

12 April 2019

Retirement Living  
Property Council of Australia  
Level 7, 136 Exhibition St  
Melbourne VIC 3000

**By email: [retirementliving@propertycouncil.com.au](mailto:retirementliving@propertycouncil.com.au)**

### **Comments on the proposed *Australian Retirement Village Accreditation Scheme Standards***

Thank you for the opportunity to provide our feedback on the draft Australian Retirement Village Accreditation Scheme Standards (**ARVAS Standards**). What follows is a brief submission on several aspects of the draft ARVAS Standards.

#### **Caxton Legal Centre Inc.**

Caxton Legal Centre is Queensland's largest community legal centre. Caxton Legal Centre's objects are to provide legal and social welfare services to low income and disadvantaged persons in need of relief from poverty, distress, misfortune, destitution and helplessness, and to educate such people in legal, social welfare and related matters. We are an independent, non-profit community organisation providing free legal advice, social work services, information and referrals.

Caxton Legal Centre's Queensland Retirement Village and Park Advice Service (**QRVPAS**), formerly known as the Park and Village Information Link (**PAVIL**), has a particular interest in the ARVAS Standards, given our ongoing involvement in providing legal advice, education and advocacy services for residents of retirement villages across Queensland.

#### **Background**

QRVPAS is a community legal service that is funded by the Department of Housing and Public Works, and has been delivered by Caxton Legal Centre since the program was first piloted in 2014. The aim of our service is to provide increased housing security to Queenslanders living in retirement villages by assisting them to:

- understand their rights and responsibilities under the relevant legislation;
- build capacity to present their interests to scheme operators; and

- have increased access to appropriate legal advice services.

To achieve these aims, QRVPAS provides free legal advice, information, community legal education and referral services to residents of retirement villages across Queensland.

In addition, we are involved in ongoing consultation with other stakeholders (including the Queensland Government's Department of Housing and Public Works, resident advocacy groups, seniors organisations and industry representatives) who contribute to the development of legislation, community education and policy in this area.

As the only community legal centre program in Queensland that has a specific focus on this area of law, we are uniquely placed to comment on the ARVAS Standards and how they will operate in practice. For these reasons, this submission is aimed at addressing issues that we have identified as being of concern to residents, based on our experience working in this area. This submission has also been endorsed by two key stakeholders in this area, the Association of Residents of Queensland Retirement Villages (**ARQRV**) and the Council on the Ageing Queensland (**COTA**).

### **General comment on the ARVAS Standards**

From the outset, we acknowledge that it is positive to see the retirement village industry attempting to introduce methods of self-regulation via the ARVAS Standards. We actively support the introduction of the ARVAS Standards and welcome the opportunity, given our expertise and interest, to comment on the impact of the standards on the rights and interests of older Queenslanders. There are many aspects of the draft ARVAS Standards which we recognise as a positive step towards achieving better living conditions for residents of retirement communities.

That said, our overarching concern is that, to a large extent, the draft ARVAS Standards do not establish meaningful obligations for scheme operators that extend beyond those already imposed by the surrounding legal framework. In this regard, the focus on assessing a scheme operator's '...achievement of compliance and positive operational outcomes'<sup>1</sup> suggests that the ARVAS standards are intended to promote the organisational goals of scheme operators, and do not prioritise any assessment of resident satisfaction or quality of life in retirement communities. We suggest that the broad aims of the ARVAS Standards should be reframed using resident-centric language, to make it clear that the industry has a dual focus on improving outcomes for residents and scheme operators alike.

In addition, we believe that if scheme operators are intending to go to the effort and expense of achieving accreditation, and then use their accreditation status to market themselves as meeting higher standards than other operators, there is a need to set more ambitious goals for scheme operators to work towards. This may include compliance with human rights laws, acknowledgement of relevant recommendations in recent reviews into elder abuse, aged care and the finance industry and the upcoming inquiry into disability services, all of which are potential touch points for a broader and more ambitious compliance standard for the industry.

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<sup>1</sup> Introduction, ARVAS Standards, pg 3.

Caxton Legal Centre has expertise in elder law and human rights law and would be happy to provide further submissions on these matters.

As we previously noted in similar comments on the *Retirement Living Code of Conduct*, if the ARVAS Standards fail to adequately prioritise resident interests, there is a real risk that accreditation of particular scheme operators will be viewed as tokenistic and/or misleading to consumers. In our view, such an outcome would be detrimental for scheme operators and residents alike and would undermine the potential benefits of the ARVAS Standards. In our submission, the development of the draft ARVAS Standards represents a significant opportunity to set the bar for best practice in the retirement living industry, and we encourage the ARVAS Standards to be used in this manner, rather than simply as a tool to check for legislative compliance.

As a broader observation, while we acknowledge that there is a clear need for technical language to identify measurable and assessable criteria and compliance indicators, the overuse of this language throughout the ARVAS Standards may have the impact of alienating individual residents. Here it is relevant to consider a comment made to us by a person living in a retirement village who was consulted about the draft ARVAS Standards (name withheld):

*"I found the tone of the document disempowering / ageist and believe it will do nothing to assist staff view older people as having some value nor to get them to recognise that they are actually delivering a service and not just filling in a compliance form."*

In this regard, we think there is a risk that the draft ARVAS Standards overemphasise policies and procedures that demonstrate compliance "on paper", but may not translate into real outcomes for individuals.

It is important that we do not underestimate the power of language used in these types of documents, which contribute to the development of industry culture, and in turn will influence the decisions of scheme operators, management and individual employees alike. The ARVAS Standards represent an opportunity for the industry to consider how it wishes to engage in conversation around industry best practice with prospective residents and residents. How that conversation is conducted through the draft standards, and the language used, will impact on the level of trust and engagement. We propose that the industry should be using this opportunity to ask its members what tone it wishes to set for a best practice model of retirement living.

In our view, the draft ARVAS Standards' emphasis on compliance, documents and meeting criteria does little to foster a resident-centric model of retirement living, and there is a real need to reconsider the language used to ensure that the industry is actively promoting a culture where individual dignity and human rights are respected.

### **Rating Framework and Accreditation**

We acknowledge that the ARVAS Standards have developed a suitable rating framework and accreditation model that is fit for purpose, and there have been clear efforts to identify relevant criteria with measurable indicators that can be objectively assessed.

However, we suggest that the standards could provide further particulars regarding the level of compliance that is expected for different scheme operators with differing operational requirements, having regard to their size, level of experience, financial resources and capabilities. This type of approach is adopted by Australian employment law which recognises the varying levels of sophistication between large businesses with dedicated human resources teams compared to small business employers (defined as those with less than 15 employees), and imposes different standards under unfair dismissal laws. Similar distinctions could be made by the ARVAS Standards to clarify how the criteria will be imposed upon industry leaders, including entities that own and operate villages across Australia, compared to not-for-profit organisations or smaller, single-village operators. This would ensure that there are consistent expectations for accredited operators with similar operational requirements.

### **Community Management**

We support the emphasised need to have a designated community manager who is nominated as the responsible person and key point of contact for a community. We also suggest that it is important for the community manager to have sufficient delegated authority from the scheme operator so that the community manager is capable of resolving disputes. For example, by agreeing to reasonable variations to a resident's contract without having to seek the approval of a director or the chief executive officer. This could be included in the standards to assure residents that their complaints will usually be dealt with by somebody who has capacity to respond and resolve issues in a timely way, without needing to defer decision-making through various levels of corporate responsibility.

In our experience as resident advocates, many residents are disempowered through interactions with community managers and/or scheme operators who act in an obstructive manner (for example, by failing to provide a meaningful response to complaints, or failing to action requests within a reasonable period of time). This often results in residents being forced to consider commencing legal proceedings to enforce their basic rights under a residence contract, with many feeling that they are too intimidated to take further steps. Accordingly, we also submit that the community manager should be compelled to respond to resident correspondence as soon as is reasonably practicable, and should willingly participate in informal dispute resolution with residents. This is the approach taken under the Queensland *Retirement Villages Act 1999* (Qld) where villages are required to respond within one week to a request for a dispute negotiation meeting.

With regards to information management within a retirement village community, we hold some concerns about the manner in which scheme operators may record information about individual residents under the ARVAS Standards. In our view, there is a risk that this type of record-keeping could encroach upon individual residents' rights to reasonable peace, comfort and privacy, and there should be clear limitations placed upon what type of information may be kept on a resident's file. In our experience there are situations where scheme operators may act in a paternalistic or invasive manner by creating excessive notes about residents' day to day activities, which may not be relevant for the purposes of managing the community. This is contrary to the *Retirement Villages Act 1999* (Qld) which prohibits a village from restricting the rights of a resident to autonomy over their personal, financial and other affairs or possessions. The right to

autonomy is an emerging area of human rights application in older age, and provides a useful framework beyond privacy standards, as it takes into account the broader entitlements of residents to have the freedom to lead independent lives in line with their conscience, values, beliefs, will, preferences and rights.

To adequately address this issue, the ARVAS Standards should clearly define what constitutes appropriate record-keeping, which we suggest should be limited to keeping records of resident contracts, correspondence, financial documentation and safety incidents. Similarly, it is of utmost importance that, in addition to complying with privacy laws and broader human rights standards, scheme operators must ensure that individual resident confidentiality is respected. For example, residents should be able to complain about a staff member without fearing that that information could later be accessed by the staff member concerned. We acknowledge that criteria 1.4 of the draft standards includes a requirement for induction and ongoing training of staff in relation to privacy obligations. This should include training on confidentiality of complaints and broader human rights framework, including the right to independence and autonomy.

As for the management of contracts for services provided to the community, we suggest that as a method of promoting increased transparency, scheme operators should be required to disclose any preferred service providers to residents. This would enable residents to compare providers with others in the market, and ensure that any community discounts are being shared with residents.

### **Human resource management**

We support the requirement that scheme operators exercise increase scrutiny when recruiting employees, particularly when it comes to confirming employee qualifications and credentials. In addition, as foreshadowed above, we suggest that there is a need to provide staff with specific training in relation to holistic issues that arise when working with older persons, such as age discrimination, capacity and decision-making, dignity of risk, identifying elder abuse or domestic violence concerns, and mental health first aid, as these will enhance awareness of resident rights, provide an appropriate framework for conversations between residents and village managers, and contribute to building a positive culture in the industry.

### **Resident entry and exit**

Standard 3.1 requires sales and marketing material and information to be ‘...complete, accurate and unambiguous.’ While we appreciate the emphasis on improving transparency and communications around the sale process for prospective residents, we submit that these obligations should extend to conduct and representations made by sales representatives and not be limited to marketing material.

In addition, it should be recognised that many scheme operators will offer referral benefits to other residents already living in a community, which may take the form of a financial incentive for introducing a prospective resident to a community. We submit that the ARVAS Standards should require any referral incentives of this nature to be disclosed, as there is potential for

residents who have been recruited to make misleading representations about the community while performing this role, and this aspect of sales and marketing is insufficiently regulated.

As for the contract documents themselves, we note that in some circumstances these contracts are prepared by scheme operators who offer multiple leasehold, freehold and other types of residence contract models. Where various contractual options are offered to prospective residents, it is sometimes the case that the residence contract package provided contains numerous pro-forma contracts covering all of these options, even where the resident has selected their preferred option. This can result in unnecessarily lengthy contract documents being heaped onto the prospective residents, which can be overwhelming, confusing, and may also result in the prospective resident accruing additional legal fees if their lawyer is then required to peruse the entire document bundle. This could easily be managed by the ARVAS Standards requiring each contractual offering to be presented as a physically separate contract package to minimise confusion.

In addition, we are concerned that under indicator 3.2.1, the obligation on scheme operators to both facilitate a face-to-face meeting with the prospective resident to ‘...explain the contract’ and ensure that the resident contracts have been ‘...certified as compliant by a qualified legal practitioner’ would be inappropriate. In particular, our concern is that these initiatives could blur the lines between the role of the scheme operator and the prospective resident’s own independent lawyer, and this could unduly influence prospective residents. There is a real risk that prospective residents may rely upon the certificate provided by the scheme operator’s lawyer as confirming there is nothing wrong with the residence contract, and therefore dismiss any recommendation that they seek their own independent advice, despite the fact that legislative compliance is not, of itself, a guarantee that the community will be suitable. Further, the cost involved in obtaining a certificate of compliance from the scheme operator’s lawyer would surely outweigh any benefit provided to residents, who still should be encouraged to have their own lawyer review the contract and provide them with this kind of assurance.

When it comes to a scheme operator’s role in acting as the sales agent for a retirement village unit, the ARVAS Standards need to create a positive obligation for the scheme operator to proactively facilitate the sale of the home. The standards could specify milestones which should be reached within a certain period of time. For example, reinstatement to be completed within two months of vacating the home, marketing to commence within one week of finalising renovations etc. The standards could perhaps require scheme operators to keep a register of all units for sale and the time frame in which they have sold, so that assessors can consider whether the scheme operator has a history of successfully selling homes within a reasonable period of time. That record should also be available for residents and prospective residents to review, so that they can estimate how long it may take for their home to sell and for them to receive their exit entitlement. In our view, this would incentivise the faster sale of retirement village homes, and would also benefit former residents who are waiting to sell their home before they can access their exit entitlement.

## **Resident engagement and feedback**

It is positive to see the ARVAS Standards providing some mechanisms for engaging residents and seeking feedback, with a view to improving the quality of services delivered. Our general comments above note the importance of ensuring that resident rights are respected and treated as a relevant considerations in all aspects of the ARVAS Standards.

One particular area that we consider relevant to quality improvement in retirement village living is the requirement for residents to obtain permission to keep pets in a retirement community. We note that we have frequently assisted residents who have made requests to keep a pet within their unit, and these requests are often denied by scheme operators who do not want to set a precedent or introduce pets into a village that previously did not allow pets, out of fear of negative responses from the community. We submit that the ARVAS Standards should require decision-makers in these cases to take into account the increasing recognition of the emotional and health benefits that pets can bring to older people's lives, along with the development of wider community standards that now recognise the need to provide housing options that cater for pet owners. Similarly, while we appreciate the difficulties scheme operators may face from time to time when balancing the preferences of an individual against those of the wider community, the ARVAS Standards should require operators to specifically consider individual residents' rights to exercise autonomy over issues that affect their own living situation and prioritise those considerations (where they do not unreasonably interfere with other residents' individual rights).

## **Community Environment, Services and Facilities**

We note that it is very common for disputes to arise in retirement communities about maintenance and repair work. In particular, there is often a disagreement between residents and the scheme operator as to who is responsible for organising and paying for maintenance work, which may have arisen because a residence contract does adequately address the issue. We suggest that the ARVAS Standards should require new residence contracts to include an addendum which specifically states what items will be included in the scheme operator's maintenance obligations, and what exclusions will be the responsibility of the resident. This should be separate to the main residence contract documents so that it can be easily referred to by the resident.

## **Safety and Security**

We recognise that the ARVAS Standards have taken positive steps to clearly define the level of safety and security that is expected in retirement communities. In this regard, we commend the efforts made to identify the need for specialist care providers and ensure that they are appropriately qualified.

However, we would also suggest that there are additional standards that could be implemented to better reconcile a scheme operator's need to balance security and safety considerations, with the need for operators and care providers to respect individual residents' human rights, and particularly in relation to dignity of risk. For example:

- scheme operators should use their best endeavours to respect residents' choice to age in place, and allow residents to access external home care service providers while still living in the community without using this as a basis for determining the accommodation is no longer suitable for them; and
- scheme operators should have policies in place to support a restraint-free environment in the provision of aged care, as a means of protecting the basic human rights of residents. The implementation of such policies should acknowledge that the application of restraint, for any reason, is an imposition on an individual's rights and dignity and, in some cases, may subject the person to an increased risk of physical and/or psychological harm. Scheme operators should also take a proactive approach to prevent situations that may lead to a perceived need for restraint.

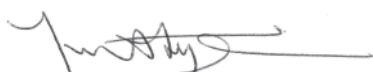
While addressing safety and security issues, we also observe we have encountered many new retirement living communities where residents have raised serious concerns about emergency access and/or disability access to certain facilities. For example, we have dealt with situations where emergency services have not been able to gain access in a timely manner because of issues with an apartment's emergency key safe or security gates that need to be opened, or in cases where the community layout is difficult to navigate because of issues with visibility of numbers on homes, inadequate signage/maps of the community, or narrow roads that are unsuitable for emergency vehicles. Similarly, we have dealt with situations where requests for disability access have not been responded to in a timely manner, and this could have potentially tragic consequences in an emergency situation. It is understandable that these types of issues may cause significant stress and concern for residents, and our view is that the ARVAS Standards should require community managers to respond to any issues of this nature on an urgent basis.

## **Conclusion**

Thank you for providing us with the opportunity to share our feedback on the draft ARVAS Standards. We are happy to provide supplementary submissions on the matters raised in this correspondence, or to consult further with the Property Council of Australia on those topics, if this would be of further assistance.

This submission was prepared by Ms Brittany Smeed, Solicitor with Caxton Legal Centre's QRVPAS service. For further information please contact Ms Smeed on 07 3214 6333.

Yours faithfully,



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Addendum

The submissions set out in this letter are endorsed by: the Association of Residents of Queensland Retirement Villages (**ARQRV**) and the Council on the Ageing Queensland (**COTA**).



A handwritten signature in black ink that reads 'Judy Mayfield'.

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