

ABN 19 659 150 786

24 May 2024

To Penny Griffiths  
Department of Energy, Mines, Industry, Regulation and Safety  
Consumer Protection Division  
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Dear Penny,

**RE: Submission to the Retirement Villages Amendment Bill 2024, Western Australia**

Thank you for the invitation to make a submission to the Retirement Villages Amendment Bill 2024 Consultation Draft (the Bill), which will introduce key changes to retirement village legislation in Western Australia (WA).

The Aged & Community Care Providers Association (ACCPA) is the national Industry Association for over 1,000 aged care providers offering retirement living, seniors housing, residential care, home care, community care and related services.

ACCPA and our members have identified several areas where clarification is required. Without the provision of further detail and clarity, we face unintended consequences for both residents and operators, generally ending in disputes.

Below, we present our key concerns regarding the Bill:

**4. Section 3 amended**

(6) In section 3(1) in the definition of **service contract** delete the passage that begins with “of ---” and continues to the end of the definition and insert:

of services, amenities and facilities in the retirement village

ACCPA is unsure why the service contract has introduced the concept of amenities and facilities. The Retirement Village Regulation 4A already defines communal amenities, communal services, personal amenities and personal services. Regulations 7B, 7C, 7D and 7E all set out matters contracts must include about communal amenities, communal services, personal amenities and personal services.

To introduce a separate term “facilities” is unnecessary. This change may require contracts to be updated to accommodate this at a considerable cost to the administering body.

**Recommendation 1: Consolidate terminology by referring only to 'amenities' in template contracts to minimise the changes required to these documents.**

**5. Section 5 amended**

(2) This Act does not apply to residential premises in a retirement village that are used to provide residential care as defined in section 41-3 of the Aged Care Act 1997 (Commonwealth)

As the aged care sector progresses with the new Aged Care Act, which permits retirement village units to offer residential care, this section introduces important nuances, particularly regarding

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individuals with residential care funding. Additionally, this part of the Bill references the Aged Care Act 1997, which is scheduled to be replaced on 1 July 2025. This section will need to be further clarified and aligned with the provisions of the new Aged Care Act.

**Recommendation 2: Align this section with the provisions of the new Aged Care Act.**

### **14B. Community arrangement statements**

(3) A community arrangement statement must -

- (a) be in the approved form; and
- (b) contain the prescribed information

**Recommendation 3: Ensure there is opportunity for ACCPA to review the draft regulations that set out the prescribed community arrangement form.**

(4) The administering body must, within 14 days of any change to a community arrangements statement, make the current statement publicly available on a website

This section implies that all retirement villages must have a website to comply with the requirement of making community arrangement statements publicly available. Further clarification may be necessary to confirm this expectation and to explore alternative means for disseminating this information for those without website capabilities.

**Recommendation 4: Provide further clarification on the requirement for a website and consider alternative methods of disseminating community arrangement statements for those without capabilities.**

### **14C. Prospective costs documents**

This section makes reference to a new requirement for the administering body to provide a prospective costs document to people making an enquiry into the village.

**Recommendation 5: Ensure there is opportunity for ACCPA to review the draft prospective costs document.**

### **14D. Property condition report at start and end of occupation of residential premises**

This section raises the question of whether contracts and reports are expected to be provided as hard copies. With advancements in technology, we recommend embracing digital solutions such as DocuSign for executing these documents. Utilising electronic signatures and digital document management would streamline processes, enhance accessibility and improve efficiency. We advocate for the Bill to explicitly allow and encourage the use of such modern technological tools.

**Recommendation 6: Amend the Bill to allow and encourage the use of digital solutions, including electronic signatures for property condition reports and contracts.**

**Recommendation 7: Ensure there is opportunity for ACCPA to review the draft regulations that will prescribe the form of the Property Condition Report.**

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## 16. Section 18 amended

### 3 (b) The ingoing contribution is not held in trust or invested as required by subsection (1)

Members would like clarity regarding this section. Deposits for entry to a village are often held by a lawyer or real estate agency, typically in a trust account. The balance of the ingoing contribution is paid at settlement with part of the proceeds paid to the former resident.

**Recommendation 8: Provide further clarity on the handling and investment of ongoing contributions.**

## 21A and 21B. Modification of Retirement Villages

ACCPA notes the various references made in sections 21A and 21B with respect to modifications of retirement villages. The sector is concerned that staged developments could be overruled by a resident vote. This could have a significant impact on the viability of future stages of a village.

**Recommendation 9: Ensure there is opportunity for ACCPA to review the draft regulations as to what will be prescribed under section 21A(1)(c) as a modification.**

**Recommendation 10: Include an exception in the regulations for buildings in a multistage development, otherwise an unintended consequence could be that residents halt a development part way through a Council approved development. This could have significant ramifications on the viability of the village.**

## 21D. Financial arrangements and budget obligations

ACCPA notes the various references made in section 21D to the regulations in relation to financial arrangements and budget obligations.

**Recommendation 11: Ensure there is an opportunity for ACCPA to review the draft regulations in relation to this section, including the insurance information required as a part of annual reporting.**

## 21C. Rules of conduct for administering bodies and residents

Our concerns relate to the current focus of this section solely on the responsibilities of administering bodies, with no mention of resident responsibilities and competing rights. There must be safeguards for operators, workers and other residents, regarding resident behaviour. Operators, workers and other residents are often left vulnerable when residents display aggressive behaviour towards staff or other residents, with no accountability for the resident's actions.

Our members believe it is crucial to establish guidelines that also address resident responsibilities, or competing rights, to ensure a balanced and fair environment. This approach will help maintain harmony within the retirement village community.

Additionally, while there is the power to make conduct regulations, it is essential that the sector has the opportunity to review and provide feedback on draft conduct obligations. It appears unreasonable that rules for operators were included in the Bill, while rules for residents were not. Including conduct regulations, applicable to both operators and residents, will ensure equitable conduct regulations that protect and benefit both operators and residents.

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**Recommendation 12: Establish guidelines that address both operator and resident responsibilities. ACCPA submits that the Bill should be amended to include the following:**

**“the resident must:**

- (a) Respect the peace, comfort and privacy of other residents and persons in the Retirement Village;**
- (b) Not harass or intimidate other residents and persons in the Retirement Village (including the operator and any person employed or engaged in the Retirement Village;**
- (c) Not act in a manner that may place the safety of other residents and persons in the Retirement Village at risk of harm; and**
- (d) Comply with the Residence Rules.”**

2 (b) Requirements for administering bodies regarding professionalism, training, competencies, performance and behaviour in connection with the administration, management or operation of retirement villages

This section outlines numerous rules, conduct requirements and training mandates for managers and Boards. While members do not disagree with these amendments and have observed similar changes in other States, there are specific concerns related to contractors. It is unclear who is responsible for training contractors and whether they are required to comply with these standards. Clarification is needed to determine the extent of involvement and responsibilities of contractors in adhering to these requirements.

**Recommendation 13: Apply training requirements only to those persons employed directly by the operator.**

3 (c) Conduct in relation to the marketing of retirement villages (including in relation to the use of terminology)

This section addresses sales and marketing, emphasising the need for operators to use language that is clear and understandable for both current and prospective residents. However, operators may also need to use terminology mandated by legislation in their contracts, which can lead to complexity and confusion among the public. This issue extends beyond marketing and sales. We recommend that the language used in legislation be simplified to enhance comprehension for residents and their representatives.

**Recommendation 14: Develop a plain English one-page explainer to simplify the language used in legislation for residents and their representatives, ensuring clarity in contracts and marketing material.**

## **28. Liability for recurrent charges**

(2) The administering body must not seek to recover from the residents of the retirement village, by increasing the recurrent charges payable by them or by demanding or receiving from them any additional fee or charge

This raises questions regarding situations where a resident exits during budget preparation. It is possible that an outgoing resident moves during the preparation of a new budget, which may result in changes to the recurrent charges. It would be reasonable for the outgoing resident to remain liable for the recurrent charges should they intersect two financial years.

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**Recommendation 15: Residents remain liable for recurrent charges that are applicable post their exit from the village.**

## **29. Payment of exit entitlements**

(1) (a) (iv) The date that is 12 months after the day on which the resident has permanently vacated the residential premises occupied by the resident

There is a risk that the date of permanent vacation is not clearly defined, creating uncertainty in calculating the 12-month period. Requiring notice would provide clarity and transparency without causing detriment. 'Vacant Possession' should be clearly defined and included in the Bill; e.g. When the unit is completely empty of the resident's property, the keys have been returned and the operator has vacant possession.

**Recommendation 16: Revise the definition of "permanently vacated" to include a formal notice requirement, and exempt existing contracts and deceased estates from the 12-month period to avoid retroactive complications.**

**Recommendation 17: The 12 month buyback provision should not apply to contracts that exist before the commencement of the Bill nor in relation to deceased estates.**

**Recommendation 18: Amend the Duties Act 2008 to ensure that duties are not payable on the buyback of strata title properties.**

## **31. Payment of daily accommodation payments from exit entitlement**

### **Request Submission**

Residents or their representatives should submit a written request to the operator within 30 days of entering residential aged care, requesting the operator to pay the Daily Accommodation Payment (DAP). It is crucial to ensure that these payments are not applied retrospectively and are only required from the date of receipt of the written request.

### **Couples' Scenarios**

The legislation must address scenarios involving couples, where one partner moves to residential aged care while the other remains in the village. The aged care rule cannot apply to the first resident leaving the village, as the partner continues to have a lifetime lease on the apartment, and the ingoing contribution needs to remain in place to secure their tenure.

### **RAD and DAP Combination**

The current wording does not account for residents who have chosen to pay both a Refundable Accommodation Deposit (RAD) and DAP combination. The DAP option is intended as a safety net for financial hardship, ensuring that residents without immediate access to their exit entitlement or other cash can enter aged care. Residents who choose to pay a RAD should be excluded from the aged care rule.

### **Interest Components**

Clarification is needed regarding whether interest components are applicable when a RAD is paid. The legislation must ensure that the nuances of different payment options are adequately captured. For instance, residents paying a part RAD may then apply to the operator to pay the interest component of the unpaid portion of the RAD as a DAP, which is not the intent of the aged care rule.

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**Recommendation 19: Restrict the obligation for the operator to pay the DAP from the exit entitlement to cases where:**

- **The last remaining resident transitions to aged care;**
- **The resident or their representative have made a written request within 30 days of entering aged care, to the operator, to do so; and**
- **The resident is unable to pay a RAD.**

### **Division 3 – Buybacks**

The commencement of the 12-month buyback period should not begin until the unit is vacated and ready for sale, as refurbishments often take around four months in some regional locations.

**Recommendation 20: Ensure buyback period does not begin until unit is fully vacated, ensuring a clear definition of ‘vacant possession’ is included.**

### **37. Valuations – exit entitlements and buybacks**

This section references valuations for exit entitlements and buybacks but lacks detail on who bears the cost of the valuation. Currently, the cost of a valuation can range from \$1,200 to \$1,800. If a property cannot be sold within 12 months, it is unreasonable to expect the operator to bear this cost. Additionally, in WA, there are few valuers specialising in retirement villages, and those that do may be conflicted with existing dealings with the administering body. This section prescribes a requirement that may not be feasible in WA.

**Recommendation 21: Specify that, where an agreement on valuation cannot be met, a valuer be engaged and the cost of valuations should be equally shared between the operator and the exiting resident – consistent with legislation in other states.**

### **41. Terms used**

#### **Capital Item**

Definition of Capital Items does not include common property as defined in the Community Titles Act 2018 Section 3 (1) 18 or the Strata Titles Act 1985 Section 19 3 (1). There could be some unique structures that potentially need to be considered here.

#### **Capital Maintenance**

The definition of "capital maintenance" does not include routine servicing. Our members are concerned that this exclusion does not adequately reflect the reality of maintenance needs. Capital maintenance should include routine servicing to ensure the proper upkeep and longevity of facilities and equipment.

The last part of this section refers to "routine servicing means routine servicing, and repair carried out frequently, or at regular intervals, and at low cost." Our members are concerned about the wording "low cost". This phrasing suggests that operators should prioritise the cheapest option rather than the most appropriate or effective one. This could be dangerous for operators and does not ensure that servicing and repairs are conducted to a high standard. We recommend revising this wording to emphasise quality and appropriateness of service, rather than focusing on cost.

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**Recommendation 22: Ensure all relevant structures are considered.**

**Recommendation 23: Amend the definition of "capital maintenance" to include routine servicing. In addition, remove the wording "low cost".**

#### **41B. Plans for capital maintenance and capital replacement**

There is a potential conflict with Strata units as, under Strata legislation, administrators are required to produce a 10-year plan that came into effect around two years ago. This new requirement may force operators to produce two separate plans, leading to conflicts between the two legislations.

Additionally, the inclusion of decreases or increases in cost in the plan raises concerns. Operators are effectively being asked to act as quantity surveyors to explain variations in costs. The Queensland Retirement Villages Act requires a full quantity surveyor report every three years, which may be a best practice approach. Utilising a quantity surveyor shifts the responsibility from the operator to an independent body, ensuring impartiality. There is no reference to the use of a quantity surveyor in this section, which could be considered to enhance the reliability and transparency of the plans.

**Recommendation 24: Address any potential conflicts with Strata legislation and adopt a 3-year quantity surveyor report.**

#### **41C. Capital maintenance**

(3) The administering body must not –

(a) pay for capital maintenance otherwise than from the mandatory capital maintenance fund; or

(b) use money from the mandatory capital maintenance fund otherwise than to pay for capital maintenance

This section introduces a mandatory capital maintenance fund. It should be defined simply as the "capital maintenance fund" rather than the "mandatory capital maintenance fund." Additionally, there is no description of how amounts are paid into the capital maintenance fund. It should be clear that this fund is paid by resident recurrent charges.

The current drafting does not address how amounts are paid into the capital maintenance fund and only considers how amounts are withdrawn. It appears that the funds from the capital maintenance fund are restricted solely to capital maintenance, which is impractical.

It would be more sensible if the requirements for a capital maintenance fund applied only to new villages or villages without any existing reserve fund. The current provision in section 41C (3), which restricts the use of the capital maintenance fund exclusively to capital maintenance, is unworkable for the sector. Many existing reserve funds are designated for purposes specified in contracts and consistent with current law, including repairs, maintenance, replacement and renovation.

Furthermore, operators sometimes cover expenses that are not drawn from the fund, necessitating the creation of a mandatory capital maintenance fund. Most operators in WA already hold reserve funds. This requirement should be grandfathered in or apply only to new villages initially.



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**Recommendation 25: The term “mandatory capital maintenance fund” should be amended to “capital maintenance fund”.**

#### **41D. Capital replacement**

This section states that the administering body must not use any amount of recurrent charges for capital replacement. This implies that the cost of capital replacement must either come from the residents as an exit fee, be allocated to a second reserve fund, or be covered by the operators.

**This provision needs urgent reconsideration because it may lead to unintended consequences.** Significant amounts collected from residents and held for specific purposes may now be prohibited from being used for those purposes. As a result, much-needed replacement of capital items might not be carried out due to concerns about breaching the law.

**Recommendation 26: Remove 41D (b) to allow villages to maintain transparent costs for ongoing maintenance (e.g., capital maintenance fund) and replacements (e.g., sinking / reserve fund), ensuring proper use of funds for both purposes.**

#### **42. Dispute Resolution**

Section 42 makes reference to dispute resolution otherwise than by the Tribunal. ACCPA notes that the detail in relation to this section will be contained within the regulations. Of concern to ACCPA members is how the Commissioner will appoint a mediator to resolve a dispute and who will pay for this service.

**Recommendation 27: Ensure there is opportunity for ACCPA to review the draft regulations including reference to the appointment of a mediator.**

#### **78. Administering bodies to provide Commissioner information for register of retirement villages & 78A Commissioner to keep and publish register of retirement villages**

This section mandates the Commissioner to maintain and publish a register of retirement villages. While this is an important step for transparency, it is important that the sector has the opportunity to review and provide input on the information that will be included in the register.

**Recommendation 28: Ensure there is opportunity for ACCPA to review what else may be prescribed as having to be provided to the Commissioner.**

#### **82. Amended (d) advertising or marketing of retirement villages**

This addition to section 82 allows for regulations to be made with respect to advertising of marketing of retirement villages.

**Recommendation 29: Ensure there is opportunity for ACCPA to review the draft regulations that specify the advertising requirements.**



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**Recommendation 30: Engage ACCPA on consultation regarding the regulations for all other sections in the Bill to ensure effective understanding and implementation.**

If you have any questions or would like to discuss this submission, please contact Mark Prosser, Director Retirement Living & Seniors Housing at [mark.prosser@accpa.asn.au](mailto:mark.prosser@accpa.asn.au).

Yours sincerely,

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