



Government of South Australia

Department for Families
and Communities

**Issues associated with the
Regulations under the
*Retirement Villages Act 1987***

DISCUSSION PAPER



June 2011

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Part 1 Background

The *Retirement Villages Act 1987* (“the Act”) regulates the rights of residents of retirement villages by providing that certain matters be outlined in residence contracts and that certain information be provided prior to settlement. The *Act* also imposes some miscellaneous duties on administering authorities of retirement villages.

The *Act* provides that the contractual terms to be outlined and the information to be provided should be prescribed in the *Regulations*.

The *Regulations* cover many matters of detail which are integral to the operation of the *Act*. They provide for:

- certain terms to be included in a residence contract
- the provision of financial and other information to prospective residents
- the termination of residents’ rights
- the provision of financial information before residents’ meetings
- forms for applications to the Residential Tenancies Tribunal
- the endorsement of certificates of title
- fees payable for applications to the Tribunal and
- a code of conduct to be observed by administering authorities.

These matters should continue to be regulated for the *Act* to fulfil its stated purpose. They provide the detailed framework of rights enjoyed by retirement village residents under the *Act*, in that full and accurate information should be provided.

The Department encourages a policy of mediation and conciliation, as well as consumer protection in retirement village matters. It emphasises the disclosure of information to prospective residents to assist in making an informed choice about housing options.

The duties of the Retirement Villages Officers in Disability, Ageing & Carers include:

- responding to enquiries from residents, their families, prospective residents, administrators, members of the public, various organisations
- providing information and/or advice regarding a range of retirement village matters, but in particular in relation to the interpretation of the *Act/Regulations*
- informing residents and administrators of their rights and responsibilities under the *Act*
- acting as a mediator in situations where residents and administrators are unable to resolve matters
- identifying and pursuing breaches of the *Act*.

Retirement villages offer a popular lifestyle for many retirees. Most residents indicate a high level of satisfaction with their chosen housing option and the majority of retirement villages are generally well managed.

However, contact with individual consumers, representations from consumer bodies, retirement village operators, other organisations and Members of Parliament, suggest that there are a number of areas which may need review.

The purpose of this Discussion Paper is to

- identify provisions of the *Regulations* which may be problematic
- provide some discussion about each of the identified issues
- identify, to the extent possible, the perceived implications of any suggested change(s) to address the issue(s) and
- elicit comments and suggestions from as wide a range of residents, administrators and others interested in the subject.

This discussion paper will be widely distributed. Persons desiring to make submissions are requested to do so in writing by **Friday 26 August 2011**.

Submissions should be forwarded to

Email - OFTARetirementVillages@dfc.sa.gov.au

Retirement Villages Unit
Disability, Ageing and Carers
PO Box 70, Rundle Mall
Adelaide SA 5001

Questions – Phone: 8207 0354
8207 0384

Submissions need not be lengthy. In addressing the questions, it would be helpful if submissions briefly described any perceived deficiency in the *Regulations* by reference to actual case histories or examples which have been experienced.

It should be emphasised that this Discussion Paper does not reflect the final, or even interim, views of the Government, any Minister or the Department. The Paper was designed to promote discussion so as to ensure that a wide cross-section of views is presented during the current review of the Regulations.

Copies of the *Retirement Villages Act and Regulations 1987* can be purchased from

Service SA Legislation Outlet
108 North Terrace
Adelaide 5001

Or online at shop.service.sa.gov.au .

The *Act and Regulations* can also be accessed free via the Internet on www.legislation.sa.gov.au

Part 2 Introduction

The regulation of the retirement village industry operates to encourage transparency in the contractual relationship between a resident and a provider of retirement village accommodation and services. Any regulation should continue to clarify the rights, obligations and relative risk for residents and administering authorities, whilst protecting the legitimate business interests of the proprietor.

This transparency should occur not only at the time of entering a contract, but also during the period of residency and when the resident vacates their accommodation for whatever reason.

In keeping with the proposed scope of this paper, the most immediate and significant issues for residents appear to be

- I. Matters relating to vacating premises including
 - remarketing costs/commissions
 - capital replacement fund contribution
- II. Management practice, particularly financial and related to the clarity and transparency of accounting practice/procedures.
 - Management costs and accountability
 - dealing with annual account deficit/surplus
 - rectification of faults in new residences
 - payment of recurrent charges for new residences
 -
- III. Other amendments
 - Offences – expiation
 - Residential Tenancy Tribunal jurisdictional limits
 - Auditing standards

This view has been reinforced by comments received to date from the South Australian Retirement Villages Residents Association (SARVRA), various retirement village resident associations, Members of Parliament and the Residential Tenancies Tribunal (RTT).

Part 3 Identified Issues

3.1 MATTERS RELATING TO VACATING PREMISES

3.1.1 Remarketing costs/commissions

See *Retirement Village Regulations 2006 (the Regulations)*, Schedule 1(3) — Code of conduct - remarketing policy. This deals with the requirement for the administering authority to have a policy which is applied for the remarketing of residences.

Currently the Regulations state that the administering authority must have a remarketing policy which clearly outlines the rights and obligations of both the administering authority and the outgoing resident. The remarketing policy must address who will be responsible for costs associated with the remarketing of the unit – including valuation, advertising and other relevant matters – and how those costs are to be calculated or determined.

The actual costs of remarketing and how the fee is determined varies extensively across the retirement village industry. Remarketing fees may incorporate actual advertising costs, a proportion of costs of whole of village advertising and promotional activities, costs of valuations and sales commissions.

Arguments have previously been presented comparing the general real estate market and agents' selling costs. The Real Estate Institute (REI) advised that as from 1996, fees for the sale of all types of land and businesses are a matter for negotiation and agreement. The same position applies to marketing expenses. All professional fees for services rendered by REI members are a matter for negotiation and agreement, taking into account the services and level of services agreed to be performed. Generally the fee charged by real estate agents ranges between 1% and 3% of the sale price.

Residents may argue that the appointment of a licensed real estate agent would achieve the same objective with the benefit of the resident having significant input into the sales strategy and costs. However, retirement village units are significantly different to other real estate, and operators assert that they are the experts in offering and explaining the product. In many cases residents are buying a 'lifestyle' not purely a residence. The REI state that the majority of land agents are unaware of loan licence type agreements and retirement village units are much harder to sell.

Retirement village industry practices are varied in relation to what remarketing fee is charged. Some villages charge a percentage of the relicensing price, while others charge a percentage of the original licence value. Where a percentage is charged, it is commonly between 1.5% and 3%. It is also common within smaller country villages for there to be a fixed remarketing fee e.g. \$2,000.

In some cases it has become apparent that while an operator has a published remarketing policy which states that a percentage of the relicensing value is retained for the purpose of the remarketing fee, rarely is the actual percentage stipulated. Many residents only become aware of the actual amount of the fee when they leave the village.

In support of continuing to charge remarketing fees, consideration should be given to:

- It is of benefit to both the resident and the operator to maintain a high public profile. A continual advertising program can generate interest in a village which contributes to faster re-licensing and the development of waiting lists.
- The Regulations already ensure that incoming residents are provided with a policy which outlines the relevant procedures and responsibilities associated with the remarketing of vacant units.
- The resident can negotiate the terms of the contract relating to remarketing costs prior to signing the contract.
- While the resident does not own the building, they own the licence to occupy. It is this licence which is being marketed.
- If the resident does not contribute to the remarketing of the unit, is it likely that the operator will use its best endeavours to have the property relicensed in as short a time as possible?

In support of changing the way remarketing fees are paid, consideration should be given to:

- Residents have queried the fairness of charging former residents for the advertising of a unit which they have only occupied and never owned.
- In many contracts it states a remarketing fee is to be charged, however the amount is only specified in a separate remarketing policy, rather than the contract. This fee can either be a percentage or dollar amount. Residents have raised concerns regarding this method. In some villages the remarketing fee when residents enter the village may be lower compared to the fee charged when they leave, e.g. a resident enters the village when the fee is 1.5% and when they leave the village has updated the remarketing fee to 3%.

Should the Regulations prescribe who is responsible for payment of remarketing costs?

Should the costs of remarketing be negotiated at the time of entry to a retirement village and subsequently documented in the contract?

If a residence contract refers to a percentage being charged for remarketing costs, should the actual percentage be specified within the contract?

What would the implications be for residents and administering authorities?

3.1 MATTERS RELATING TO VACATING PREMISES

3.1.2 Capital Replacement Fund contribution

The current legislation does not regulate the nature of fees charged upon departure from a retirement village.

Residence contracts must outline whether the resident is entitled to a refund of the whole or part of a premium when the residence contract is terminated. The information in the contract must include:

- the formula for calculating the refund
- the fees and charges that may be deducted from the amount of the refund
- the conditions that must be met before the refund will be made.

The residence contract must also include information relating to any funds established by the administering authority that the resident will be required to contribute to. The information must include:

- the purpose of each fund
- the amount required to be contributed by the resident to each fund
- when the resident will be required to contribute to each fund.

It is common practice in the industry to impose fees which are payable upon a resident's departure from a village. These fees are commonly known as exit fees, but are also referred to as deferred management fees, deferred fees or a deferred payment. This fee is commonly a percentage of the price for which the unit is relicensed. This percentage is calculated in a variety of ways, including a percentage charge per annum until a maximum is reached. This is generally calculated on a sliding scale and will reach 25% after 3 to 5 years of occupancy.

The operator retains the exit or deferred management fee. This reduces the amount a resident pays upon entry and enables the operator to recoup the establishment and infrastructure costs of the village. This fee is generally well accepted and understood upon entry into a village.

Another fee villages may retain upon relicensing is a contribution towards a capital replacement fund (CRF). This fund is commonly used to replace major capital items.

In general the CRF exit fee is calculated at 1% per year of occupation, and can be based on the original purchase price. It is common for this fee to be capped between 10% and 15%. A small number of villages do not cap these fees. This has been raised as a major issue of concern for residents. It is feasible for a person entering a village at 55 years of age to be in occupation for 30 years. This would result in a 30% deduction for CRF

along with any other fees and charges from the amount payable to the resident.

Anecdotal evidence suggests that while the operator discloses the contribution towards the capital replacement fund in the contract as being 1% per annum, the resident does not realise the importance or implications of this until the end of residency. Unfortunately, while residents generally recognise and understand the 25% deferred management fee, it appears they often do not understand the implications of paying a further 1% per annum if they were to remain in the village for a large number of years.

It is reasonable for residents to contribute to the replacement and upgrading of the village buildings, infrastructure, fixtures and fittings as it ages. This will ensure that the quality of the village and future value is retained.

From a resident's perspective the amount of fees when all exit costs are taken into consideration may be considerable. The sum of deferred management fees, capital replacement fee, refurbishment and remarketing costs and commissions could be significant.

Should the Regulations prescribe that a resident must contribute to a fund used for repair and replacement of capital items when they leave a village?

OR

Should this be a matter that is negotiated at the time of entry to a retirement village and subsequently documented in the contract?

What would be the implications for the industry? Would the implications be different for private and non-profit organisations?

3.2 MANAGEMENT OF RETIREMENT VILLAGES

3.2.1 Management costs and accountability

The Act does not indicate specific amounts that residents are charged when entering or living in a retirement village, or the level of service management the village will provide residents for these fees. Many retirement villages are self funded, which means residents bear the costs of running the village. These running costs may include council rates, electricity, water, insurance and management fees.

Management fees usually revolve around the day to day running of the retirement village. This may include ensuring the residences and communal facilities are kept in a satisfactory condition. The administration of the retirement village may be included in management costs which incorporate the collection of maintenance payments, payment of consulting fees and compliance with the Act and the Regulations as well as residence contracts.

An issue raised by residents has been what they believe are excessive management costs. In some cases up to 50% of the maintenance fee is attributed to administration and management costs. It is reported that residents believe they are not receiving the appropriate level of professional service for the fees they are paying.

Some residents have also queried why they pay a premium for professional management and have no input into village staff costs within a self funded village. Queries have also been raised with DAC when residents are charged a set fee per residence for management and are not provided with information as to how these costs are calculated. Residents are often concerned they are covering corporate costs which do not directly relate to management of their village. This issue is further complicated when instances of poor management occur.

Disability, Ageing and Carers (DAC) is aware of situations where village budgets have been poorly developed, resulting in excessive overspend and leading residents to question how this could occur under professional management. The failure of the operator to address and manage maintenance requests has also been identified, resulting in extensive delays or no action.

When a fee for a service is set, it is reasonable to expect a certain standard of service from the provider. The Australian Competition & Consumer Commission website states that when a consumer pays for a service, the 'service providers must carry out all services using an acceptable level of care and skill'.

Organisations such as the Retirement Villages Association (RVA) and Aged and Community Services help to promote and improve quality assurance and best practice standards within the industry. The International Retirement Community Accreditation Scheme (IRCAS) has been developed by Aged Care Queensland and RVA with the view to create a set of national

standards. IRCAS is currently being introduced in Queensland before expanding into the remaining states. Accreditation may assist in the resolution of a number of concerns raised by residents. Drawbacks of accreditation may include an increased cost to residents and the lack of resources available to some operators, such as community-run regional villages or older villages, to meet accreditation standards.

Consideration of best practice management standards could be included in the Regulations. An object of New South Wales' retirement village legislation encourages 'the industry to adopt best practice management standards'. The South Australian legislation does not currently make reference to management standards. The Regulations currently contain a Code of Conduct and under section 41(2) of the Act it is a term of a residence contract that the administering authority will observe the Code of Conduct. An objective similar to that in New South Wales legislation could be considered for the Code of Conduct.

Consideration could be given to the implementation of best practice standards within the industry. The presence of best practice standards and continuous improvement may help to encourage consumer confidence and trust within the industry.

Should the Code of Conduct encourage industry to adopt best practice management standards?

What would the implication be for private and non-profit organisations?

3.2 MANAGEMENT OF RETIREMENT VILLAGES

3.2.2 Dealing with annual account deficit/surplus

The Act and the Regulations currently do not contain any provisions relating to what occurs when a village's recurrent charges account records a surplus or deficit at the end of the financial year.

Regulation 5 and section 17 of the Act relate to the content of residence contracts. These sections do not prescribe that an administering authority must include any information in relation to deficits or surpluses.

While a small number of residence contracts include what is to happen when one or both of these scenarios occur, the majority do not.

Villages may adopt different practices, which can cause confusion and concern among residents. Practices that villages have undertaken in the past in regard to surpluses include refunding the surplus to residents or carrying over the surplus in the budget. When determining which approach to take, the effect on the following year's recurrent charges should also be considered. A reduction of surplus fees in one year may result in a larger increase the following year.

A deficit is most often dealt with through an increase in residents' recurrent charges or a special levy.

The South Australian Retirement Villages Residents' Association (SARVRA) first raised the issue of surplus funds at the Retirement Villages Advisory Committee (RVAC) meeting held on 28 June 2007 and have consistently raised the issue at subsequent RVAC meetings. Residents also consistently query DAC as to what is to occur when a village records a surplus or deficit.

Under Clause 5 of the Code of Conduct in the Regulations, the administering authority must undertake reasonable consultation with a residents' committee on the preparation of the budget.

Under Clause 6 of the Code of Conduct, the administering authority must also consult with residents in relation to any matter that could have a significant impact on their financial affairs, the amenity of the retirement village or their way of life.

It is under these two clauses that it would be expected that the administering authority would consult with residents in regards to any surpluses or deficits.

As money for recurrent charges is collected for specific purposes under a contract, it has also been queried whether any surplus funds would be able to be used for purposes outside those listed in the contract, regardless of whether residents have voted on the issue.

Residents also frequently query DAC about ownership of any surplus funds. As residents have paid the money towards maintenance fees, they

generally perceive the money as belonging to the residents, or as needing to remain in the maintenance fund. In some villages, residents have raised with DAC a perception that the administering authority wishes to use any surplus funds for their own purposes.

Should the Regulations define the use of surplus funds from recurrent charges?

Or

Should the Regulations allow residents to vote on the use of surplus funds at a meeting of residents in accordance with section 22 of the Act?

Should the Regulations define what is to occur when a village incurs a deficit in its recurrent charges?

Or

Should the Regulations allow for residents to vote on how a deficit is to be recovered?

Or

Should a residence contract be required to outline what is to occur within a village when a surplus or deficit occurs?

3.2 MANAGEMENT OF RETIREMENT VILLAGES

3.2.3 Rectification of faults in new residences

SARVRA and individual residents regularly raise the issue of problems and delays surrounding rectification of faults in new residences with DAC.

On numerous occasions, residents have also approached the Minister for Ageing and the Minister for Consumer Affairs seeking assistance in resolving issues of this nature.

Currently, under section 17(3) of the Act a resident is required to receive a premises condition report before entering into a residence contract. This details the condition of the premises prior to the resident taking occupation of the residence. It also details who is responsible for replacement of fixtures and fittings. The current premises condition report could be a useful tool, however, it was introduced with the intention of avoiding disputes regarding refurbishment costs at the end of occupancy. This report is also not useful if the issue arises after the resident takes possession of the unit and the problem was not apparent when the report was completed.

A reliance on third-party contractors can make the rectification of faults within new residences frustrating for both residents and administering authorities. It can also result in long delays in waiting for any problems to be rectified.

Generally, a person having difficulties with rectification of building problems would be able to seek assistance from the Office of Consumer and Business Affairs (OCBA). OCBA have advised that residents of a retirement village are not defined as building owners for purposes of section 32 of the *Building Contractors Act*, therefore they are unable to assist residents. OCBA have also advised they are unable to assist companies, so will not assist an administering authority in seeking remedies. This leaves it up to the owner to seek rectification of any faults directly with the builder.

While this is the case, and OCBA are unwilling to assist retirement village residents to seek rectification direct with the builder, DAC may be able to assist in the resolution of the dispute with the village owner. Should the village owner be hesitant to rectify building faults, DAC will assist the resident to apply to the Residential Tenancies Tribunal (RTT) seeking a determination for repair of the building/infrastructure in accordance with their contract. An order would then be in place, with which the operator must comply. This situation is not ideal, however it can assist the resident to achieve the desired result.

If an administering authority fails to acknowledge a problem or is lax in following the issue up with the builder, there is little recourse left for the resident. Residents also have reported frustration when an administering authority suggests that it is not responsible for the premises while it is pursuing remedies against the builder. This raises the question that if a builder denies liability or goes out of business, does the administering authority then say it can no longer help the resident in rectifying the issue?

DAC are aware of villages in which the administering authority has failed to rectify faults in new residences and consequently the statutory building warranty period has expired. Some residences in these villages have had outstanding new building maintenance for several years. In some villages, this delay has resulted in the administering authority using funds from a village's capital replacement fund to repair faults that should have arguably been repaired earlier under a building warranty and not at residents' cost.

Should representation be made to OCBA regarding the inability of retirement village residents and operators to seek assistance regarding faults with new buildings?

What would be the implications for administering authorities and residents?

3.2 MANAGEMENT OF RETIREMENT VILLAGES

3.2.4 Payment of recurrent charges for new units

Section 20 (2) (b) of the Act currently prescribes that, following the vacation of a unit, the Administering Authority assumes responsibility for payment of any maintenance fees or other recurrent charges. The section reads as follows;

20—Arrangements if resident is absent or leaves

(2) *Where a resident ceases to reside in a retirement village—*

...

(b) the administering authority must assume responsibility for the payment of any maintenance or other recurrent charges in respect of the residence occupied by the resident before he or she left the retirement village, or otherwise payable by the resident in connection with the retirement village (other than with respect to any amount attributable to a charge accrued before the resident left the retirement village).

DAC has received queries regarding this issue, particularly where the new residence or a group of new residences are selling slowly. Residents and the administering authorities have questioned who should be responsible for the payment of recurrent charges where a newly built residence fails to sell quickly. The Act is currently silent regarding this situation.

Where these residences are generating village expenses such as council rates, there is an expectation that the operator would contribute towards these fees. Some states such as NSW have clarified who is responsible for the payment of recurrent charges for new residential premises that have never been subject to a village contract.

DAC has also received queries about residences that are bought back by the operator and then combined with a neighbouring room or unit to create a larger residence. Although this may make the property more marketable, queries have been raised regarding the reduction of units within the village and the subsequent increase in fees to the remaining residents. This is a problem where ageing retirement villages are considering redevelopment strategies to modernise the village.

Should the Regulations prescribe who is responsible for the payment of recurrent charges for newly built properties?

What are the implications for administering authorities and residents?

Should the Regulations prescribe who is responsible for the payment of increased recurrent charges where two neighbouring residences are combined to become one residence?

3.3 OTHER AMENDMENTS

3.3.1 Offences - expiation

The Registrar of the Act has wide-ranging powers delegated under the Act. The current Registrar is Dr David Caudrey, Executive Director, Disability, Ageing and Carers within the Department for Families and Communities. DAC administers the Act.

Since the implementation of amendments to the legislation in 2006, no administering authority has been prosecuted for a breach of the legislation. DAC has effectively administered the Act to date by using a mixture of information and education to achieve compliance with the Act. Currently, there are a number of penalties which may apply for breaches of the Act ranging from \$2,500 to \$35,000, and a small percentage of offences which are able to be expiated.

DAC use a combination of oral warnings, written warnings and expiation to enforce retirement village legislation. Whilst the application of penalties is not the first and only option, it has become evident that it is appropriate where an administering authority has repeatedly failed to comply with the legislation. Where the breaches are not severe enough to warrant prosecution, the introduction of expiable offences would enable prompt action and reinforce obligations under the Act. However, prosecution will always be viewed as a last resort.

It is DAC's wish to encourage an environment where good practice is promoted and minimum opportunity exists for consistent problems to occur for residents or administering authorities. While the intent of the Act is to protect the interests of administering authorities and residents, the introduction of more expiable amounts would only further strengthen the Act. This change would also reinforce within the industry that compliance with the Act is required and enforceable.

The number of expiable items will be increased within the regulations.

What are the implications for residents and administering authorities?

3.3 OTHER AMENDMENTS

3.3.2 RTT jurisdictional limits

The RTT has jurisdiction to hear and determine a matter in relation to jurisdictions other than the *Residential Tenancies Act*. These include the *Residential Parks Act 2007* and the *Retirement Villages Act 1987*. The *Residential Parks Act* gives the RTT a separate jurisdictional limit of \$40,000, however, the *Retirement Villages Act* does not currently provide a monetary limit.

The RTT has raised concerns regarding the lack of clarity in regards to jurisdictional limits within the Act. Section 24 of the *Residential Tenancies Act 1995* may restrict the jurisdictional limit to \$10,000, unless the parties to the proceedings consent in writing to the RTT hearing and determining the claim. The RTT has previously dealt with retirement village matters where there is a monetary claim in excess of \$10,000.

Section 32 of the Act provides that the RTT may decline to hear or accept an application. Section 32 (7) sets out the factors to be taken into account by the RTT in determining whether to decline an application. This includes, '*if the application relates to the repayment of a premium or portion of a premium – the amount in dispute*'. A dispute including repayment of a premium will generally involve an amount in excess of \$10,000.

In addition, Schedule 1 clause 6 (3) (c) of the Act states, '*if the proceedings involve an amount which exceeds \$50,000 or such other amount as is prescribed by a Regulation*' then the parties may be legally represented. This provision suggests that there is no jurisdictional limit.

An amendment to the Retirement Villages Act will be made to clarify that there is no jurisdictional limit for retirement village matters.

What are the implications for residents and administering authorities?

3.3 OTHER AMENDMENTS

3.3.3 Auditing standards

The Act attaches great importance to financial accountability. For this reason, it contains a number of provisions with which an administering authority must comply in regards to financial management within a village.

Amendments to the Act, which came into effect in 2006, aimed to increase financial and operational transparency and documentation and practice for administering authorities. Residents have the right to know the true financial position of a retirement village.

Section 22 of the Act provides:

(6) A notice for an annual meeting under subsection (5) must be accompanied by—

(a) in relation to the retirement village—

(i) an audited statement of income received from residents, and expenditure of that income, for the previous financial year; and

(ii) a statement of estimates of income from residents, and expenditure of that income, for the current financial year; and

(iii) a statement of estimates of income (from any source), and expenditure, for the current financial year in respect of any contingency, sinking or other reserve fund or account established for the purposes of capital replacement or improvements, irregular long-term maintenance, or other similar items; and

(iv) such other information as the regulations may require; and

(7) The administering authority must ensure—

(a) that information provided under subsection (6)(a) complies with any standard or principle prescribed by the regulations; and

(b) that any resident is afforded, on request, a reasonable opportunity to inspect, depending on how the administering authority prepares its accounts—

(i) an audited balance sheet (with appropriate notes) for the retirement village; or

(ii) an audited balance sheet (with appropriate notes) for the administering authority,

as at the end of the previous financial year.

The Act does not specify the requirements for an audited financial statement.

Regulation 8 provides standards for financial information:

Information provided under section 22(6)(a) or 23(1) of the Act to a resident or residents of a retirement village must be in a form that shows specific information for the retirement village (and, if the retirement village has more than 1 site, must specifically relate to the site at which the resident or residents reside).

It has been suggested that it would be preferable for such a standard to advert to or incorporate an Australian Accounting Standard relating to auditing from source documents or at least journals.

The success of the provision of financial statements depends on the professional work of the auditors – that is, verification that all appropriate disclosures have been made and that funds for specific purposes have only been used for those purposes. Without proper audit reporting, village managers may still not provide sufficient financial disclosures to residents.

DAC has seen an example where an auditor has failed to examine any source documents or journals to provide an audit report. Subsequent investigations into the village's financial reports resulted in the discovery of extensive misuse of residents' funds by management.

It has also been suggested that a further deficiency exists in sections 22 and 23, in that they require accurate information about income and expenditure to be provided to residents. However, there is no requirement that accurate information about the true financial status of the village or any of its funds is provided to residents. This could be remedied by the making of appropriate regulations under section 23(1)(e) and 22(6)(a)(iv) of the Act.

Issues relating to accounts, perceived misuse of residents' funds and financial information generally have been the subject of many enquiries and complaints to DAC, and several applications before the Residential Tenancies Tribunal (RTT).

DAC has also received a number of enquiries from administering authorities seeking clarification surrounding the requirement to obtain an audit.

The clarification of a required auditing standard may reassure residents that the village's finances are in order, as well as detect any misuse of residents' funds. It may also provide greater clarity to administering authorities when preparing the financial statements required under the Act.

Regulation 8, *Standards for financial information* will be clarified in regards to auditing standards by incorporating a relevant accounting standard.

The Regulations will include a requirement under section 23(1)(e) and 22(6)(a)(iv) of the Act that the audited financial statements as presented to residents must include the true financial position of the village.

What are the implications for administering authorities and residents?