the basis that as condition of the purchase the resident must lease the SCILU to the RV which then sub-leases it back to the resident. It is envisaged that this sublease arrangement may be useful for asset protection in later marriages. The sub-lease may be to both partners while the freehold is held only by the original purchaser and, while permitting the survivor to remain in their home for the rest of their life (or as long as they otherwise choose to remain there) ultimately becomes the property of their estate with distribution as per their will after the death of both. It is suggested, however, this can be confusing as the sub-lease can impose conditions more commonly found in RVs but not in strata title complexes but the RV is marketed on a 'freehold' basis. Further confusion can arise in respect of the retirement-style villages.

Leasehold

Under this arrangement the resident is granted a long-term lease (i.e. for 99 years) following the payment of a lump sum payment (lease fee) that is the equivalent of the market value of the SCILU. In all other respects this scheme is similar to the loan/license arrangement in that upon exit, or re-sale, the RV operator (the lessor) pays the resident (the lessee) for the balance of their leasehold interest. This payment however is generally offset by a DMF. In addition the resident may share in any capital gains, or losses. In contrast to the loan/license agreement, payment to the outgoing resident usually is dependent upon and subject to receipt of monies from the incoming resident. McGovern and Baltins (2002) comment that registration of the lease with the State Land Titles Office does offer the resident an additional level of security in addition to that which is provided in the Act. In Queensland, and similarly throughout Australia, registration of the lease in the Titles Office would offer the resident the security of indefeasibility of their leasehold title upon registration. (Section 184, LTA).

Loan and/or licenses

Under this arrangement the residents make a payment to the RV operator in the form of an interest-free loan when taking up residence in the SCILU. In exchange for this the RV operator grants the resident a license to occupy the unit and permission to access common facilities. The loan is repaid to the resident (or their estate) upon departure from the village on the unit being resold. The departure generally also attracts a DMF, which is offset against the repayment of the loan. There also may be an apportionment of capital gain, or alternatively a share in the capital loss to the resident. In some instances the loan is linked to a license to occupy. In others the license to occupy exists independently. This is the most common tenure structure in many states such as Queensland.

With Queensland having the largest share of the RV market, accounting for 45% of all those villages with a presence on the internet, (Craddock and Blake, 2012) the license to occupy ('LTO') model has a significant place in the RV market. In a LTO village, residents are able to occupy their SCILU upon receipt of a Certificate of Occupancy. From the resident's perspective their ingoing costs are reduced, as there is no requirement to pay transfer fees or stamp duty on the transaction because they are not in receipt of an interest in land. This is also the case with the loan arrangement, which features in NSW, Victoria and South Australian RV offerings.

While the potential cost and time savings related to the LTO tenure structure are evident for some prospective residents it is difficult to ignore the lack of security of tenure of the residents' interest. Generally a LTO would not accrue an interest in land and therefore in the case of being dispossessed of their rights there will be no rights *in rem* but only rights *in personam* accruing to the resident (Craddock and Blake, 2010). A dispossessed resident/licensee will have no right of recovery of the property but merely a right to be compensated monetarily following legal action.

Rental

In some instances residents occupy their SCILU under a rental arrangement. A rental arrangement, however, is purely a tenancy arrangement and does not give the tenant an interest in the land as would be the case in a leasehold offering. This occurs when, for example, the residents become tenants under the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld). However, very few RVs operate on a purely rental basis and many do not provide rental accommodation at all. As such rental accommodation of SCILUs has not been considered for the purposes of this article.

The variety of tenure offerings for RV occupation may confuse consumers, which may partly explain the low adoption rate in comparison to international models. According to ABS only 2.7% of people aged 65 years or over live in RVs compared to 6-7% in the United States. (ABS 1996 as cited in Stimson 2004) Although this participation level in RVs has increased it has not done so proportionally to the ageing population. Of the models identified, the leasehold structure is still under relatively high usage in Queensland at 17.87% and is the most common tenure structure in New South Wales (46.21%) (Craddock and Blake, 2012)

Newell and Peng (2006) noted that in 2006 there was an increased level of institutional investment in the RV sector. They identified that 12 property funds included retirement

facilities as part of their portfolio. These accounted for 99% of all RVs with a total value of \$528 million. While the composition of investments may have changed significantly in the last few years, the fundamentals of this sector, particularly with respect to population growth, would suggest that the RV sector will continue to grow in the future.

One of the primary sources of litigation in the RV sector occurs as a result of the contracts signed by residents when they enter into self-care accommodation. Disputes also occur in respect of SCILUs. While litigation more recently is in respect of village operation, (*Filmer v Carlyle*, [2001]) disputes also occur in relation to issues arising from the financial arrangements residents entered into when joining the village and the imposition of DMFs when they seek to leave. Keogh (2002) notes that some of the major points of legal conflict arise from the wide variety of contract and tenure structures, or alleged unconscionable conduct on the part of the owners and developers of villages.

Choice of tenure structures

Although not finding empirical evidence to confirm why the specific tenure structures are used, it is likely that the frequency of use of the leasehold and licence to occupy models may be due to the fact that the RV operator retains the ownership of the land. This provides the operator with long-term flexibility to re-develop if, at a future point in time, a RV is no longer be considered the highest and best use of the site. This structure also may enable streamlining of the development process due to the fact that separate titles do not need to be issued over each SCILU. Further, any minor future alterations to services do not require body corporate approval as would be deemed necessary by the BCCM in a freehold context.

By contrast with a LTO or rental SCILU, the tenure structures offered by leasehold and freehold interests are capable of registration in the States' Land Register with freehold tenure accruing the highest possible bundle of rights available under the land tenure system in Australia. However, the disadvantage of these structures is that transfer fees or stamp duty will be payable by the resident albeit that the stamp duty on a lease generally is less than for a transfer of freehold. Further, residents with a freehold interest in land will be liable for all the costs of local government fees and charges and utility charges which are likely to be exempt from LTOs. While, the personal rights associated with the LTO are not protected by the indefeasibility of title, as they offer no registrable interest in land, the resident is not without protection. The resident has rights both by virtue of the common law in contract and more importantly, as with all RVs, through the relevant RV law.

This area of land tenure is complex and may be a source of confusion to potential residents. This situation is exacerbated by the lack of clarity of publicly available information concerning the transaction structure and specifically regarding the tenure arrangements. Despite the legislative requirement for a public information document to be given to all prospective residents prior to entry into a residence contract (Section 84 of the Act), and the fact this document must include information regarding any statutory charges or securities applicable to the RV land (Sections 74 and 80 of the Act), the information is generally not easily available in the public domain or easily understood.

'Tenure also can have a significant impact upon tenants' rights if a RV closes (DOJ, 2011) as licences to occupy and leasehold interests attract lesser protection than freehold tenures. The newly enacted changes to the Queensland RV legislation (CPA, 2011, Section 242) although making future calculations of exit fees fairer, does not assist in making available information any clearer. Despite recognition of the impact of tenure, the current scrutiny

does not extend to an examination of tenure types per se nor their impact upon desirability. (DOJ, 2011)

Interestingly, of the disputes that have proceeded to court, most do not involve tenure arrangements, or what residents thought the tenure arrangement was to be. Disputes generally are more focused on the calculation and application of DMFs or exit fees; (*Taylor v Mistern*, [2001]) the calculation of market value of SCILU for the purposes of calculating capital gains or losses or in respect of approved, or not approved, pets.

Deferred management fees

Generally freehold tenure will not have DMFs as this is not generally applicable to freehold title. Although disclosure of all chargeable fees, including DMFs, is a general requirement of each States/Territory's legislation, 63% of villages nationally have no information publically available via their internet site as to the applicability or quantum of DMFs. This appears to be most acute in states/territories such as ACT, NT and WA where not a single village proprietor had any publicly available information pertaining to DMFs on their village internet site. (Craddock and Blake, 2012) The DMF contributions have been found to range from 20 to 40% over any period from 5 to 10 years (McMullen & Day 2007 and Gelbert & Harris 2008 as cited in McAuliffe 2010) to a period of up to 12 years (Craddock and Blake, 2012). Although DMFs may be calculated as a percentage of the original purchase price it is more common that DMFs are calculated as a percentage of the resale figure. Without an industry standard in terms of industry offerings, this may create a level of confusion amongst prospective residents.

Rightly or wrongly the calculation of exit entitlement is one of the primary sources of disputes within the RV sector. The exit entitlement generally includes the ingoing contribution less any deferred management fees or exit fees and any other applicable fees such as reinstatement fees. This figure is then adjusted against the resident's portion of the capital growth or loss of the dwelling. It seems that disputes may arise from a lack of understanding of the intricacies of the residence agreement with respect to calculation of the fees.

The variations across villages and operators and the likely capability of many of the residents to interpret these variations may lead to confusion about the product that is actually being purchased. One such example is the Queensland decision in *William's Case*. The Court held that Mr Williams was not entitled to a portion of the appreciation of his leased unit when the subsequent lessee paid a considerably increased in-going contribution. The disturbing element of *William's Case* was the misinterpretation of the situation by Mr Williams when the residence agreement was silent on the issue of allocation of capital growth.

It is clear that the current legislative approach to disclosure currently applying throughout Australia does not aid in consumer understanding of the intricacies of RV tenure. Nor does it enable a better understanding by consumers as to the differences between RV tenure and 'traditional' home ownership. In our consumer aware society it is time this changed.

CONCLUSION

Not every retiree who wishes to move to a RV is able to do so. The effects of the GFC and the ongoing down turn in the property market; coupled with anticipated reduced

retirement income (ABS 2009) may make relocation impossible. However, the GFC is but part of the problem facing the industry. The peculiarities of RV tenure (Craddock and Blake, 2012) combine with potential negative publicity from disputes regarding RV operations and complicated documentation to complete the triad of issues facing RV operators in the marketing of their villages.

Addressing issues relevant to the RV sector at a national level remains some way off. The current federal government's proposal to increase consumer awareness regarding aged care issues by, *inter alia*, the development a national assessment framework and *My Aged Care* website – envisaged to provide easy access to quality indicators for age care services (Australian Government, Budget Paper No. 1) – may go some way to addressing certain consumer protection/awareness issues faced by older Australians as it will enable access to relevant information via the internet and so may assist prospective residents in understanding the available products and offerings. (Craddock and Blake, 2012) However, this will not address the issues raised by the authors in this paper. Aged care is not the same as RV living and in any event the steps proposed are not a substitute for a national scheme and legislation and user-friendly non-legal-speak documentation.

With an ageing population, appropriately addressing consumer protection issues is a priority. However, addressing issues arising from jurisdictional differences is not the exclusive focus of residents. Most RV operators own villages in more than one jurisdiction and, similar to complaints regarding jurisdictional idiosyncrasies in respect of retail shop leasing, are required to maintain a bank of different State/Territory RV documents and educate staff accordingly. For the benefit of all parties, now is the time to look to both simplify and standardise RV documents, and to introduce a national RV legislation scheme.

The NSW proposal if implemented is a step in the right direction although issues may still arise considering existing tenure documents will continue to operate as will the legislation that was current at the time those documents were entered into. These existing RV residents may still need specialist advice should any dispute arise in respect of their tenure. However, moving forward, it should be easier for prospective RV tenants in NSW to understand what occupying their 'home' will entail before they make their choice, and for NSW RV operators to have the comfort of that knowledge. Adoption of these measures Australia-wide would see a significant improvement to consumer protection for residents as well as provide operational certainty for RV operators.

Valuing either the retirement village operator's or residents' interest in a retirement village is complex due to the myriad of potential retirement village offerings with respect to tenure types, deferred management fees and apportionment of capital gains or losses. In the absence of standardised retirement village offerings, valuers need to be alert to the differences in individual villages and the variability of cash flow that this creates. For valuers working in the retirement village sector, pending finalisation of current reviews, there will be the need to be aware of transitional matters for some time to come. Although these reviews are designed to simplify matters for residents, they are likely to make the valuer's job even more complex.

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