



**RESPONSE TO QUEENSLAND GOVERNMENT
RETIREMENT VILLAGES DISCUSSION PAPER AUGUST**

**Prepared by
COTA Queensland**

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COTA QUEENSLAND – COUNCIL ON THE AGEING

COTA Queensland is a state based organisation committed to advancing the rights, needs and interests of older people in Queensland. It aims to help create a more just, equitable and caring community in which older people are actively involved and empowered and have access to appropriate support, services and care.

COTA Queensland bases its' policy principles on the World Health Organisation (WHO) policy pillars of Health, Security and Participation.

As one of the eight State and Territory COTAs that make up COTA Australia, our work is also guided by five principles:

- Maximising the social, economic and political participation of older Australians;
- Promoting positive views of ageing, rejecting ageism and challenging negative stereotypes;
- Promoting sustainable, fair and responsible policies;
- Focusing on protecting against and redressing disadvantage; and
- Protecting and extending services and programs that are used and valued by older Australians

COTA Queensland collaborates with other organisations addressing issues that impact upon older people. COTA undertakes community development with vulnerable older people, provides community education and awareness on health promotion issues and provides a statewide information and referral service. It undertakes research, policy development and advocacy on issues impacting on older people in Queensland.

COTA Queensland's objectives include (but are not limited to):

- Promoting policies, practices and services that advance well-being and justice for older people and redress injustice and disadvantage;
- Promoting the positive contribution of older people to their own well-being and a more caring and just community;
- Facilitating collaboration within and between older people's organisations, aged service agencies, Government, the private sector and community groups in working towards well being and social justice for older people;
- Promoting and engage in research of matters concerning older people;
- Advocating on behalf of the needs, rights and interests of older people, giving priority to those suffering injustice discrimination, disadvantage or disability;
- Participating as an active member of the COTA network throughout Australia.

COTA Queensland is aware of the broad range of housing issues that concern older people and maintains links with other organisations which work with and for older people to address housing issues. COTA has a strong awareness of the significance of housing to the development of good ageing policy.

COTA QUEENSLAND'S PRIORITIES FOR ACTION

Background

1. Queensland's Ageing Demographic Profile

Queensland's demographic profile is ageing with 545,800 people aged 65 years and over (or 12.3% of the population) in 2009, an increase of 81,200 people since 2004. The age distribution is not even across the State with the Fraser Coast (18.9%), Toowoomba (13.6%) and Moreton region (14.7%) all with significantly higher proportions of older people.

- The most rapidly growing group of older people is those aged over 85 years, with women outnumbering men by 2 to 1;
- Aboriginal and Torres Strait Islander people aged over 55 years are expected to double over the next decade although their life expectancy is still significantly shorter than non-Indigenous Australians;
- The older migrant population is ageing more rapidly than the Australian born population with the cultural and linguistic backgrounds and their pre-and post migrations experiences varying enormously; within this demographic, people from a refugee background, in particular, may have specific ageing experiences;
- People with an intellectual disability are living into their 60s and 70s, but with early onset age-related conditions such as dementia evident in their 50s; and
- The number of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people aged over 65 years is increasing as are their demands for services to meet their needs and lifestyles.

2. Retirement Villages in Australia

Retirement villages are the main form of service integrated housing (SIH) in Australia. SIH refers to:

'all forms of housing for people in later life where the housing provider deliberately makes available or arranges for one or more types of support and care, in conjunction with the housing provision.'¹

The retirement village sector has developed largely in a formal policy vacuum with little recognition of its significance as a housing choice for older Australians. With an estimated 130,000 residents, however, service integrated housing is comparable in size to the residential aged care sector which has a combined total for permanent and respite aged care of 165,000. Community care services support retirement village residents in a similar way to how they support older people living in the broader community.

With the exception of service integrated housing for specific vulnerable groups such as homeless people and those at risk of homelessness, the sector has had limited government involvement and leadership. Although several broad categories of service integrated housing can be identified in Australia, there are many different dimensions including tenure arrangements, dwelling form, level and types of service and age range.

¹ AHURI. Jones, Andrew et al. "Service integrated housing for Australians in later life", January 2010, p1

The proportion, and number, of Australians aged 65 and over living in retirement villages has been increasing for two decades. The trend is likely to continue, particularly from about 2020 when the early baby boomers will be in their 70s.

Issues Outlined in Discussion Paper

The Queensland Retirement Villages Discussion Paper, August 2011, canvasses a limited number of issues pertinent to the operation of retirement villages in Queensland, focusing only on closures.

1. Closing a retirement village scheme

1.1 Triggering deregistration of a scheme

COTA Queensland recognises there may be valid reasons for an operator to wish to close a village – the village is the operator’s business and source of livelihood. However, the village is also people’s homes and certain resident protections need to be built in to ensure residents’ rights are upheld. The operator should be required to explain, and justify, the proposal to close, to both the residents and to an independent tribunal. The tribunal could be either the Supreme Court or the Queensland Civil and Administrative Tribunal (QCAT), however the latter is preferred because of the expense and time involved in a Supreme Court hearing. It needs to be noted however, that further work is required to ensure QCAT has the capacity and resources to deal adequately and in a timely manner with these matters that involve significant financial and contractual issues.

Residents themselves should also be able to initiate village closure proceedings through the independent tribunal. Moving to end the operator’s livelihood is a serious step and should require a two-thirds resident vote rather than a simple majority. The tribunal would also be empowered to consider whether other options such as compliance action would be more appropriate.

COTA Queensland believes the chief executive should retain the right to initiate deregistration proceedings and this would be done through the independent tribunal as for applications by the operator or residents. In particular cases involving urgency, it may be appropriate for the chief executive to be able to act on resident initiated deregistration matters prior to going to QCAT.

1.2 Grounds upon which a scheme may be deregistered

COTA Queensland believes the current grounds for deregistration are too limited, ie where a village is no longer operating. In the absence of a minimum set of standards to cover amenity and condition, an operator could allow a village to run down to encourage residents to leave the village. We recommend the development of a minimum set of standards for retirement villages. Where standards are being breached, residents could take compliance action.

2. Timeframes involved in closing a village

2.1 Winding-down period after deregistration

The current period of 30 days is inadequate because it does not enable outgoing residents to source, purchase and relocate. A three-month period, with an option for QCAT to extend up to 12 months if necessary, is reasonable. Submissions to QCAT to extend the time could be made by either residents or the operator.

2.2 Winding-down period after cancellation of registration

Once a decision to close has been made, it is in everyone's interests for this to happen as soon as possible. As indicated above, however, residents may require some time to settle their affairs. COTA Queensland believes a 12 month period, as operates in New South Wales, is appropriate.

3. Financial considerations

3.1 Dealing with the maintenance reserve fund

The balance of the maintenance reserve fund should be distributed evenly between all residents living in the village on the day the deregistration or cancellation of registration is announced.

3.2 Dealing with the general services charges

It is unlikely that there would be a significant sum remaining in the general services fund because it is used on a day to day basis – it should be distributed to residents as they paid the charges.

3.3 Whether general services charges should continue to be payable

Under current legislation and in usual circumstances, a resident who leaves the village would continue to pay the general services charges for a particular period or until the right to reside in the unit has been resold. However, in the event of closure, there will be no on selling of the right to reside. Additionally, there will be little or no use of the bulk of the general services charges, ie the maintenance reserve fund, during the winding-down period. Therefore, it is reasonable for the operator to bear the maintenance costs once the residents vacate.

3.4 Reinstatement costs

In usual circumstances, exiting residents must reinstate their units to marketable condition. However, where residents are required to move because the scheme operator intends to cease operating as a retirement village scheme, residents should be released from this requirement. If the operator intends to sell the housing on the open market or use it for another purpose, the residents should also be released from the reinstatement requirement. This should be clearly stated in the public information document and the residence contract, both of which should be rewritten in plain English.

3.5 Valuation of the right to reside in a retirement village unit

COTA Queensland's recommendation on 3.4 will result in significant savings for residents. We therefore believe it is fair for the valuation for the sale price for the unit to be assessed on its current condition.

3.6 Timing of payment of exit entitlement

For residents who must move because their retirement village is closing down, early payment of exit entitlement is important to facilitate the purchase of an alternative residence. It is reasonable to expect the exit entitlement to be paid within 14 days of the settlement date. The current definition of 'settlement date' includes the date of sale of right to reside. The definition of 'settlement date' would therefore need to be adjusted to reflect the fact that in the event of village closure there may be no sale of a right to reside.

3.7 Compensation for residents

Under current legislation, scheme operators are only required to pay the resident their standard exit entitlement. However, in the event of village closure, residents are leaving their home involuntarily. It is therefore reasonable to expect they will be compensated to assist them to cover their moving costs. Compensation would be in addition to the usual exit entitlement. The underlying principle COTA Queensland supports is that the residents should not be financially worse off because of the decision to close the village.

3.8 Exit fees

It is possible that payment of the exit fee may mean that residents leaving a village that is closing are unable to buy into a village of the same standard as their existing village, through no decision of their own. At the same time, the exit fee represents the profit the operator makes from running the village. If no exit fee is payable in the event of a closure, the scheme operator may incur significant financial loss. COTA Queensland suggests that financial modeling needs to be undertaken by Fair Trading before a decision is made on this question. The results of the modeling will better inform decisions about application, part application or no application of exit fees when villages close.

4. Entering a village and closure implications for residents

Disclosure through a public information document is used as a tool to inform people about their rights and responsibilities. Experience indicates the tool, used alone, is inadequate. This could be partly addressed by having the public information document rewritten using plain English. Consideration also needs to be given to the use of a lower level of English, in addition to plain English, which incorporates illustrations and diagrams to be more meaningful for people with a mild intellectual disability. The use of community languages also needs to be provided for.

Other Considerations

The review is limited and does not aim to address broader issues regarding the operation of retirement villages.

COTA Queensland believes a broader review is required to address a range of retirement village issues including for example whether there is a need to further 'harmonise' the retirement village regulatory approach by the States and Territories. It is noted that the Productivity Commission report into aged care recommends that under the aegis of the Council of Australian Governments (COAG) State and Territory governments should pursue nationally consistent retirement village legislation.² COTA Queensland looks forward to being involved in this broader work.

² Recommendation 12.5, *ibid*, p322