

# CARE IN AUSTRALIAN RETIREMENT VILLAGES

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## I SYNOPSIS

This article takes a broad notion of ‘care’ to give a national overview of the features of retirement village living from the regulatory, social, physical, service, financial, revenue, and care perspectives.

The author argues that retirement villages can offer an ideal accommodation option for elders where their families cannot reasonably be expected to maintain the level of informal and formal care that will be needed over time. The usual benign revenue features of the ‘principal residence’ for the purposes of the pension (age and carers), government-funded domestic care services and a range of tax concessions also apply to dwellings in retirement villages. What distinguishes villages is the proximity of services and facilities specifically for, and companionship of, retirees. Attention is given to the rights of residents to retrieve their financial investment on moving, notably to higher care, or on death. Finally, a brief comparison is made with other accommodation options for elders.

## II REGULATORY FEATURES

Once the province of churches and charities in the 1950s, when contract was the primary source of applicable law, the private sector became major providers of retirement living in the 1980s, and the large corporates since about 2005. Every jurisdiction in Australia now has a statute or code of practice dedicated to the regulation of retirement villages and most have an inexpensive and informal tribunal for the resolution of disputes under the Act or code.<sup>1</sup> Unlike formal aged care, the regulation of retirement villages is very much State-based. Generally speaking, unless expressly provided otherwise, a provision of a village contract is void to the extent that it is inconsistent with the statute.<sup>2</sup> NSW has gone so far as to introduce a mandatory standard form village contract as of 1 October 2013.<sup>3</sup>

Complementing this is a range of largely Commonwealth-funded domestic care services that are available in retirement village dwellings in much the same way as in suburban houses.

## III SOCIAL FEATURES

Three social features distinguish a retirement village from a general suburban residential environment.

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<sup>1</sup> See Schedule 1 for a table of the primary statutes, codes, regulations and tribunals relating to the regulation of retirement villages in Australia. References in the footnotes below will simply refer to an abbreviation for the relevant State or territory and then the section number, eg ‘NSW s 180’ means section 180 of the *Retirement Villages Act 1999* (NSW).

<sup>2</sup> ACT s 261; NSW ss 11, 199; QLD ss 23, 45; SA s 40; TAS ss 5, 42; VIC s 7; WA s 6.

<sup>3</sup> NSW s 43, Reg sch 2.

First, all residents must be over the age of 55 years or retired from full-time work, or the spouse or domestic partner of such a person.<sup>4</sup> In some jurisdictions retirement villages are a rare example of express exemption from age discrimination laws.<sup>5</sup> Neighbours are likely to be both more understanding and respectful than the busy young family next door in the suburbs, or the shared student household generating some night-time noise. Village residents tend to ‘look out for one another’ more than occurs in the general population.

Second, most villages have a range of communal recreational facilities available to residents who can and do self-organise into clubs of mutual interest, such as bowling, bushwalking, darts, bridge, dancing, dining and woodworking. Access for most involves a short safe walk within the village, rather than driving and parking elsewhere in the suburbs. Of course, there is no compulsion to ‘join in’ and frequently those who do quietly withdraw over time as frailty increases.

Third, at least in the larger villages, there is often the option of the elder later moving within the village into a serviced apartment with meals, cleaning and laundry provided and sometimes to an adjacent residential aged care facility. There is arguably less stress and ruction involved in such short moves, and it is then easier for friends made in the village and others to maintain contact despite the declining mobility of the resident. Such a move is dependent upon the availability of a suitable apartment or bed and, if Commonwealth-funded, assessment by the Aged Care Assessment Team (ACAT) that the resident is in need of a certain level of care.

Retirement villages can provide a self-contained caring cosmos protected from the buffeting impacts of the wider community.

#### IV PHYSICAL FEATURES

Retirement villages built since the 1970s are typically an example of medium density housing comprising townhouses or duplex dwellings with communal facilities. The number of dwellings might be anywhere from 10 to 20 and up to 600, though the Sunshine Coast in Queensland has several much larger developments. In recent times, vertical high-rise villages have been developed and will increase in popularity as land prices increase and proximity to the central business district is sought after.

The communal facilities may range from a comfortable common room, library and barbecue area to a putting green, gymnasium, heated swimming pool, indoor bowls, outdoor bowling green, tennis court and licensed bar areas.<sup>6</sup> The physical proximity of these facilities and of the population using them often means significant economies of scale can be achieved. It will often be cheaper for a resident to use the village facilities than to become a member of and drive or otherwise get to and from the nearest club(s).

#### V SERVICE FEATURES

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<sup>4</sup> Definitions of ‘resident’ and ‘retired person’ in ACT s 3, Dictionary; NSW s 3(1), Reg cl 8; NT s 3(1); QLD s 5 (‘retired person’ referred to but not defined); SA s 3(1); TAS ss 3(1), 7; VIC s 3(1); WA s 3(1).

<sup>5</sup> *Discrimination Act 1991* (ACT) s 30; *Anti-Discrimination Act 1997* (NSW) s 54; NT s 50; QLD s 26; TAS s 7.

<sup>6</sup> In NSW there is an exemption for a liquor license in retirement villages provided certain conditions are met under the *Liquor Act 2007* (NSW) ss 6(3) and (4).

In addition to the recreational facilities, most villages provide various care services as well. This might be as basic as nightly security patrols and the provision of emergency pendants with 24-hour telephone monitoring to a nursing service. This can be activated in case of either an intruder or a medical emergency. Again, because of the density of customers in the one site, these services can usually be provided much more cheaply than in the suburbs. This provides considerable comfort to the resident and his or her family.

Gardening and household maintenance is usually covered in a monthly fee (see below), at least if a majority of residents agree to this at an annual meeting. In some jurisdictions the operator is liable for all repairs and replacements in the village,<sup>7</sup> except for damage by a resident,<sup>8</sup> subject to a right to fund repairs via recurrent charges but only in accordance with an approved annual budget.<sup>9</sup> This may include a statutory duty to maintain replacement building insurance.<sup>10</sup>

Village operators assume many responsibilities of home maintenance for residents generally at or near cost in accordance with duties under statute or the particular contract.

For those no longer able or willing to drive a car, many larger villages have a bus to take elders to and from local shopping and medical centres. Some State governments also offer subsidies for pensioners using taxis if their doctor certifies that their medical condition justifies this.<sup>11</sup>

## VI FINANCIAL FEATURES

### *A Entry Payment*

Moving into a village usually requires a resident to sell their former principal residence. About 83 per cent of the Australian population aged 65 years and over own their own home outright or with a modest mortgage.<sup>12</sup> This funds the payment of a purchase price or ‘ingoing contribution’ for their resident right to occupy their dwelling in the village.

Operators claim that prices are typically pitched at around 80 per cent of the median price for comparable dwellings in the locality. Prices to move in are largely market-determined. Some not-for-profit organisations offer rental-only accommodation, which is a return to the model of the pre-1980s where the provision by the Commonwealth government of funding for the construction of housing for the elderly<sup>13</sup> meant there was little in need of consumer protection and so contract was the main source of applicable law.

### *B Cancellation Rights*

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<sup>7</sup> ACT s 137; NSW s 93; QLD s 97 as to maintenance and s 103(3) as to replacement.

<sup>8</sup> ACT s 138(2); NSW s 94(2); QLD s 96.

<sup>9</sup> ACT s 141; NSW s 97; QLD s 97.

<sup>10</sup> ACT s 145; NSW s 100; QLD s 110; TAS s 20.

<sup>11</sup> The NSW Taxi Transport Subsidy Scheme is not otherwise means tested and covers 50 per cent of a pensioner’s taxi fares up to a maximum of \$30 per journey. The QLD Taxi Subsidy Scheme and the WA Taxi Users’ Subsidy Scheme are similar, with a maximum subsidy of \$25 per journey. In VIC there is a financial hardship criterion.

<sup>12</sup> Australian Bureau of Statistics, ‘2012 Year Book Australia’ (Year Book, Commonwealth of Australia, 2012) Tables 10.20 and 10.24; Productivity Commission, ‘Caring for Older Australians’ (Draft Report, Commonwealth of Australia, January 2011) 207 [7.2].

<sup>13</sup> *State Grants (Dwellings for Pensioners) Act 1974* (Cth).

All jurisdictions provide for a cooling-off period during which the resident can cancel the proposed transaction without penalty, provided they have not already moved into occupation under a village contract, within

- five business days after the date of the contract<sup>14</sup>
- seven business days of the operator's receipt of the village contract signed by the resident<sup>15</sup>
- 10 working days<sup>16</sup>
- 14 days<sup>17</sup>
- 15 days<sup>18</sup>

In Victoria the cooling-off rights may be exercised within 3 business days but the resident is liable to pay \$100 or 0.2 per cent of the price, whichever is the greater.<sup>19</sup>

Some jurisdictions (ACT, NSW and SA) additionally provide for a 'settling in period' during which time the resident can cancel even after completion of the transaction and moving into occupation, within 90 days of the earlier of moving in or being entitled to move in.<sup>20</sup> The resident can be charged a fair market rent,<sup>21</sup> costs of rectifying damage<sup>22</sup> and a modest administration fee,<sup>23</sup> but no more.<sup>24</sup> The operator must pay the refund, depending on the type of resident right within 14 days of permanent vacation<sup>25</sup> or of a new resident moving in.<sup>26</sup>

### *C Ongoing Payments*

Ongoing monthly fees cover asset management outlined above and village staffing and contractors, including council and water rates and cleaning and maintenance of common areas and facilities. For the most part, these are not profit centres for village operators and are limited to cost recovery. Surpluses must be carried forward or distributed to the residents<sup>27</sup> and deficits must be borne by the operator<sup>28</sup> except in very limited circumstances.<sup>29</sup> The accounts have to be audited annually<sup>30</sup> and made available to residents.<sup>31</sup>

In NSW recurrent charges can only be increased in accordance with a stated formula (eg a specified percentage of the maximum single age pension) or in accordance with a budget.<sup>32</sup> In

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<sup>14</sup> TAS s 6(7); WA s 14.

<sup>15</sup> ACT s 53; NSW s 32.

<sup>16</sup> NT s 51(2)(a) and COP s 21.

<sup>17</sup> QLD s 48, Dictionary definition of 'cooling-off period'.

<sup>18</sup> SA s 17(7).

<sup>19</sup> VIC s 24.

<sup>20</sup> ACT s 71; NSW s 44A; SA ss 3(2)(b), 31(3), (4).

<sup>21</sup> ACT s 73(1)(a); NSW s 44B(1)(a); SA s 31(4)(a).

<sup>22</sup> ACT s 73(1)(b); NSW s 44B(1)(b).

<sup>23</sup> ACT s 73(1)(c); NSW s 44B(1)(c).

<sup>24</sup> ACT s 76; NSW s 44E.

<sup>25</sup> Non-registered interest holders: ACT s 75(1)(a); NSW s 44D(1).

<sup>26</sup> Registered interest holders: ACT ss 75(2), 235; NSW ss 44D(2), 180(2).

<sup>27</sup> ACT s 173; NSW s 120B; QLD s 102A(6); WA COP s 5.6 (unless the contract provides otherwise).

<sup>28</sup> ACT s 174; NSW s 120C; QLD s 102A(6) deficits are to be carried forward.

<sup>29</sup> ACT Reg cl 40; NSW Reg cl 33; QLD s 107.

<sup>30</sup> ACT s 168; NSW s 118; QLD 113; TAS s 15; WA COP s 5.5.

<sup>31</sup> ACT s 169, Reg cl 39; NSW s 119; TAS s 6(2)(d).

<sup>32</sup> NSW s 104.

the latter case, any proposed increase exceeding the CPI requires a majority vote of approval by the village residents.<sup>33</sup>

#### *D Exit Payments*

The primary profit centres for operators are the charging of departure fees and the retention of (part of) capital gains following permanent vacation, and these can be very substantial. There is definitely a price to pay for the benefits of retirement village living outlined above. It is often said that: 'retirement villages are not a financial investment, but rather an investment in a lifestyle.

The retention of 'capital gain'<sup>34</sup> by the operator might be anywhere between nil and 100 per cent. The latter tends to prevail in the not-for-profit sector while 50 per cent is probably the norm in the private sector.

Departure fees are usually expressed as an annual percentage of the ingoing contribution paid either by the outgoing resident when they moved in ('entry price') or payable by the succeeding resident now moving in ('exit price'). In the latter case, the operator is effectively retaining a (further) share of any capital gain. An annual fee of between 2.5 and 3.5 per cent over a maximum period of 10 years is typical. Sometimes it is tapered, starting with a higher percentage that diminishes in successive years. The increased longevity of residents in retirement villages is borne out by a nascent trend in deleting any reference to a maximum accrual period.

#### *E Concessions on Leaving*

In some jurisdictions following permanent vacation:

- unless a new resident moves in beforehand, the outgoing resident's liability for
  - the departure fee is limited to the period up to the date of permanent vacation if the maximum accrual period has not expired;<sup>35</sup>
  - recurrent charges for
    - optional or personal services ceases to further accrue as of permanent vacation,<sup>36</sup> or 28 days from then,<sup>37</sup> and
    - general services
      - ACT and NSW: continues for 42 days only,<sup>38</sup> except for registered interest holders, who share the cost with the operator in same proportion as capital gains is to be shared until a new resident moves in;<sup>39</sup>
      - QLD: continues for 90 days and then the cost is shared in accordance with the sharing of capital gain up until 9 months from permanent vacation;<sup>40</sup> and

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<sup>33</sup> NSW ss 106, 114.

<sup>34</sup> ACT s 13; NSW s 7A.

<sup>35</sup> ACT s 217; NSW ss 156(3), 158; QLD ss 15(2), (3).

<sup>36</sup> ACT s 209, NSW s 151.

<sup>37</sup> QLD s 102.

<sup>38</sup> ACT ss 210(3)(a), 211(2)(e); NSW ss 152(3)(a), 153(2)(e).

<sup>39</sup> ACT s 210(3)(b); NSW s 152(3)(b).

<sup>40</sup> QLD s 104.

- the outgoing resident's liability for reinstatement of the premises
  - is limited to rectifying excessive wear and tear,<sup>41</sup> or
  - extends to fair wear and tear but that part of the cost is shared in the same proportion as capital gains is to be shared under the contract.<sup>42</sup>

## VII REVENUE FEATURES

Retirement villages enjoy a relatively benign revenue environment in terms of tax exemptions and asset exemption for pension purposes.

### *A Age Pension*

All standard forms of rights of residence in retirement villages meet the generous pension criteria of the elder having a right or interest in a dwelling house or unit providing 'reasonable security of tenure'<sup>43</sup> that is occupied as the resident's principal residence. This means the ingoing contribution paid enjoys the usual exemption from the assets test.<sup>44</sup> In pension parlance, the elder is a 'special resident' in a 'special residence'.<sup>45</sup>

Of course, if a resident sells their former principal home for significantly more than the ingoing contribution payable for their residence right in the village, that surplus will most likely be deposited with a bank or invested in shares generating interest or dividends for income to live off. The surplus will in most circumstances be exemption from capital gain tax<sup>46</sup> but will be counted as financial assets<sup>47</sup> under the assets test<sup>48</sup> with deemed income<sup>49</sup> under the income test.<sup>50</sup>

Assets exceeding the relevant Asset Value Limit (AVL) will result in a decrease in pension of \$1.50/fn for each \$1000 of excess.<sup>51</sup> Income exceeding the relevant 'ordinary income free area' (\$156.00/fn for a single person or \$276.00/fn for a couple combined, up to 30 June 2014) will reduce the pension by \$0.50/fn for each \$1.00 of excess income (or \$0.25/ for each member of a couple).<sup>52</sup> Whichever test reduces the pension payable more will prevail.<sup>53</sup>

The elder has up to 12 months,<sup>54</sup> or 24 months in exceptional circumstances on application to Centrelink,<sup>55</sup> to apply the sale proceeds of the former principal home to purchasing another, such as a dwelling in a retirement village, before the funds are factored into the pension means test. This means the elder can stay with family temporarily on selling their former

<sup>41</sup> ACT ss 218, 220; NSW ss 162, 164, see also *Dean v Todber Pty Ltd* [2011] NSWCTTT 420; QLD s 62(2)(a), (3)(a), Dictionary definition of 'reinstatement work'.

<sup>42</sup> QLD s 62(3)(b).

<sup>43</sup> *Social Security Act 1991* (Cth) s 11A(10).

<sup>44</sup> *Ibid* s 1118(1)(a), (b).

<sup>45</sup> *Ibid* ss 12, 12C.

<sup>46</sup> *Income Tax Assessment Act 1997* (Cth) s 118.110.

<sup>47</sup> *Social Security Act 1991* (Cth) s 9.

<sup>48</sup> *Ibid* s 1064-G1.

<sup>49</sup> *Ibid* ss 1076-1083.

<sup>50</sup> *Ibid* s 1064-E1.

<sup>51</sup> *Ibid* s 1064-G4.

<sup>52</sup> *Ibid* s 1064-E10.

<sup>53</sup> *Ibid* s 1064-A1 Step 11.

<sup>54</sup> *Ibid* s 1118(1B).

<sup>55</sup> *Ibid* s 1118(2B).

home if suitable alternative accommodation has not been found by then without this adversely affecting his or her pension.

Occasionally, on selling and moving into the village there is a last-minute problem with completing the sale, eg if the purchaser has not attended to a requirement of their incoming mortgagee. If the removalist van is already packed up and on the way to the village, this can be a drama. In NSW this is lessened where a short term residential tenancy agreement can be entered into by the operator and the incoming resident expressly excluding the provisions of the *Retirement Villages Act 1999* (Cth).<sup>56</sup> The rent is usually at least equivalent to the recurrent charges and can tide the resident over to be where he or she wants to be while the completion of the sale is finalised.

### B GST

On moving in, GST only applies to the purchase price of the first sale of a new strata unit. Resales<sup>57</sup> and long term leases and licenses<sup>58</sup> are input taxed, unless the premises have been substantially renovated.<sup>59</sup> It is rare for a resident to pay GST on moving in.

### C Stamp Duty

Depending on the jurisdiction, ad valorem stamp duty<sup>60</sup> generally applies to the purchase of a unit under strata<sup>61</sup> or company<sup>62</sup> title or a premium paid for the assignment of a lease,<sup>63</sup> but otherwise leases and licenses are exempt from duty.<sup>64</sup> There are relatively few strata retirement villages,<sup>65</sup> so it rare for a resident to pay stamp duty on moving into a NSW retirement village.

### D Land Tax

In some jurisdictions the dwelling owned and occupied by an elder as a principal residence under strata title is exempt from land tax,<sup>66</sup> and all the land used as a retirement village is exempt in the hands of the landowning operator where dwellings are leased or licensed to residents.<sup>67</sup>

### E Council Rates

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<sup>56</sup> NSW ss 4(1) definition of 'residence right', 24(2)(b), 199(4).

<sup>57</sup> *A New Tax System (Goods and Services Tax) Act 1999* (Cth) s 40.65.

<sup>58</sup> Ibid s 40.70, Dictionary definition of 'long term lease'.

<sup>59</sup> Ibid s 40.75.

<sup>60</sup> *Duties Act 1997* (NSW) s 32.

<sup>61</sup> Ibid s 11(1)(a).

<sup>62</sup> Ibid s 11(1)(d), Dictionary definitions of 'company title dwelling' and 'home'.

<sup>63</sup> Ibid s 8(1)(b)(viii).

<sup>64</sup> Ibid s 65(16)(d).

<sup>65</sup> In 2004 the NSW Office of Fair Trading estimated that 50 out of 750 retirement villages were under strata title: Office of Fair Trading, 'Review of the NSW Retirement Villages Act 1999' (Report, NSW Government, March 2005) 2.

<sup>66</sup> *Land Tax Act 2004* (ACT) s 9; *Land Tax Management Act 1956* (NSW) s 10(1)(r).

<sup>67</sup> *Land Tax Act 2004* (ACT) s 10(1)(e), (2); *Land Tax Management Act 1956* (NSW) s 10R.

Under leasehold title and licenses there is a potential saving in that the minimum council rate that applies to every registered parcel can apply to a lot comprising numerous dwellings, while each strata unit will attract at least the minimum rate.<sup>68</sup>

### F CGT

Finally, on moving out an individual with an 'ownership interest' in their principal dwelling<sup>69</sup> is exempt from capital gains tax.<sup>70</sup> This extends to standard residence rights in retirement villages.<sup>71</sup>

So, retirement village dwellings enjoy all the revenue benefits normally associated with a principal home in terms of the pension, CGT and GST, with the added bonus (in NSW at least) of exemptions from duty and land tax and concessional council rates in the case of the grant of a lease or licence.

### VIII CARE FEATURES

Independent living units and serviced apartments in retirement villages are as eligible as any other private residence for various domestic care services. The type and extent of care may be attenuated according to the services the village operator has already contracted to provide to the resident.

#### A HACC

Elders aged 65 years and older can apply for home assistance under the Home and Community Care (HACC)<sup>72</sup> if assessed as needing help and being at risk of premature admission into residential aged care. Help includes assistance with

- domestic activities like house cleaning and shopping
- personal care such as cooking, eating, washing and dressing, and
- home modifications like installation of grab rails.

#### B HCPs

A higher level of assistance can be sought from an approved provider of Commonwealth-funded Home Care Packages (HCPs).<sup>73</sup> These are of a similar type to those under HACC but more extensive, potentially expensive and regulated.

- This requires an assessment by the Aged Care Assessment Team (ACAT) and a determination that the elder needs care of between Levels 1-4 but does not require residential aged care.<sup>74</sup>

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<sup>68</sup> *Local Government Act 1993* (NSW) ss 548(3)(a); *Local Government Regulation 2005* (NSW) cl 126.

<sup>69</sup> *Income Tax Assessment Act 1997* (Cth) s 118.115.

<sup>70</sup> *Ibid* s 118.110.

<sup>71</sup> *Ibid* s 118.130.

<sup>72</sup> *Home and Community Care Act 1985* (Cth).

<sup>73</sup> Formerly 'flexible care' under *Aged Care Act 1997* (Cth) s 49-3 and the Flexible Care Subsidy Principles 1997, replaced on 1 August 2013 by the Community Care Subsidy Amendment Principles 2012 (No.1) (F2012L02056) known as 'home care' as from 1 July 2014.

<sup>74</sup> *Aged Care Act 1997* (Cth) s 21-3 and Approval of Care Recipients Principles 1997 (Cth) s 5.6.



- HCPs cost \$133.98 per person per fortnight (to 30 June 2014), being 17.5 per cent of the maximum single age pension for the time being.<sup>75</sup>
- If the resident's income exceeds the maximum age pension (\$766.00/fn to 30 June 2014) then up to 50 per cent of that excess is also payable for HCPs.<sup>76</sup>
- 'Income' means net of tax and the Medicare Levy and excludes any pharmaceutical allowance, rental assistance, telephone assistance or pension supplement payable by Centrelink or the Department of Veterans' Affairs.<sup>77</sup>

What used to be community care (Community Aged Care packages) and flexible care (Extended Aged Care at Home packages and EACH – Dementia packages) have become the 4 levels of HCPs as from 1 August 2013.<sup>78</sup>

### C Carer Allowance

A retirement village resident who is 'frail aged' can seek the help of an adult carer and that person may be eligible for the Carer Allowance from Centrelink. The resident must be assessed as needing a certain level of care under the Adult Disability Assessment Tool (ADAT)<sup>79</sup> on a daily basis in the elder's principal residence being a private home.<sup>80</sup> This may be a dwelling in a retirement village. If the carer does not co-habit with the resident, the required care must be for at least 20 hours per week.<sup>81</sup> Cessation of care due to hospitalisation or other temporary cause exceeding 63 days in any calendar year will cease eligibility.<sup>82</sup> If the carers are a couple, only one member of the couple is eligible for the carer allowance.<sup>83</sup>

The carer may receive the age pension, if otherwise entitled, as well as the carer payment as payments under the *Social Security Act 1991* (Cth) are not 'income' for pension purposes.<sup>84</sup>

The carer allowance is not subject to the income or assets test<sup>85</sup> and is \$118.20/fn up to 30 June 2014. There were about 560 000 recipients of the Carer Allowance in 2013.<sup>86</sup>

### D Carer Payment

If the level of care required by the elder is more intensive under the Adult Disability Assessment Tool (ADAT)<sup>87</sup> and constant care is required, a carer of the elder at the elder's

<sup>75</sup> *Aged Care Act 1997* (Cth) s 60-2 and *User Rights Principles 1997* (Cth) s 23.89(2), as from 1 July 2014, s 52D-3.

<sup>76</sup> *Aged Care Act 1997* (Cth) s 60-2 and *User Rights Principles 1997* (Cth) s 23.89(3), as from 1 July 2014, s 52D-2(3).

<sup>77</sup> *Aged Care Act 1997* (Cth) s 60-2 and *User Rights Principles 1997* (Cth) s 23.89(5).

<sup>78</sup> Explanatory Statement, *Aged Care Act 1997* (Cth) Community Care Subsidy Amendment Principles 2012 (No 1).

<sup>79</sup> *Social Security Act 1991* (Cth) ss 38C, 954(1)(c) or 954A(1)(c); Australian Government, 'Guide to Social Security Law' (Guide, Commonwealth of Australia, 12 May 2014) [3.6.9] <<http://guides.dss.gov.au/guide-social-security-law>>.

<sup>80</sup> *Social Security Act 1991* (Cth) ss 954(1)(d), 954A(2)(d).

<sup>81</sup> *Ibid* s 954A(2)(b).

<sup>82</sup> *Ibid* ss 955(2) and 957(3).

<sup>83</sup> *Ibid* s 965.

<sup>84</sup> *Ibid* s 8(8)(a).

<sup>85</sup> National Commission of Audit, 'Towards Responsible Government' (Report, Commonwealth of Australia, February 2014) 144: Recommendation 26 includes an income limit of \$150,000 pa at which no Carer Allowance would be payable.

<sup>86</sup> *Ibid* 142-144.

private home<sup>88</sup> may be eligible for the Carer Payment. The elder must be a full or part pensioner.<sup>89</sup> Providing the care must severely restrict the carer's ability to pursue paid employment.<sup>90</sup> Like the Carer Allowance, up to 63 days cessation of rendering care due to hospitalisation or other reasons will not disqualify eligibility.<sup>91</sup>

Unlike the Carer Allowance, the Carer Payment is means tested under separate provisions but it is administered in the same way as under the age pension.<sup>92</sup> If the elder is not eligible to receive the age pension, then his or her taxable income must not exceed \$104 096 per annum<sup>93</sup> and assets must not exceed \$642 000<sup>94</sup> up to 30 June 2014.

The carer payment is equivalent to and calculated in the same manner as the age pension,<sup>95</sup> being a maximum of \$766/fn up to 30 June 2014. There were about 220,000 recipients of the Carer Payment in 2013 and the number has been growing at 12 per cent per annum over the last decade.<sup>96</sup>

### *E Serviced Apartments*

As mentioned earlier, many retirement villages have both independent living units and serviced apartments. Some apartments are Commonwealth funded and others are not. Where not, typically the ingoing contribution is less than the 'extra allowable amount',<sup>97</sup> \$142 500 up to 30 June 2014, and if rent<sup>98</sup> of between \$112.00 and \$280.55/fn is paid then rental assistance of up to \$126.40 for a single person may be payable. Recurrent charges in serviced apartments are typically equivalent to 85 per cent of the maximum single age pension and 100 per cent of rental assistance. This includes the provision of three meals a day and weekly cleaning of the apartment and laundry.

A resident would normally have to arrange to sell the residence right to their independent living unit to raise the ingoing contribution for the serviced apartment. This will still be an exempt asset for pension purposes, but any surplus will most likely be a financial asset for pension purposes though not a taxable capital gain. In NSW the original maximum departure fee accrual period cannot be extended or restarted when moving from one premises to another in the same village or another owned or managed by the same operator, or a close associate of that operator.<sup>99</sup>

### *F Residential Aged Care*

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<sup>87</sup> *Social Security Act 1991* (Cth) s 198(2)(a).

<sup>88</sup> *Ibid* ss 198(3).

<sup>89</sup> *Ibid* ss 198(5)-(7).

<sup>90</sup> *Ibid* s 197D(1)(d).

<sup>91</sup> *Ibid* ss 198AA and 198AC.

<sup>92</sup> *Ibid* ss 198A-198Q, but Centrelink appears to use the same income and assets tests as applies under the age pension according to the DOHS website.

<sup>93</sup> *Ibid* s 198A.

<sup>94</sup> *Ibid* s 198D(1).

<sup>95</sup> *Ibid* ss 210, 1064-A.

<sup>96</sup> National Commission of Audit, above n 85, 142-144.

<sup>97</sup> *Social Security Act 1991* (Cth) s 1148(2).

<sup>98</sup> National Commission of Audit s 13(2).

<sup>99</sup> NSW ss 156(4), s 4(1) definition of 'close associate'.

Some retirement village operators are also, or are related to, approved care providers<sup>100</sup> that provide HCPs and operate residential aged care facilities in the same complex or close by. Entry is determined not by the care provider but independently by ACAT.<sup>101</sup> If an accommodation bond is payable for low care it will be an exempt asset for pension purposes,<sup>102</sup> as will the ‘refundable deposit’ for any residential aged care as of 1 July 2014.<sup>103</sup>

## IX SECURITY OF TENURE

A wider but important aspect of care in a retirement village is the sense of security afforded to residents knowing they can stay where they are for as long as they wish. This is equally important for the resident’s family.

All jurisdictions require retirement villages to be specially noted as such by notice from the operator to the land registry.<sup>104</sup> Legal title offered to residents covers the range in conveyancing generally: strata or community title, company title, ‘purple title’ as tenants in common (in WA), lease (assignable or more usually non-assignable, unregistered or more usually registered) and licence.

The usual conveyancing considerations as to security of tenure apply here, with some modifications.

### *A Freehold Title*

Strata and community title are fee simple but may be subject to the operator being entitled under the contract to lodge a caveat or charge on the title and to retain custody of the resident’s title deed. This is to ensure that there is no transfer of title without payment of monies then due to the operator, as outlined earlier.

### *B Leasehold Title*

Registered long term leases (99 years is common) are a very robust form of tenure provided that if there is a mortgagee on title, the lease is registered with that mortgagee’s (or those mortgagees’) consent.<sup>105</sup> The only ‘chink in the armour’ is that the liquidator of an insolvent corporate operator may disclaim, ie unilaterally cancel, a lease, leaving the resident to queue up with other unsecured creditors to claim damages.<sup>106</sup> Being based on Commonwealth law, this will prevail over State and Territory legislation to the extent of inconsistency.<sup>107</sup>

### *C Licence*

Licence is typical in the not-for-profit sector and is essentially a contract without any interest in the land.

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<sup>100</sup> *Aged Care Act 1997* (Cth) s 7-1.

<sup>101</sup> *Ibid* s 22-1, 22-4.

<sup>102</sup> *Social Security Act* (Cth) s 1118(1)(u).

<sup>103</sup> *Ibid* s 1118(1)(v).

<sup>104</sup> ACT s 42; NSW s 24A; NT s 36; QLD ss 28, 34; SA ss 11, 12; TAS s 38; VIC s 9; WA s 16.

<sup>105</sup> *Permanent Mortgages Pty Ltd v Fadale Pty Ltd* [2011] NSWSC 975 (31 August 2011) (Harrison AsJ); NSW s 138; *Conveyancing Act 1919* (NSW) s 53(4).

<sup>106</sup> *Corporations Act 2001* (Cth) s 568(1); *Willmott Growers Group Inc v Willmott Forests Limited (Receivers and Managers appointed) (In liquidation)* [2013] HCA 51 (4 December 2013), and see NSW s 129(2)(d).

<sup>107</sup> *Commonwealth of Australia Constitution 1901* (Cth) s 109.

## D Termination by Operators

Operators have strictly limited grounds on which to terminate a village contract, and in most jurisdictions only if it is a lease or a licence,<sup>108</sup> such as

- medical grounds if the premises are no longer suitable to the resident's needs<sup>109</sup>
- serious and persistent breach of the village contract,<sup>110</sup> or
- serious and persistent damage or injury caused by the resident.<sup>111</sup>

In some jurisdictions, operators may not seek to recover possession without first obtaining an order for termination from the court or tribunal.<sup>112</sup> Many retirement village residents effectively have, at the very least, life tenancies.<sup>113</sup>

## X TIMING OF REFUND

Another somewhat more remote aspect of care in a village is knowing that if and when it comes time to move to alternative accommodation, notably to higher care, the refund by an operator or payment from a purchaser will be paid in a timely manner. The same applies to the resident's family in general, and his or her executors in particular in the event of the elder dying while the residence right is still current.

### A No Refund

Under strata, community and company title and assignable leases, there is no refund by an operator, but a payment receivable from a purchaser of the dwelling, the timing of which will be governed by the particular contract, and a prior obligation to pay the exit costs above to the operator on transfer of the title. Typically, the balance of the purchase price will be payable on completion of the contract for sale when the incoming resident is given possession of the dwelling.

### B Finding a New Resident

The great majority of refunds by operators to outgoing residents are made because a replacement resident moves into their former dwelling in the village. The rapidity in or delay with which this happens is closely linked to the prevailing conditions of the residential property market in general.

Under leases and licenses in all jurisdictions an operator is obliged by force of statute to pay a refund of the ingoing contribution, plus any agreed share of achieved capital gain, less the

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<sup>108</sup> ACT s 183; NSW s 130; NT s 28; SA s 31(2)(b); TAS s 8(2); WA s 18(2).

<sup>109</sup> ACT s 187; NSW s 133; NT s 15 and COP s 32(1)(a); QLD s 53(3)(c) (in need of residential aged care); SA s 31(1)(d); TAS s 8(1)((e), (3); VIC s 16(5); WA s 58 and COP s 7.1.

<sup>110</sup> ACT s 188; NSW s 134; NT s 16 and COP s 32(1)(b); QLD s 53(3)(a); SA s 31(1)(c); TAS ss 8(1)(d), 32(3); VIC s 16(2); WA s 59 and COP s 7.1.

<sup>111</sup> ACT s 189; NSW s 135; NT s 19 and COP s 32(1)(d); QLD s 53(2); WA s 62.

<sup>112</sup> ACT s 194; NSW 139; NT s 22 and COP s 32(2); SA 31(7), (8); WA s 66.

<sup>113</sup> ACT s 182; NSW s 129; NT s 14 and COP s 35(2).

above fees and charges, within a certain time of the new resident moving in, typically 14 days.<sup>114</sup>

In some jurisdictions the resident has considerable control over or input into the process of locating a new resident for the premises, and therefore the timing of the payment of the refund.

In the ACT and NSW, ‘registered interest holders’ can set and revise the listing price and retain any real estate agent or other lawful means to find a new resident of their choosing.<sup>115</sup> These residents include those occupying under strata, community and company title,<sup>116</sup> as well as leasehold title, provided the lease:

- is registered, and
- is for a term of at least 50 years or for the life of the resident, and
- entitles the resident to at least 50 per cent of any capital gain.<sup>117</sup>

If the agent is the operator, or a person chosen by the operator, any commission is to be shared in the same proportion as capital gains is shared under the contract.<sup>118</sup> The operator is obliged to put all offers received to the resident and to provide regular marketing reports if requested.<sup>119</sup>

Some operators include a provision in the contract to the effect that if the resale price accepted by the resident is less than that which the operator would accept, then the calculation of the refund is to be based on the operator’s figure if verified by an independent valuer. In NSW such a provision is arguably void,<sup>120</sup> resulting as it may in an exaggerated deduction of any shared capital gain from the resident’s point of view.

The same right to appoint an agent applies to a Queensland resident, regardless of the type of residence right involved, if no resale has been achieved by the operator within 6 months of notice of termination.<sup>121</sup> In the interim, the operator and resident must endeavour to reach agreement as to the listing price, failing which an independent valuation from a licensed valuer must be obtained.<sup>122</sup> If an operator delays in this, the resident may apply to the tribunal for an order for payment if materially prejudiced by the delay.<sup>123</sup>

In WA the operator has to pay a refund to a resident within 45 days of termination of the contract if the resident does not have the right to appoint his or her own agent.<sup>124</sup> This applies wherever a lump sum payment is made on moving in, regardless of the type of residence right.<sup>125</sup> Presumably, few WA operators would fetter the resident’s rights to appoint an agent.

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<sup>114</sup> ACT ss 235(2), 238(2)(b)(ii)-(iv); NSW ss 180(2), 181(2)(a)-(e); NT s 51(2)(a) and COP s 36(1)(b); QLD s 63; SA s 41 and COP s 4 (10 days); TAS 12(a)(iii) (30 days); VIC s 26; WA s 19(3)(a) and COP cl 7.1 (7 days).

<sup>115</sup> ACT s 223(1); NSW s 168(1).

<sup>116</sup> ACT ss 12(1)(a), (b); NSW ss 7(1)(a), (b).

<sup>117</sup> ACT ss 12(1)(c), 13; NSW ss 7(1)(c), (2), 7A.

<sup>118</sup> ACT s 225; NSW s 170.

<sup>119</sup> ACT s 223(6); NSW s 168(5); QLD s 65.

<sup>120</sup> NSW ss 168(1), 199(1).

<sup>121</sup> QLD s 64.

<sup>122</sup> QLD s 60.

<sup>123</sup> QLD s 171.

<sup>124</sup> WA s 20(3)(b), (5).

<sup>125</sup> WA s 3(1) definition of ‘premium’.

This is in curious juxtaposition to Queensland where the restriction of the right of a resident to dispose of their residence right is integral to the definition of a ‘residence contract’ that is subject to regulation.<sup>126</sup>

In Victoria, the right to set the sale price and appoint an agent was confined to owners of the fee simple estate,<sup>127</sup> but since amendments in 2006 residents under other types of resident rights, like WA, have the right to either set the sale price and appoint an agent or require the operator to pay the refund, but within 6 months of termination.<sup>128</sup>

In these cases, operators are generally precluded from interfering with the resale process.<sup>129</sup>

These are very significant rights to allow the resident or his or her estate to ‘meet the market’ in order to achieve a quick sale or wait patiently in more buoyant times.

Other jurisdictions merely oblige the operator to take all reasonable steps to find a new resident,<sup>130</sup> or to comply with what the contract says about this.<sup>131</sup>

### *C No New Resident*

In some circumstances in some jurisdictions a resident can require payment of the refund, or at least part of it, in the absence of a new resident moving in. Generalisations are not very apt as each legislature has its own take on when and how such an obligation should arise.

In the NT and Tasmania, any resident is entitled to a refund within six months of giving a notice of termination.<sup>132</sup> In the ACT and NSW, any resident who is *not* a registered interest holder, can require the operator to pay the refund due on six months from permanent vacation<sup>133</sup> even if no new resident has moved in by then.<sup>134</sup>

In other jurisdictions, if a resident is assessed as needing a higher level of care than can be provided by the operator, and a lump sum is required to be paid for that care which the resident does not otherwise have available, the operator is obliged to pay so much of the refund ultimately payable as is needed to cover that payment. This will usually be an accommodation bond or refundable deposit payable to an approved care provider of residential aged care.

In Tasmania, the operator must pay the bond amount within 45 days of the resident moving provided he or she gave notice of this before or within 10 days of moving.<sup>135</sup> In Victoria, the payment must be made within 14 days prior to the expiration of six months of the resident moving out of the village or into residential aged care, whichever is earlier.<sup>136</sup> In SA, the

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<sup>126</sup> QLD s 10(4)(d).

<sup>127</sup> VIC ss 3(1) definition of ‘owner’, 32B.

<sup>128</sup> VIC s 26 and 2006 Reg 5, sch 1 cl 1, 7, sch 2 cl 1.

<sup>129</sup> ACT s 232; NSW s 169; QLD ss 60, 67, 170; VIC s 32C.

<sup>130</sup> TAS s 12(b); WA COP s 5.7.

<sup>131</sup> SA s 41 and COP s 3.

<sup>132</sup> NT s 51(2)(a) and COP ss 36(1), (2), unless under sub-(3) the contract provides for an earlier refund date; TAS s 12(a).

<sup>133</sup> ACT s 14; NSW s 8.

<sup>134</sup> ACT s 238(2)(b)(vii); NSW s 181(2)(f).

<sup>135</sup> TAS s 8(3).

<sup>136</sup> VIC 2006 Reg s 6.

payment is due within 60 days of receipt of a request from the resident, provided this is given within 60 days of moving into residential aged care.<sup>137</sup>

In Queensland, a different regime applies. If no new resident has moved in and the operator fails to observe time limits to do with getting quotes for reinstatement work, an independent valuation of the resale price in the absence of agreement, advise the resident of offers received and reconsider the resale price in the absence of sale, then the resident may apply to QCAT for an order for payment of the refund due if materially prejudiced by this.<sup>138</sup>

As mentioned above, in WA a resident can require a refund within 45 days of leaving if their contract restricts their right to appoint an agent to sell their dwelling. The same applies to lessees and licensees in VIC where a 6 month refund period prevails.

In the absence of an applicable statutory provision, the timing of payment of the refund will be determined by the terms of the village contract.

Some operators do provide in the contract that a refund will be paid independently of any statutory obligation if no resident has moved in within a stated number of years from permanent vacation, eg between two and five years. This would typically be based on a resale price then determined by agreement or, failing that, an independent valuation.

## XI ENFORCING PAYMENT

All jurisdictions provide for a resident to be able to apply to the tribunal for an order for payment with interest if it is not paid in time.<sup>139</sup> This generally applies to the operator for the time being, even if not a party to the resident's particular contract.<sup>140</sup>

### *A Charge*

As to certain leases and licenses, all jurisdictions provide for a statutory charge to provide some security for the right to payment of a refund,<sup>141</sup> though this can be problematic in practice, particularly for an elderly resident.

For example:

- The application is not made to the tribunal but to the much more formal and expensive Supreme Court.<sup>142</sup>
- An application to enforce the charge cannot be made unless the operator is insolvent and can be shown to be unlikely to be able to pay the overdue refund.<sup>143</sup>

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<sup>137</sup> SA s 21.

<sup>138</sup> QLD ss 171, 194.

<sup>139</sup> ACT ss 235(6), 238(7); NSW ss 180(4), 181(7); NT s 13(3)(e); QLD ss 63, 191(2)(b); SA ss 19(1), 32(2)(a)(ii); TAS ss 10(2), 33(2)(j); VIC ss 26, 38I; WA s 19(4).

<sup>140</sup> ACT s 7; NSW s 40; NT s 12(1); QLD s 71(1)(b), (c); SA s 17(10); TAS s 39; VIC ss 14, 30(2): as to NSW see *Estate of Fairfield-Smith, Albert and Brown v Australian Property Custodian Holdings Ltd (in liq), Lend Lease Primelife Ltd and Brentwood Village Ltd* [2012] NSWCTTT 296 (27 July 2012) (Chairperson Ransome), affirmed in *In the matter of Australian Property Custodian Holdings Ltd (in liq) (receivers and managers appointed)* [2012] NSWSC 1298 (26 October 2012) (Black J).

<sup>141</sup> ACT s 242; NSW s 182B; NT 12(4)-(6); QLD ss 114, 116, definition of 'leasehold interest' in the Dictionary; SA s 19(3)-(6); TAS s 10(4)-(6); VIC s 27; WA s 20(1).

<sup>142</sup> NSW s 182F; NT ss 3(5)(b), 12(6); QLD s 120(2), District Court is available; VIC s 31; WA s 21.

- The Court must not make an order for sale of the land under the charge unless satisfied that this would be ‘in the best interests of the majority of the residents in the retirement village’.<sup>144</sup>
- The land the subject of the charge is defined by reference to the residence right<sup>145</sup> rather than a registered and therefore transferable parcel of land.<sup>146</sup> It is not entirely clear what is to be sold.
- The charge is subject to any prior mortgages.<sup>147</sup>

Unlike residential aged care,<sup>148</sup> there is no government guarantee of a refund. The NSW Supreme Court has observed in the case of an insolvent retirement village that ‘...an operator’s ability to make a departure payment depends entirely on financial viability when the payment falls due’.<sup>149</sup>

## XII OTHER ACCOMMODATION ALTERNATIVES

### *A Staying at Home*

Staying at home is fine as long as the services needed can be sourced at an affordable cost and social isolation is not an issue.

### *B Granny Flats*

Operator insolvency aside, there is arguably less financial risk in moving into a retirement village than may apply to a granny flat interest where the elder, for example, invests money in the home of one of his or her children, or transfers his or her home to a child for nil or sub-market consideration, with a right of residence there for life.<sup>150</sup>

On the one hand, courts of equity are reluctant to countenance the gift of the bulk of the elder’s assets to one child or a friend, unless carried out in the clearest of terms and with demonstrably independent legal advice.<sup>151</sup> Such a gift can prevent or impede the elder from being able to move to alternate accommodation if they wish to, or to a residential aged care facility if they have to. Their investment is also vulnerable to a forced sale of the dwelling if the owner child dies, loses capacity, separates from a co-owner spouse or domestic partner or defaults under a loan secured by a mortgage over the property.

The issue of improvidence raised by a sick old man putting his only asset out of his hands as a source of future capital was obvious. He could remain in the house for life. But what if he needed aged care or hospitalisation? The house could only be used for

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<sup>143</sup> NSW s 182E; in QLD ss 120(1), 121(1)(a) the resident must have obtained an order for payment which is unsatisfied after 6 months.

<sup>144</sup> ACT s 12(7); NSW s 182H, or at least not be contrary to the interests of other residents; NT 12(7); QLD ss 120(5), 121(1)(b) all other residents must be given notice of the application; VIC s 31(2)(b); WA s 21(2)(b).

<sup>145</sup> NSW s 182B.

<sup>146</sup> *Real Property Act 1900* (NSW) s 37.

<sup>147</sup> NSW s 182G(b); QLD s 122(3)(b); VIC s 31(5)(a); WA s 21(4)(a).

<sup>148</sup> *Aged Care (Bond Security) Act 2006* (Cth).

<sup>149</sup> *Edwards v Anderson* [2009] NSWSC 373 (15 May 2009) 42 (Schmidt J).

<sup>150</sup> *Social Security Act 1991* (Cth) s 12A.

<sup>151</sup> *Irvine v Irvine* [2008] NSWSC 592 (16 June 2008) (Barrett J); *Aboody v Ryan* [2012] NSWCA 395 (4 December 2012).



such at the discretion and with the consent of the Aboodys. He was submitting himself to their charity in the event of such contingencies. This was obvious.<sup>152</sup>

In that case, the Court of Appeal affirmed the decision of the trial judge ordering the transfer of the elder's house back to the father by his daughter and son-in-law for nil consideration with costs.

On the other hand, in order that the elder's payment for the granny flat to escape the asset deprivation provisions, the payment must not be structured as a loan<sup>153</sup> or as otherwise being refundable.<sup>154</sup> Ironically, in order to preserve pension entitlements the payment for a granny flat must legally be a gift in order not to be treated as a 'gift' for pension purposes for five years.<sup>155</sup>

It is submitted that retirement villages currently offer a better protected right of refund than applies to a granny flat interest and that Centrelink's treatment of the latter should be tweaked<sup>156</sup> to tolerate loans and refunds. After all, payments by residents to for-profit operators typically are in the form of a loan which is repayable, with adjustments, following permanent vacation for any reason by the resident. Why granny flat interests should not be treated in the same way is not obvious.

If the elder co-owns the house this problem does not arise because he or she will have an interest in their principal home and the usual pension asset test exemption will apply.<sup>157</sup> However, this option will not generally be available where a commercial mortgagee is on title as they have a policy against asset lending where the elderly are vulnerable.

### *C Residential Parks*

A cheaper alternative is the purchase of a manufactured home in a residential park. This involves buying the home as a chattel and renting the land upon which it sits. There is no age requirement here so the neighbours, services and facilities are more generic than in retirement villages.

## XIII REFORM

This overview highlights the desirability of a national regulatory approach to retirement villages coupled with a government operated insolvency fund to cover refunds to outgoing residents or their estates funded by a modest levy on village operators.

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<sup>152</sup> *Aboody v Ryan* [2012] NSWCA 395 (4 December 2012) 56 (Allsop P).

<sup>153</sup> *Social Security Act 1991* (Cth) s 1122.

<sup>154</sup> Commonwealth Department of Family and Community Services and Indigenous Affairs, 'Social Security Guide' (Guide, Commonwealth of Australia, 10 July 2012) ch 4 s 6 pt 4 paras [50] 'Granny Flats – Features, Rights and Interests', [60] 'Granny Flats – Reasonable Value Conversion Factors', [70] 'Granny Flats – Additional Features'; Centrelink, 'Granny Flats' (Brochure, Australian Government, November 2009).

<sup>155</sup> *Social Security Act 1991* (Cth) ss 1123, 1124.

<sup>156</sup> *Ibid* s 1147(1D)(b)(ii).

<sup>157</sup> *Ibid* ss 1118(1)(a), (b).

#### XIV CONCLUSION

Retirement villages are likely to continue to be an appealing accommodation option for the ever-increasing cohort of elders in Australia because of the economies of scale achieved in delivering services and facilities specifically for retirees and the companionship of fellow elders. Operator insolvency and fees and charges aside, they provide good security of tenure and reliable retrieval of funds invested when needed on moving out.

## Schedule 1: Primary Retirement Village Legislation in Australia

<b>JURISDICTION</b>	<b>STATUTE</b>	<b>REGULATION</b>	<b>TRIBUNAL</b>
ACT	<i>Retirement Villages Act 2012</i>	<i>Retirement Villages Regulation 2013</i>	ACAT (not to be confused with the Aged Care Assessment Team)
NSW	<i>Retirement Villages Act 1999</i>	<i>Retirement Villages Regulation 2009</i>	NCAT
NT	<i>Retirement Villages Act 1995</i>	<i>Retirement Villages Regulations 1995</i> including Code of Practice in sch 2	Local Court
QLD	<i>Retirement Villages Act 1999</i>	<i>Retirement Villages Regulation 2010</i>	QCAT
SA	<i>Retirement Villages Act 1987</i>	<i>Retirement Villages Regulations 2006</i> including Code of Practice in sch 1	Residential Tenancies Tribunal
TAS	<i>Retirement Villages Act 2004</i>	<i>Retirement Village Regulations 2005</i>	Director of Consumer Affairs & Fair Trading, Supreme Court
VIC	<i>Retirement Villages Act 1986</i>	<i>Retirement Villages (Contractual Arrangements) Regulations 2006</i>	VCAT
WA	<i>Retirement Villages Act 1992, and Fair Trading Act 2010</i>	<i>Retirement Villages Regulations 1992, and Fair Trading (Retirement Villages Interim Code) Regulation (No 2) 2013</i>	State Administrative Tribunal