



Retirement Villages: Contract and Information Disclosure Options

**To: Policy & Legislation Branch, Consumer
Affairs Victoria**

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Introduction

Consumer Affairs Victoria (CAV) has released a discussion paper on options to improve retirement village contracts and information disclosure. Relevant legislation includes the *Retirement Villages Act 1986* (Vic) (the Act), Retirement Villages (Records & Notices) Regulations 2005 (Regulations), Retirement Villages (Contractual Arrangements) Regulations 2006 and *Owners Corporation Act 2006* (Vic).

The Law Institute of Victoria (LIV) welcomes the opportunity to provide feedback on the issues canvassed in the discussion paper, and has addressed below each of the questions in the discussion paper.

General Comments

The LIV makes the following general submissions, which should underpin the disclosure requirements for retirement villages in Victoria:

1. Give a prospective resident the information usually disclosed to a purchaser.

A prospective resident should receive the same sort of information that a prospective purchaser of real estate in Victoria would receive under a vendor's statement required under s32 of the *Sale of Land Act 1962* (Vic). For example, a prospective resident should be told:

- the total of the current outgoings and how those outgoings are made up;
- whether there are any known major expenses for, or changes to, the village in contemplation; and
- whether any building approvals and/or building warranty insurance have been granted in the past seven years and if so whether an occupancy permit has also been granted.

If the retirement village is a strata-titled village, most of this information will be contained in the vendor's statement. A disclosure statement should be designed to avoid duplication of this information.

2. Confine disclosure to information not publicly available.

Apart from the information set out in 1 above, the information required to be given in a disclosure statement should be confined to information solely within the knowledge of the owner/operator of the village and which cannot be discovered by public searches. Such information would include, for example, the method of calculation of any exit fee, but would not include the location of the nearest public transport.

3. Confine disclosure to information that is common across the retirement village or sections of it.

A disclosure statement should, as far as possible, include only information that is generic to the retirement village. A disclosure statement should not need to be customised to and separately created for each prospective resident.

4. Require only one pre-contract disclosure statement.

There should not be two different disclosure statements to be given at different stages. We note that the NSW two-staged system is not yet in operation and we understand that lawyers practising in the retirement villages industry in NSW believe that it will cause greater confusion than it remedies.

5. Keep disclosure short.

The required disclosure statement should be kept as short as possible, preferably not more than 3-4 pages. If it is too long, it will fail to achieve the Victorian's government's objective to actively promote better understanding of retirement village residents' rights and obligations, because residents will find it too difficult to absorb all the information contained in the disclosure statement.

6. Allow public access to the information provided by operators under reg 9 of the Regulations.

The industry is currently required to provide information to CAV which covers much of the information listed in the discussion paper. This information could be made available on the CAV website. The provision of information in this way would provide easy and substantial early disclosure to prospective residents, and would not impose any further obligation on retirement village operators than is imposed at present.

The LIV also wishes to comment on the unfair contract terms provisions under the *Competition and Consumer Act 2010* (Cth) (the Australian Consumer Law) which commenced on 1 January 2011. Feedback from LIV members indicates that a number of retirement village operators have reviewed their standard contracts with a view to complying with the Australian Consumer Law. While the discussion paper does not discuss the application of the Australian Consumer Law to retirement village contracts, the LIV proposes that CAV consider its application when determining prescribed matters and terms to be included in or excluded from retirement village contracts.

Chapter 2 – Existing Framework

1. Does existing legislation sufficiently enable residents to compare villages and to understand their rights and obligations? If so, why; if not, why not?

The LIV submits that current legislation makes it difficult for prospective residents to access important information.

The structures of retirement villages and retirement village contracts are often complicated and vary between villages. The mandatory information that must currently be provided to prospective residents does not enable them to readily and easily compare information about villages and to understand their potential rights and obligations.

2. Could residents obtain the information they need if there were no regulation but Consumer Affairs Victoria continued to provide the above information? If so, how; if not, why not?

The information currently provided by CAV enables prospective residents to access general information about retirement villages. The LIV proposes that, in addition to this general information, CAV should publish on its website more information about specific retirement villages, to enable prospective residents to make preliminary and basic comparisons. We note that CAV currently collects a range of information from retirement village managers. Under s38L of the Act and the Regulations, managers are already required to provide certain information to CAV when a village is established and to notify CAV of any changes to particulars within 14 days. This information could be made publicly available on the CAV website. We refer to the table in Appendix A, which sets out those matters that should be published on CAV's website, which retirement village managers are already required to provide to CAV.

While access to more information from CAV would be helpful as a starting point, the LIV considers that further regulation of disclosure is necessary to protect prospective residents, who are often more vulnerable consumers, and to ensure that they can make informed decisions about their future living arrangements. The LIV submits that increased mandatory disclosure should be part of the regulatory framework to ensure that prospective residents have access to information regarding particular retirement villages. Regulation is also necessary to establish legally enforceable rights and remedies which protect prospective residents.

3. Could residents obtain the information they need under voluntary industry codes of conduct, with Consumer Affairs Victoria continuing to provide the above information? Why, or why not?

The LIV does not consider that the introduction of voluntary codes of conduct would be sufficient to ensure that prospective residents are able to access important information and make informed decisions about retirement village living.

The LIV is particularly concerned that not all retirement village operators are members of the Retirement Villages Association, which might mean that those operators do not agree to comply with the code of conduct.

Further, the LIV observes that any potential penalties resulting from an operator's failure to comply with a voluntary code of conduct might be insufficient to discourage operators from breaching the code.

The LIV therefore reiterates that regulation is necessary to ensure that prospective residents are able to access information to make informed decisions. The LIV refers to its comments at question 2 in this regard.

Chapter 3 – Staged disclosure of information and documents

4. Would staged disclosure better assist prospective residents to:

a) compare villages and village contracts

b) make an informed decision about a particular retirement village unit?

Why, or why not?

The LIV notes that staged disclosure would impose an obligation on retirement village operators and managers to maintain multiple sets of information to satisfy staged disclosure requirements. Each disclosure statement would need to be regularly updated, so that staged disclosure would impose significant additional administrative burdens on operators and managers to ensure that information is correct at the time it is provided. The LIV is concerned that such an approach may actually result in confusion for prospective residents rather than providing any benefits.

The LIV therefore does not support mandatory staged disclosure, and proposes instead the publication of information about retirement villages on the CAV website (as provided to CAV by retirement village managers under s38L of the Act and discussed above under question 2), and revision of the pre-contract disclosure statement currently required under s19 of the Act and reg 9 of the Regulations. Regarding items to be included in a revised pre-contract disclosure statement, the LIV refers you to the table in Appendix A.

The administration of this would be a matter for CAV. The information which is to be notified to CAV under the Regulations could be provided to CAV via the CAV website (as occurs with notifications to several government authorities), thereby avoiding double handling by CAV of the information. The inputted information would serve both as a representation to the resident and would fulfil the reporting requirements to CAV. It is anticipated that CAV would explain on the website that the information has been directly inputted by the operator and has not been reviewed by CAV.

As this information is currently required to be provided by operators there would be no burden placed on industry in the provision of this information, but the information is likely to be of assistance to residents.

The LIV also proposes that the first page of the disclosure statement should comprise a summary of items canvassed in the statement. While there would be no obligation to provide the first page to a resident, it is anticipated that in a commercial setting, this single page would be made available to all residents in the initial enquiry stage. It is also possible that provision of the first page upon request could be supported by the Retirement Villages Association by making it a requirement of accreditation. The LIV would welcome further consultation on the content and proposed wording of the disclosure statement and any summary page.

5. Is any item not useful in deciding to choose a particular retirement village or not cost-effective to disclose? Why?

Refer to Appendix A.

6. What else would be useful and cost-effective to disclose? Why?

Refer to Appendix A.

7. Is any document in this list not useful in deciding to choose a particular retirement village or not cost-effective to provide. Why?

Refer to Appendix B.

8. Are there other documents that would be useful and cost-effective to provide? Why?

Refer to Appendix B.

9. What method of disclosure would be the most cost-effective:

(a) copies as a matter of course

(b) available for inspection with copies on request, with an obligation on the manager to advise the prospective resident of their right

(c) available for inspection, with an obligation on the manager to advise the prospective resident of their right?

The LIV considers that a concise disclosure statement with limited attachments as a matter of course is desirable to ensure that prospective residents are able to readily access important information. The LIV is concerned that the provision of multiple documents as a matter of course may be costly and might add to consumer confusion. For this reason, the LIV proposes that the disclosure document should have limited attachments and should indicate which additional documents are available on request. Appendix B outlines which documents should, in our view, be attached to the disclosure statement and which documents should be available for inspection, with copies on request.

10. Should the village manager be allowed to make a reasonable charge for providing copies of documents to prospective residents? Why, or why not?

The LIV submits that the disclosure statement and attachments should be provided free of charge to prospective residents, however, where a prospective resident requests copies of additional documents, the village manager should be allowed to impose a reasonable charge.

Chapter 4 – Pre-contract disclosure of information and documents

- 11. Is any item in this list not useful in deciding to enter into a retirement village contract or not cost-effective to disclose? Why?**

Refer to Appendix C.

- 12. What else would be useful and cost-effective to disclose? Why?**

Refer to Appendix C.

- 13. Is any document not useful in deciding to choose a particular retirement village or not cost-effective to provide? Why?**

Refer to Appendix C.

- 14. Are there other documents that would be useful and cost-effective to provide? Why?**

Refer to Appendix C.

Chapter 5 – Retirement village contracts

- 15. Would such regulations make it easier for seniors to compare village contracts and to understand their rights and obligations before and after entering a village? Why, or why not?**

The LIV considers that regulations should prescribe matters to be excluded from and included in retirement village contracts, to achieve greater regularity between operators and to assist prospective residents to compare contracts and to identify and understand their contractual rights and obligations.

- 16. Is anything on this list not appropriate for exclusion from retirement village contracts?**

Refer to Appendix D.

- 17. Are there other appropriate matters for exclusion?**

The LIV has not had the opportunity to consider in detail other matters that may be appropriate for exclusion. There may be other matters, such as indemnity clauses (or the scope of indemnity clauses), that require further consideration. We refer you to our comments above regarding the Australian Consumer Law and its application to retirement village contracts.

18. Is any matter not appropriate for inclusion in a retirement village contract?

Refer to Appendix E.

19. Are there other appropriate matters for inclusion?

The LIV notes that the Schedule 2, Part C item 2 of the Regulations requires the inclusion of a warning that a prospective resident should take the pre-contract disclosure statement to a 'legal practitioner who understands the financial implications of retirement village contracts'. The LIV suggests that a retirement village contract should also include a notice which recommends that that the prospective resident obtains independent legal advice regarding the prospective resident's legal rights and responsibilities before entering into the contract.

Other than this matter, the LIV has not had the opportunity to consider in detail other matters that may be appropriate for inclusion.

20. Is any term not appropriate for implication into retirement village contracts?

The LIV does not support the concept of terms being implied into retirement village contracts. Instead, the LIV submits that the "implied terms" should be prescribed by regulation, including the precise wording of the terms, so that the terms must be expressly included in contracts. There will then be greater certainty and clarity regarding parties' obligations.

Therefore, the LIV's comments in the table at Appendix F specify the LIV's position as to whether the regulations should prescribe the wording of each term, for mandatory inclusion in retirement village contracts.

21. Are there other appropriate terms that should be implied?

The LIV has not had the opportunity to consider in detail other appropriate terms for implication.

22. Would a standard layout for village contracts make it easier for residents to compare contracts and understand their rights and obligations?

The LIV acknowledges that a standard layout for village contracts would make it easier for residents to compare contracts and understand their rights and obligations. However, the LIV does not consider that a standardised contract layout is ultimately viable because of the myriad of different retirement village structures that are entrenched in the current system.

23. If so, is the above an appropriate list of what it should contain?

In the event that a standard layout is to be introduced, the LIV's comments regarding the list of items identified in the consultation paper are specified in the table at Appendix G.

Chapter 6 – Condition report

24. If you were party to a dispute about who caused damage to a unit, without being able to refer to a condition report, what were the consequences?

LIV members have not reported details of any disputes. They have observed that since the resident is the party in possession of the unit, it seems unlikely that there would ever be a dispute as to who caused the damage to the unit. Once the resident takes possession of the unit, the resident is deemed to have accepted the unit in that condition. However, which party is responsible for what damage should be set out in the resident contract.

25. Is a condition report likely to reduce disputes between residents and managers and, if so, would that outcome outweigh the costs to the manager of providing the report?

The LIV notes that condition reports are useful when parties are entering into lease transactions such as residential leases. However, while a retirement village resident may occupy a unit under a lease or a licence, the resident's occupation of the unit is akin to that of 'owner'. In this context, the LIV considers that a condition report would be of limited use, as the resident has no entitlement to require that the unit be in a particular condition. Further, residents are usually required to pay for refurbishment of their unit when leaving the retirement village, the cost of which will not depend on the original condition of the unit.

The LIV therefore proposes that condition reports should not be mandatory in Victoria. It follows that any failure by the manager to provide a condition report or fully complete a condition report should not trigger any penalties.

However, the LIV accepts that some parties may find it beneficial to have access to a standard condition report, and suggests that an optional standard condition report could be made available on the CAV website.

26. Are there items in the NSW condition report that should not be included and, if so, why?

The LIV considers that the items in the NSW condition report are acceptable, with the exception of items 5 and 7 of the instructions regarding completion of the report. These items require the condition report to be provided to the resident at least 14 days before the operator and resident enter into a retirement village contract. The LIV's view is that the condition report should be completed on the day that the resident moves in and provided to the resident at the same time.

27. Are there items that are missing from the NSW report that would be cost-effective to include and, if so, why?

The LIV does not consider that any further items need to be included in the condition report.

Other Comments - penalties

The LIV is concerned about the penalties under ss19 and 20 of the Act (for failure to provide prescribed information and documents and knowingly providing false or misleading information respectively). We note that the penalty for failing to provide information is considerably greater than for providing misleading or deceptive information. The LIV considers that the existing penalties provide an incentive for owners to mislead and deceive prospective residents, rather than fail to provide information. We propose that the penalty for providing misleading or deceptive information be increased to better protect the interests of consumers.

APPENDIX A - INFORMATION DISCLOSURE (documents listed on pp8-9 of the discussion paper)

Information	STAGE ONE: CAV website	STAGE TWO: Pre-contract disclosure	Should it be included on the CAV website or pre-contract disclosure statement? Why? Why not?	Prescribed particulars of which the manager must notify CAV under the <i>Retirement Villages (Records and Notices) Regulations 2005</i>
Village Details				
Common name of the village	✓	✓	For identification purposes.	
Address of the village	✓	✓	For identification purposes.	
Number of the residential premises, and whether they are leased, licensed or strata titled.	✓	✗	The LIV observes that the number of residential premises may change over time. Under the Regulations, the manager must notify CAV whether the total number of completed units is within any of the specified ranges. LIV proposes that managers should be responsible for updating information about their village through an online system that automatically updates the CAV website.	Reg 7(a) - Total number of completed units Reg 7(b) - Total number of those units not occupied and not promised to a future resident under a residence contract
Size of the residential premises	✗	✗	The LIV acknowledges that the inclusion of the size of the premises would usefully enable prospective residents to compare the size of premises. However, the LIV notes that vendors of real estate in Victoria are not expressly required to disclose the size of the property. Although copy titles and plans are attached to vendor's statements required under s32 of the Sale of Land Act 1962 (Vic) which specify measurements, general condition 3 of the contract of sale of real estate prescribed by the Estate Agents (Contract) Regulations 2008 (Vic) provides that a purchaser may not make any claim for compensation regarding any alleged	

			<p>deficiency in the property's measurements. The LIV considers that the same approach should apply regarding retirement village units so that it is a prospective resident's responsibility to inspect the premises to ensure that the size is adequate and to conclusively determine its measurements.</p> <p>The LIV is also concerned to ensure that any obligation to disclose information is balanced against the cost on developers to customise and develop disclosure statements for each prospective resident. As specified paragraph 3 of the General Comments in the LIV's submission, the LIV considers that a disclosure statement should, as far as possible, include only information that is generic to the retirement village.</p>	
Number of units owned (including the nature of the ownership) and leased (including the length of tenure) by residents	✓	✘	<p>The LIV suggests that the CAV website publish information about the occupancy rate in the retirement village and in relation to the percentage of residents reside in the village that they own or pursuant to a long term lease, periodic tenancy, licence, rights under a unit trust or share in a company.</p> <p>It is unnecessary and potentially misleading to require retirement villages to provide information about the length of tenure of particular residents. The website should contain details of the maximum length of tenure (eg "99 years).</p>	<p>Reg 7(c) - Occupancy rate</p> <p>Reg 7(f) – <i>“Whether the respective percentages—</i> <i>(i) of residents residing in the village in a unit that they own; and</i> <i>(ii) of residents residing in the village pursuant to a long term lease; and</i> <i>(iii) of residents residing in the village pursuant to a periodic tenancy; and</i> <i>(iv) of residents residing in the village pursuant to a licence; and</i> <i>(v) of residents residing in the village pursuant to rights under a unit trust; and</i></p>

				<p>(vi) of residents residing in the village consequent upon the ownership of a share in a company are—</p> <p>(A) less than 50%; or</p> <p>(B) between 50% and 70% inclusive; or</p> <p>(C) between 71% and 85% inclusive; or</p> <p>(D) between 86% and 95% inclusive; or</p> <p>(E) greater than 95%”</p>
Nature of the ownership or length of the leases of units on offer	*	*	Inclusion of this information would impose an obligation on managers to regularly update information on availability of units. The LIV does not consider that such a burden would attract a proportionate benefit to consumers. This information should be obtained by inquiry to the manager.	
Owner and Manager Details				
Name and address of the village owner and manager		✓	For identification purposes.	
The date the manager commenced at the village		✓		
Whether there is an on-site representative of the manager		✓		
Contact details for further enquiries	✓	✓	Under s38J(2)(c) of the Act, CAV must record the postal address of the village in a register that is publicly available. In addition, this information should include a telephone number.	
Facilities, services and security	✓ (as per reg 7(d))	✓ (limited)	The LIV proposes that the disclosure statement refer only to prescribed facilities and services. The LIV suggests that prescribed services be limited to whether there is a 24 hour onsite manager and bus service. The LIV proposes that	Reg 7(d) - Number of units that are operating or intended to operate as serviced or supported residences rather than independent living units

			the information should be accurate at the date of disclosure (i.e.: not what the owner intends to build/provide).	
Details of facilities and services, including optional services and their cost and any restrictions on use	✘	✘	<p>The LIV considers that “services” can be difficult to define and will vary greatly between villages. Costs for which the resident will be liable should be disclosed as part of the financial disclosure and not separately. This will not include optional services. We note that often, optional service fees will not be within a manager’s control and may change from time to time without the manager’s knowledge. It would not be possible for a manager to ensure that a disclosure statement was current in relation to such costs.</p> <p>We note that under the Act, certain “residence documents” must be provided to residents so that the information does not need to be included in a disclosure statement. Under s19(f) of the Act, residents must be provided with all “residence documents” 21 days prior to entering a residence contract. Section 3 defines “residence documents” to include:</p> <ul style="list-style-type: none"> • a document under which a resident ... promises to pay an in-going contribution or a recurring charge for the provision of goods or services by a manager; • a list, in the prescribed form, of important information that a person should consider before deciding to become a resident in a retirement village. 	<p>Reg 11 – <i>“For the purposes of paragraph (f) of the definition of residence documents in section 3(1) of the Act, the list of information required under section 19 of the Act must be in the form of the list set out in Part C of Schedule 2”.</i></p> <p>Schedule 2, Part C contains a list of important information and warnings that must be provided to prospective residents. Item 3(b) of the list provides:</p> <p><i>“Regarding life at the village itself, you should find out whether the facilities at the village meet your present needs and whether they will meet what you expect will be your future needs.”</i></p>
Whether the manager is an approved community care	✘	✘	The manager should not have to disclose information beyond its knowledge, such as other	

provider and, if not, the names and locations of local providers			providers, which can change and would be difficult to keep up to date.	
Whether there is a residential care facility and, if so, the eligibility criteria and, if not, the location of the nearest facility.	✓	✗	The Regulations currently provide that managers must notify CAV if the retirement village is co-located with a residential care facility.	Reg 7(e) – “ <i>Whether the retirement village is co-located with a residential care facility</i> ”
The nearest public hospital, shopping centre and public transport stop.	✗	✗	The manager should not have to disclose information beyond its knowledge, such as other providers, which can change and would be difficult to keep up to date. Potential residents should undertake their own research in the same way as if they were purchasing or renting residential property.	
Details of security screen doors, window locks and emergency systems.	✗	✗	The LIV considers that this information is readily obtained through an inspection of the property.	
Details of disabled access to units and facilities	✗	✗	The LIV considers that this information is readily obtained through an inspection of the property.	
Restrictions				
Rights of the manager to terminate occupancy	✓	✗	<p>The rights of a manager to terminate occupancy are governed by s16 of the Act. The disclosure statement could include a warning that the manager may have a right to terminate occupancy under s16 of the Act and that potential residents should refer to information provided on the CAV website and should be encouraged to seek advice from a lawyer.</p> <p>Further, we note that under s19(f) of the Act, potential residents must be provided with a list of important information that a person should consider before deciding to become a resident in a retirement village (including, a warning to find</p>	<p>Schedule 2, Part C contains a list of important information and warnings that must be provided to prospective residents. Item 8 of the list provides:</p> <p><i>“Find out whether the owner can terminate your occupancy at any time, and if so, under what circumstances.”</i></p>

			out whether the owner can terminate your occupancy at any time, and if so, under what circumstances).	
Restrictions on the use of units	*	✓ (limited to warning)	<p>The LIV proposes this information not be included in the disclosure statement, and observes that this information is available in the contract. The disclosure statement could indicate if there are any restrictions on use and if so, that potential residents should refer to the contract.</p> <p>However, restrictions on pets, visitors and car parking should be included in the disclosure statement. Please see our comments below.</p>	<p>Schedule 2, Part C contains a list of important information and warnings that must be provided to prospective residents. Item 4(e) of the list provides:</p> <p><i>“You should also enquire about the restrictions (if any) on your use of your unit and of the village facilities generally.”</i></p>
Restrictions on the transfer of the unit to another person	*	✓	This is important information for potential residents.	<p>Schedule 2, Part C contains a list of important information and warnings that must be provided to prospective residents. Item 4(d) of the list provides:</p> <p><i>“You should also enquire about what restrictions exist on the persons to whom you may sell your unit.”</i></p>
Restrictions on pets, visitors and car parking	*	✓	This is important information for potential residents.	<p>Schedule 2, Part C contains a list of important information and warnings that must be provided to prospective residents. Item 4(a) of the list provides:</p> <p><i>“You should also enquire about pets, visitors, car parking and public transport;”</i></p>
Right of the manager to relocate residents without	*	✓	This is important information for potential residents.	Schedule 2, Part C contains a list of important information and

their consent				warnings that must be provided to prospective residents. Item 3(e) of the list provides: <i>“Regarding life at the village itself, you should find out whether you can be moved from the village or within the village without your consent, and if so, under what circumstances.”</i>
Restrictions on the resident’s ability to remove their fixtures during residency and on departure.	x	✓	This is important information for potential residents.	
Financial				
The range of unit purchase prices or in-going contributions in the past financial year	x	x	The LIV does not consider that this information is necessary. Price will be determined by market factors and is often negotiable and dependent on additional works/ requests by the resident relating to fit out.	
The amount of any in-going contribution payable and whether it is refundable or not, including whether interest is payable	x	✓	We understand that calculating financial obligations is often confusing for potential residents, making it difficult to compare between villages. It is important that financial information is easily comparable and villages should be required to disclose all fees and contributions under a consistent pricing framework. Note that the LIV is proposing one pre-contractual disclosure statement and not staged disclosure as proposed in the discussion paper. Please refer to our comments below in relation to entry costs.	
The amount of any departure fee, or how it would be	x	✓	Note that the LIV is proposing one pre-contractual disclosure statement and not staged	

calculated			disclosure as proposed in the discussion paper. See comments below regarding exit costs.	
The amount or method of calculating any refund of the in-going contribution, and when it will be paid	x	✓	Note that the LIV is proposing one pre-contractual disclosure statement and not staged disclosure as proposed in the discussion paper. See comments below regarding exit costs.	
How capital gain or loss will be shared	x	✓	Note that the LIV is proposing one pre-contractual disclosure statement and not staged disclosure as proposed in the discussion paper. See comment below regarding refunds of ingoing contributions.	
The range of recurrent charges and how often they are due	x	✓	Note that the LIV is proposing one pre-contractual disclosure statement and not staged disclosure as proposed in the discussion paper. See comment below regarding ongoing costs.	
Owners corporation fees	x	✓	The LIV observes that owners corporation fees may or may not be included as a recurrent charge. The LIV proposes that the disclosure statement should inform as to whether or not the owners corporation fees are included in the recurrent charge. See further comments below regarding ongoing costs.	
Who is responsible for different types of insurance	x	✓		
Who is responsible for the cost of refurbishment or reinstatement of units	x	✓	Note that the LIV is proposing one pre-contractual disclosure statement and not staged disclosure as proposed in the discussion paper. See comment below regarding exit costs.	
For any capital works, capital replacement or maintenance fund (other than under the <i>Owners Corporation Act 2006</i>), details of: <ul style="list-style-type: none"> o its income sources 	x	✓		

<ul style="list-style-type: none"> ○ who determines payments from the fund and on what basis ○ any property owned by the village owner or manager on which the fund can be spent 				
Details of any negative statement by the auditor during the latest year	✘	✘	<p>The LIV considers that it is difficult to define a “negative” statement and queries the value of this information for potential residents.</p> <p>See below our comments regarding financial statements. The LIV considers that these statements should be made available on request.</p>	
Planning and Development				
Details of planning permissions for further development of the village	✘	✓ (limited)	<p>The LIV supports the inclusion of information pertaining to planning permits, but proposes that it be limited to the following details:</p> <ul style="list-style-type: none"> a) Whether or not a planning permit exists b) The number of the relevant permit c) The works the permit allows 	
Whether final occupation certificates have been issued	✘	✓	Whether a final occupation certificate has been issued should relate to a particular unit. The LIV proposes that a statement be included in the disclosure statement that if there is currently no occupation certificate, this must be obtained before they occupy the unit.	
Residents’ rights				
Details of any residents’ committee	✓ (limited)	✘	The LIV suggests that information about residents committees should be limited to an indication as to whether such a committee exists or is intended to exist in the future. The website could also indicate if a residents’ committee	<p>Reg 7(i) – “<i>whether the retirement village has a residents committee</i>”</p> <p>Reg 7(j) – “<i>if the retirement village has a residents committee,</i></p>

			exists, the frequency of meetings in the most recent financial year (in line with reg 7(j)).	<p><i>whether, in the most recent financial year, the manager (or an agent of the manager) held meetings with representatives of the committee—</i></p> <p><i>(i) frequently; or</i></p> <p><i>(ii) infrequently; or</i></p> <p><i>(iii) never”</i></p> <p>Reg 7(k) – <i>“if the retirement village has a residents committee, whether, in the most recent financial year, the manager (or an agent of the manager) corresponded with the committee—</i></p> <p><i>(i) frequently; or</i></p> <p><i>(ii) infrequently; or</i></p> <p><i>(iii) never”</i></p>
Details of any right of residents to determine the design, construction and furnishing of incomplete units	*	*	Whether a potential resident has the right to determine the design, construction and furnishing of incomplete units is usually negotiated as a special condition to a contract and will be specific to the agreement made (and not a general right). The LIV considers that the list provided to potential residents in Schedule 2 to the Regulations is sufficient to inform potential residents that they should make inquiries.	<p>Schedule 2, Part C contains a list of important information and warnings that must be provided to prospective residents. Item 3(c) of the list provides:</p> <p><i>“Regarding life at the village itself, you should find out whether you have any say in the design, construction and furnishing of your unit if construction is not yet complete.”</i></p>
Details of dispute resolution mechanisms	*	* (but should be attached)	Under s38G of the Act, managers must ensure that residents are informed about complaints and dispute mechanisms and must ensure that copies of documents required under ss 38E and	Schedule 2, Part C contains a list of important information and warnings that must be provided to prospective residents. Item 4(c) of

			38F are readily available on request. The LIV proposes that the disclosure statement alert consumers to this documentation, which could be attached to the disclosure statement or made available on request.	the list provides: <i>“You should also enquire about what system the village has for resolving disputes.”</i>
Whether pensioner rebates are claimed by the manager on residents’ behalf and how they are dealt with.	*	✓	The LIV proposes that the disclosure statement indicate how pensioner rebates are dealt with and whether the benefit of the rebate is attributed to the resident or to the village generally. The LIV also considers that this matter is more appropriately categorised under <i>‘Financial’</i> .	Schedule 2, Part C contains a list of important information and warnings that must be provided to prospective residents. Item 9 of the list provides: <i>“If pensioner rebates are to be claimed by the owner or manager on your behalf, find out whether you will receive all the benefits of the rebates.”</i>

APPENDIX B - DOCUMENT DISCLOSURE (documents listed on pp10-11 of the discussion paper)

Physical Details				
The village site plan	x	✓	The LIV supports the inclusion of a general site plan attached to the disclosure statement, but submits that surveyed /dimensioned plans should not be because of the cost burden this would create.	
Plans showing the location, floor plan and significant dimensions of residential premises available in the village	x	✓ (new villages only)	The LIV observes that a number of older premises will not have floor-plans readily available, and that obtaining them could be cost prohibitive. In these cases, an inspection of the property provides comparable benefit to the consumer at no cost to the owner. However, where the premises are yet to be built, it is likely a floor plan will be available. Since consumers are not able to inspect unbuilt properties, consumers should be entitled to a copy of the floor plan. The LIV thus proposes that off-the-plan village developers should be obliged to provide floor plans to potential residents.	
Organisational details				
If the retirement village is subject to a company title scheme, the company's: <ul style="list-style-type: none"> o constitution o replaceable rules set out in the <i>Corporations Act 2001</i> (Commonwealth) 	x	On request	These documents should be available on request for copying. The disclosure statement should contain a warning box indicating which documents are available on request.	
If the retirement village has an owners corporation: <ul style="list-style-type: none"> o the owners 	x	✓ (in s32 Vendor Statement)	We note that owners corporation matters will be relevant only to retirement village units sold on freehold or strata title and that for sale of these	Reg 7(l) – “ <i>whether the retirement village has a body corporate</i> ”

<ul style="list-style-type: none"> o corporation rules o any management agreement relating to the village, to which the relevant owners corporation is a party 			<p>units, s32(3A) of the <i>Sale of Land Act 1962 (Vic)</i> requires certain documents to be included in the vendor's statement which must be provided to purchasers.</p> <p>We note that reg 7(l) of the Regulations requires managers to notify CAV if the retirement village has a body corporate. This should be amended to refer to owners corporation.</p>	
Financial				
<p>The statements required to be prepared under the Act¹ for:</p> <ul style="list-style-type: none"> o each of the past three financial years of the village o the current financial year of the village o the next financial year of the village (if available) 	*	On request	<p>The LIV considers that a concise disclosure statement is necessary in order to ensure that consumers are able to readily access important information. The LIV is concerned that the inclusion of these documents would complicate the experience for a consumer. For this reason, the LIV proposes that the disclosure document should merely indicate that these documents are available on request.</p>	
<p>If the retirement village has a capital works, capital replacement or maintenance fund, statements of the balances at the end of:</p> <ul style="list-style-type: none"> o each of the last three financial years of the village o the most recent 	*	*	<p>This information will be available in the financial statement.</p>	

¹ Section 34 of the Act requires: the village manager to prepare an annual statement of actual income and expenditure on the provision of goods and services for the village; anticipated expenditure on goods and services; any provision for extraordinary or major works; proposed increases in maintenance charges; and proposed special levies; and the village owner to prepare an annual statement of the status of refundable in-going contributions and of any matter likely to affect the owner's solvency.

quarter				
The trust deed for any trust fund into which money paid by the residents is deposited	*	On request		
Contracts				
Examples of all village contracts that an incoming resident may have to enter into	*	*	This will not be necessary under the LIV's proposal because the disclosure statement will be provided as part of pre-contract disclosure and therefore the resident must also be provided with a copy of the contract under s19(1) of the Act.	
The village rules	*	*	This will not be necessary under the LIV's proposal because the disclosure statement will be provided as part of pre-contract disclosure and therefore the resident must also be provided with a copy of the by-laws of the village under s19(2)(c) of the Act.	
Planning/development				
The development consent terms, if any, for the village (if construction is not complete or if it is a condition that a particular service or facility be provided for the life of the village)	*	On request	Details of any development consent terms should be available on request.	
Other				
If the manager has a waiting list for the village and charges a waiting list fee, the written policy on how the waiting list operates	*	On request	This information may not be relevant in pre-contract disclosure. If the disclosure statement is provided to potential residents prior to joining a waiting list, the disclosure statement should indicate that there is a waiting list policy, which is available on request.	

Consumer Affairs Victoria's guide for prospective retirement village residents	✓	✘	The LIV does not consider that this information needs to be provided to potential residents. The disclosure statement should contain a link to CAV's website, alerting potential residents to the publication.	
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APPENDIX C - ADDITIONAL PRE-CONTRACT DISCLOSURE OF INFORMATION AND DOCUMENTS (information listed on p12 of the Discussion paper)

Entry costs				
Purchase price of the unit or amount of in-going contribution payable, including whether interest is payable	x	?	<p>There are competing views about whether the purchase price should be included on the disclosure statement. One view is, the price is necessary for consumers to compare villages, although often products on offer between villages will be very different, and difficult to directly compare on price alone.</p> <p>Another view is that the purchase price is a commercial term that is often negotiable and including a price may mislead consumers to suggest that it's a fixed price.</p>	
Amounts and details of legal costs payable	x	✓	This should clarify that any legal costs payable under the contract are the manager's legal costs and that potential residents are responsible in addition for their own legal costs.	<p>Schedule 2, Part C contains a list of important information and warnings that must be provided to prospective residents. Item 2 of the list provides:</p> <p><i>"You should take all of the documents relating to the village to a legal practitioner who understands the financial implications of retirement village contracts."</i></p>
Amounts and details of other up-front payments	x	✓	This should detail in particular those amounts which are not "obvious".	
Total amount payable on or	x	✓	This should include a total of all fixed costs and if	

before entry			the purchase price is disclosed, the purchase price.	
Details of the estate agent or legal practitioner who will hold the in-going contribution	x	x	This information would need to be updated on a short term basis to ensure it is up to date. The LIV does not consider that such a burden would attract a proportionate benefit to consumers.	
Ongoing costs				
Details of recurrent charges payable, including how increases will be determined		✓	We note that increases in maintenance fees are subject to reg 8A of the Regulations. The disclosure statement should refer potential residents to the CAV website, which should explain the formula.	
Details of owners corporation fees payable	x	✓	<p>It may not be possible for some operators to determine how much of the recurrent maintenance and service charges comprise owners corporation fees. If the disclosure statement discloses that the owners corporation fees are included in the recurrent maintenance and service charges, then there should be no need to isolate and separately disclose the owners corporation fee.</p> <p>Further, we note that for freehold sales of units, owners corporation information (including details of fees) will be attached to the section 32 vendor's statement in the owners corporation certificate.</p>	
Exit costs				
The amount of any departure fee, or how it is calculated	x	✓	For most villages it is not possible to state the amount of the exit fee as it will vary depending on matters such as the length of the resident's stay.	

		<p>The LIV proposes that where the amount of the exit fee is subject to such variables the disclosure statement should show only the formula for calculation of the exit fee without worked examples.</p> <p>Page 12 of the discussion paper contemplates estimates of exit entitlements at one, two, five and ten years. If worked examples are to be included as proposed by CAV using the formula provided in the disclosure statement CAV should provide base figures consistent across all villages to which the formula should be applied because:</p> <ul style="list-style-type: none">- the resident can then see how the formulae for different villages will compare across time using the same set of figures; and- this part of the disclosure statement will be the same for all residents, rather than having to customise every worked example for each prospective resident when the disclosure statement is given; and- where all operators use the same base figures, it will be more difficult for a resident to allege misrepresentation if an exit entitlement falls short of the resident's expectations. <p>Regarding the setting of the base figures, the LIV observes that this may be a complex exercise. The LIV would be happy to consult further with CAV in this regard.</p>	
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The amount of any refund of the in-going contribution, or how it will be calculated, and when it will be paid	x	✓	<p>The refund of an in-going contribution and often the departure fee may be calculated by reference to the ingoing contribution paid by the new resident (ie the resident who will occupy the departing resident's unit). This will depend on factors like capital growth, refurbishment of the unit etc.</p> <p>The LIV does not support the disclosure of worked examples to show the operation of any applicable formula. However, if worked examples are required, a fixed percentage estimated capital growth/loss per annum should be used across all villages so that a resident has a base for comparison.</p>	
How any capital gain or loss will be shared	x	✓	See comment above regarding refunds of in-going contribution.	
Details of the resident's liability for refurbishment or reinstatement of the unit	x	✓	This is important information for a prospective resident to know.	
Estimate of the resident's exit entitlement after one, two, five and 10 years	x	?	See comments above under departure fee and refund of ingoing contribution.	
Village financial details				
Amounts payable to former residents in Previous financial years that were not paid in full and on time, and the reason for the failure	x	x	The LIV does not consider that this information will be useful for residents.	

Details of any negative statement by the auditor in the latest financial statement	x	x	The LIV does not support the inclusion of any negative auditor statements in the disclosure statement. The LIV considers that it is difficult to define a “negative” statement and queries the value of this information for prospective residents, when they have access to the financial statement of the manager on request.	
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APPENDIX D - RETIREMENT VILLAGE CONTRACTS – PRESCRIBED MATTERS TO BE EXCLUDED (as listed on p 15 of the discussion paper)

Matter / Term	Should regulations prescribe the exclusion of this matter / term from retirement village contracts? Why? Why not?	
Require the resident to have a will or to advise the manager of its location	<p>Yes.</p> <p>The LIV notes that a resident's estate planning is personal to the resident.</p>	
Require the resident to take out insurance, other than liability insurance for any motorised wheelchair operated by the resident	<p>No.</p> <p>Generally, contents insurance is not provided by operators. The LIV considers that operators therefore need to be able to include a requirement in contracts that residents take out contents insurance. Alternatively, operators must be able to include a warning (rather than a requirement) to residents regarding the need to take out contents insurance.</p>	
Require the resident to pay the manager's costs for:	Corresponding with the resident	<p>Yes.</p> <p>Generally, the manager's fees will incorporate such costs.</p>
	Preparing or providing any information that must be given to the resident	<p>Yes, but a limited exclusion.</p> <p>The LIV suggests that the exclusion should only extend to the manager's costs for preparing or providing any information that is required under legislation to be given to the resident. Therefore, operators should be able to include terms in contracts which require the resident to pay the manager's costs for preparing or providing any information for a resident which is not required under legislation.</p>
	Enforcing the contract against the resident	<p>No.</p> <p>The LIV submits that if a resident is in breach of any provisions of the contract, it is reasonable that the resident be liable for the manager's legal costs of enforcing the contract against the resident.</p>

Restrict the resident's absence from the village	<p>Yes.</p> <p>The LIV does not consider this to be a reasonable condition.</p>
Require the resident to pay liquidated damages for a breach of the contract or the village rules (that is, a pre-specified amount regardless of the actual loss or damage caused)	<p>Yes.</p> <p>The LIV's view is that payment of a pre-specified amount regardless of the actual loss or damage caused is overly onerous for residents.</p>
Exclude or limit any future statutory relief for the resident regarding his or her obligations or liabilities under the contract	<p>Yes.</p> <p>However, the LIV observes that inclusion or exclusion of this type of term in a contract would be subject to any mandatory legislative provisions. If therefore new provisions come into effect with retrospective application that relate to a resident's statutory relief, these provisions would override the contractual position.</p>
Exclude or limit the manager's liability for default or negligence	<p>Yes.</p> <p>The LIV agrees that if a resident suffers loss due to the manager's default or negligence, it is not reasonable that the compensation or damages payable to the resident be excluded or limited.</p> <p>However, the LIV notes that there are a number of existing contracts which contain provisions excluding or limiting the manager's liability. These contracts are 'entrenched' where a resident sells his or her interest in a unit and the incoming resident is contractually required to accept the terms of the existing management contract.</p>
Contain an 'entire-agreement' term	<p>No.</p> <p>The LIV considers that both the resident and operator should have certainty of contract. This is a common clause in most contracts and retirement village residency contracts should be no different. It is noted that the resident already has the same consumer protections available to any consumer (such as remedies for undue influence, misrepresentation, etc).</p>
Give the manager power to terminate the management contract or to assign it without the resident's consent	<p>No.</p>

	<p>Regarding termination, the LIV's view is that if a resident is in breach of his or her contractual obligations then the manager should have the power to terminate the management contract.</p> <p>Regarding assignment, the LIV notes that current business practices are such that management contracts are often assigned by one manager to another. The resident's consent should not be required to such assignment.</p> <p>Assignments are necessary whenever management of the village is sold to a third party. Given the possible length of the residency (eg up to 20 years), transfer of the management contract may occur a number of times over the period of that residency in the normal course of business and as the industry alters shape.</p> <p>Obtaining the consent of all of residents is likely to be very difficult if not impossible. It may be that there is never a time in any village that all of the residents agree to a transfer of management at any time.</p> <p>To require the consent of all residents would unreasonably fetter the industry.</p>
<p>Give the manager power to relocate the resident to other premises without the resident's consent</p>	<p>Yes.</p> <p>However, the LIV considers that there should be scope to include a term that allows the manager and resident to negotiate regarding the resident's relocation to other premises.</p> <p>It is imperative that the manager has the right to negotiate with residents regarding their relocation if reasonably required. An example may be if the premises are potentially unfit due to structural damage which needs to be remedied. Any remediation may require residents in a building / area to be removed even if not all parts of that building are currently potentially unfit because they may be affected by noises or vibrations etc. during the remediation work.</p>

	If the manager and resident are unable to reach agreement, then VCAT should have jurisdiction to resolve the matter.
Include charges in the exit fees to recover administration and operating costs other than those incurred while the resident resided in the village	No. Charges and fees are commercial terms. The LIV therefore submits that they should be able to be imposed on residents provided that the resident has had upfront disclosure and the opportunity to negotiate the amounts.
Require the resident to pay more than half the costs of any valuation of the unit or residence right that is required or permitted, except where the resident has acted unreasonably	No. These costs are commercial terms. The LIV therefore submits that they should be able to be imposed on residents provided that the resident has had upfront disclosure and the opportunity to negotiate the amounts.

APPENDIX E - RETIREMENT VILLAGE CONTRACTS – PRESCRIBED MATTERS THAT MUST BE ADDRESSED (as listed on pp 16 to 17 of the discussion paper)

Matter / Term	Should regulations prescribe the inclusion of this matter / term in retirement village contracts? Why? Why not?
Formal matters	
Village name and address, the names of the parties and the date on which the contract is made	<p>Yes.</p> <p>The identity of the parties entering into the contract, and the date on which the contract is made are necessary inclusions.</p>
The unit address and any garage, storeroom, and parking space entitlements	<p>Yes.</p> <p>The unit address and other entitlements are necessary inclusions.</p>
The date that the resident occupies the unit	<p>Yes, subject to comments below.</p> <p>The LIV proposes that the date on which the resident has the right to occupy the unit be specified instead.</p> <p>It is noted that there are times when the occupation date is not known eg. if the resident is to enter a new unit after the certificate of occupancy has been obtained. This date will not be known when the contract is first provided to the resident, or even when the resident signs the contract. Instead, only the method by which the date of the right to occupancy can be included in the contract at the time of disclosure or execution. Any requirement in relation to the occupancy date should allow for this alternative.</p>
Statutory matters	
The existence and primacy of the Act and the regulations made under the Act	<p>Yes.</p> <p>The LIV notes that from a consumer protection perspective, it is useful for a resident to be aware of the existence of the Act and regulations made under the Act.</p>

The resident's rights under the statutory cooling-off period	<p>Yes.</p> <p>The LIV considers that this is an important inclusion from a consumer protection perspective.</p>
Unit matters	
What fixtures, fittings and furnishings are provided	<p>Yes.</p> <p>This is a useful and important inclusion.</p>
The resident's ability to alter and add to the unit	<p>Yes.</p> <p>The LIV considers it important for the resident to know his or her rights regarding alterations and additions to the unit where those alterations additions are to be after the resident has moved into the unit.</p> <p>See further our comments below in relation to the parties' rights to negotiate alterations and additions prior to the resident moving into the unit.</p>
The resident's ability to transfer to another unit or other type of accommodation	<p>Yes, subject to comments below.</p> <p>For clarity's sake, the LIV proposes that the prescribed inclusion should be whether or not the resident has the ability to transfer to another unit or other type of accommodation. It should not be assumed that the resident will have this ability.</p> <p>The LIV also queries whether 'another unit or type of accommodation' refers to a unit or accommodation within the resident's existing retirement village or to other accommodation such as a residential aged care facility.</p>
If the unit is incomplete, the resident's ability to determine its design, construction and furnishing	<p>No.</p> <p>As noted by the LIV in the table to Appendix A, whether a potential resident has the right to determine the design, construction and furnishing of incomplete units is usually negotiated as a special condition to a contract and will be specific to the agreement made (and not a general right). The LIV considers that this should continue to be subject</p>

	to negotiation by the parties.
Restrictions	
Any restrictions on the resident's use of the unit	Yes. This is important for a resident to know.
Any restrictions on pets, visitors and car parking	Yes. This is important for a resident to know.
Any restrictions on the persons to whom the resident can transfer the unit	Yes. This is important for a resident to know.
The manager's rights of access to the unit	Yes. This is important for a resident to know.
The manager's ability to relocate the resident to other premises without the resident's consent	Yes, subject to comments below. The LIV agrees that a term regarding relocation should be included. However, as stated in the table at Appendix D, the LIV considers that there should be scope to include a term that allows the manager and resident to negotiate regarding the resident's relocation to other premises (as opposed to the manager having the right to relocate the resident to other premises without the resident's consent). If the manager and resident are unable to reach agreement, then VCAT should have jurisdiction to resolve the matter. See our comments above regarding the manager's power to relocate the resident to other premises without the resident's consent.
Facilities/services/maintenance matters	
The services, facilities and amenities provided – including details of any service or facility that the manager represented would be provided or made available, and the date it would be so	Yes, but only details of amenities. The services and facilities, including those that the manager represented

		would be provided or made available, may change regularly over time. The LIV therefore considers that the contract should only need to specify details of amenities.
The consultation process for changes in services or facilities, which must include exploring alternatives		No. The LIV does not agree with an obligation on operators / managers to consult regarding changes in services and facilities. Given the number of residents occupying villages, an obligation to consult with all would likely result in significant delays.
The repair and maintenance procedure – including the responsibilities of manager and resident, and the process for the resident to ask the manager to carry out repairs and maintenance		Yes, but only regarding inclusion of the repair and maintenance procedure. The LIV does not consider that the process for the resident to ask the manager to carry out repairs and maintenance should be specified in the contract, as this may change from time to time. The LIV however supports an obligation on the manager to disclose the process.
Financial matters		
The manager's legal costs payable by the resident		Yes. This is important for the resident to know.
All retirement village fees payable, including:	Details of all costs payable to gain entry to, reside in and leave the village (ingoing contribution, including interest; maintenance and other recurrent charges, and the matters for which such charges may be used; and any departure fee)	Yes, except the inclusion of details about how amounts paid by the resident may be used. The LIV does not consider that a contract should need to specify how amounts paid by a resident may be used. Use of these amounts should be at the manager's discretion, subject to compliance with the Act and any contractual obligations.
	How the maintenance charge is to be adjusted and how special levies can be imposed	No. This is already covered in detail under the Act, and it would be cumbersome to replicate it. However, reference to the Act could be made eg. by a standard note in a form to be prescribed.

	The method of calculating any refund due to the resident on termination of the contract, including how capital gains or losses are shared and any applicable financial penalties	Yes. The LIV notes that the relevant provisions of the Act could be referred to when including this information in a contract.
Insurance that the manager is responsible for		Yes. This is important for a resident to know.
Who is responsible for the costs of maintaining the unit in a reasonable state of repair, including replacement and maintenance of fixtures and fittings		Yes. This is important for a resident to know.
What refurbishment or reinstatement of the unit will be required and who pays for it		Yes. This is important for a resident to know.
Termination and other contractual matters		
How the contract may be terminated, including the minimum advance notice to a resident when the manager terminates the contract		Yes. It is important that this provision be included.
Whether the resident can refuse to change or terminate the contract		No. The LIV does not support inclusion of this term due to its lack of clarity.
Any terms implied into the contract by the Act or regulations		Yes, subject to comments below. The LIV does not support the concept of terms being implied into retirement village contracts. Instead, the LIV submits that the implied terms should be prescribed by regulation, including the precise wording of the terms, so that the terms can be expressly included in contracts. There will then be greater certainty and clarity regarding the parties' obligations.
Village matters		
The village rules		Yes.

	<p>The LIV supports inclusion of the village rules, but proposes that they simply be attached to the contract.</p>
<p>Dispute resolution arrangements – including the internal and external processes for dealing with disputes, and the fees payable for dispute resolution</p>	<p>Yes.</p> <p>The LIV supports inclusion of a provision regarding dispute resolution arrangements. The LIV also notes that under s38G of the Act, managers must ensure that residents are informed about complaints and dispute mechanisms and must ensure that copies of documents required under ss38E and 38F are readily available on request.</p>

APPENDIX F - RETIREMENT VILLAGE CONTRACTS – IMPLIED TERMS (as listed on pp 17 to 18 of the discussion paper)

As specified above and in the submission, the LIV does not support the concept of terms being implied into retirement village contracts. Instead, the LIV submits that the implied terms should be prescribed by regulation, including the precise wording of the terms, so that the terms can be expressly included in contracts. There will then be greater certainty and clarity regarding the parties' obligations.

Therefore, the LIV's comments in the table below specify the LIV's position as to whether the regulations should prescribe the inclusion of each term in retirement village contracts.

Term	Should regulations prescribe the inclusion of this term in retirement village contracts? Why? Why not?
The manager is obliged to:	
Use best endeavours to ensure tenants, employees, invitees or other persons lawfully on the village premises comply with village rules	No. It is not the manager's role to monitor the behaviour of residents and their guests. It may be reasonable to impose an obligation on the manager to use reasonable endeavours if the obligation is only in relation to the manager's employees, guests or invitees.
Promptly carry out repairs or replacements to the common facilities and other areas under its control that are necessary for the health, safety or security of residents	Yes, but the LIV considers that this term should instead require that if: <ul style="list-style-type: none"> - There are repairs or replacements to the common facilities and other areas that are necessary for the safety or security of residents; and - the manager is obliged under a management contract to carry out those repairs or replacements, then the manager must carry out those repairs within a reasonable time, but only if: <ul style="list-style-type: none"> - authorisations for the repairs have been obtained (eg. by special resolution of the residents, or under the maintenance plan); and - there are adequate maintenance funds. The LIV submits that the manager's obligation to carry out repairs or

	<p>replacements must be subject to there being sufficient maintenance fees available to the manager.</p> <p>Also, the LIV does not support an obligation on managers to carry out repairs and replacements that are necessary for the 'health' of residents, as "health" is subjective depending on the particular needs of residents. Managers are might also inadvertently breach this provision as the health of each resident will differ, and managers may not always be aware of each residents' health needs.</p>
<p>Get the resident's consent to enter their unit:</p> <ul style="list-style-type: none"> • unless in an emergency or if a resident's safety or property is endangered. In this circumstance, the manager must make a reasonable attempt to obtain the resident's consent • subject to any contract provision that enables entry for reasonable cause on reasonable notice 	<p>Yes.</p> <p>However, the LIV proposes that the first sentence of the second paragraph should be amended to read:</p> <p><i>Unless in an emergency or if, in the manager's reasonable opinion, a resident's safety or property is endangered.</i></p>
<p>Give receipts for payments made by the resident or keep a record of such payments.</p>	<p>Yes.</p> <p>It is appropriate that receipts be provided and/or records maintained.</p>
<p>The resident is obliged to:</p>	
<p>Use best endeavours to ensure invitees or other persons lawfully on the resident's premises comply with the village rules</p>	<p>Yes, but the resident should only be required to use 'reasonable' endeavours.</p> <p>This is a reasonable obligation.</p>
<p>Respect the rights of other residents and persons in the village</p>	<p>Yes.</p> <p>This is a reasonable obligation.</p>
<p>Not interfere with other residents' peace, comfort and privacy</p>	<p>Yes.</p> <p>This is a reasonable obligation.</p>

Respect the rights of the manager, its employees and agents to work free from harassment and intimidation	Yes. This is a reasonable obligation.
Not adversely affect the occupational health and safety of people working in the village	Yes. This is a reasonable obligation.
Not withhold consent unreasonably if the manager asks the resident to relocate to other premises.	Yes. This is a reasonable obligation. See also our comments above regarding the manager's power to relocate the resident to other premises without the resident's consent.
The resident has a right to:	
Exclusive and vacant possession of the unit in a clean and tidy condition	Yes, but the LIV considers that the term should be amended to read: <i>The right to occupy the unit on the terms of this agreement.</i> 'Exclusive possession' is a leasing concept, and will not be appropriate if a licence to occupy rather than a lease is granted. Also, the term should not require the unit to be in a 'clean and tidy condition'. Regardless of the legal basis on which the resident occupies the unit, the resident is generally regarded as the 'owner' of the unit. It should therefore be the resident's responsibility to ensure that it is clean and tidy.
Not be liable for fair wear and tear to the unit, when the resident does not own the unit	No. Even if the resident occupies the unit under a lease or a licence, the resident's occupation should not be regarded as a traditional leasehold or licence with an exception for responsibility for fair wear and tear. Therefore, the resident should be liable for fair wear and tear to the unit. We note that many contracts require residents to pay for refurbishment of their unit.

Any refund entitlements, unaffected by termination of residence right (even for breach of contract)	Yes, but the LIV proposes that this term should be amended to specify whether or not the resident has any refund entitlements.
Remove any fixture that the resident has added, at any time before permanently vacating the unit.	Yes, but the LIV considers that the term should be amended to provide that the resident's right to remove fixtures is subject to the resident making good any damage to the unit caused as a result of the removal.
General provisions	
Terms prescribed under the legislation take precedence over inconsistent terms of the contract or village rules.	Yes.
Village rules take precedence over inconsistent terms of the contract.	No. The LIV is concerned that the village rules could be amended unilaterally by residents to create inconsistencies with contracts. This would undermine the certainty of contracts.
The contract must comply with applicable legislation and is void to the extent of its inconsistency with this legislation.	Yes.
The manager and resident will deal with each other in good faith.	No. The LIV is concerned that the term 'good faith' is subjective, and that there may be allegations by one party that the other party has breached this term even if the other party considers that he/she has acted in good faith.

APPENDIX G – STANDARDISED CONTRACT LAYOUT

As specified in the submission, the LIV does not consider that a standardised contract layout is viable because of the myriad of different retirement village structures that are entrenched into the system. However, in the event that a standard layout is to be introduced, the LIV's comments regarding the list of items contained on page 18 of the discussion paper are set out below.

Matter / Term	Should regulations prescribe the inclusion of this matter / term in a standardised contract? Why? Why not?
Provide for the layout of formal matters – the village name and address; parties' names; the date on which the contract is made; unit details including address and any garage, storeroom and parking space entitlements; the date that the resident occupies the unit	<p>Yes.</p> <p>These formal matters are necessary inclusions.</p>
The date the resident occupies the unit	<p>Yes, subject to comments below.</p> <p>As the date on which the resident occupies the unit might not be known when the contract is made, the LIV proposes that the date on which the resident has the right to occupy the unit be specified instead.</p> <p>See our comments above in relation to the item 'The date that the resident occupies the unit'.</p>
State the existence and primacy of the Act and the regulations made under the Act	<p>Yes.</p> <p>The LIV notes that from a consumer protection perspective, it is useful for a resident to be aware of the existence of the Act and regulations made under the Act.</p>
State the resident's rights under the statutory cooling-off period	<p>Yes.</p> <p>The LIV considers that this is an important inclusion from a consumer protection perspective.</p>
Provide headings for matters that must be addressed in the contract	<p>No.</p> <p>The LIV submits that this would not be viable given the complexity of retirement village structures and contracts.</p>

State any terms implied by the Act or regulations

Yes, subject to comments below.

The LIV does not support the concept of terms being implied into retirement village contracts. Instead, the LIV submits that the implied terms should be prescribed by regulation, including the precise wording of the terms, so that the terms can be expressly included in contracts. There will then be greater certainty and clarity regarding the parties' obligations.