



RETIREMENT VILLAGE RESIDENTS ASSOCIATION INC.

ABN: 16 674 035 984

SUBMISSION

**To the AUSTRALIAN CHARITIES AND
NOT-FOR-PROFIT COMMISSION**

**on the Review of not-for-profit governance
arrangements Consultation Paper**

December 2011

By the RETIREMENT VILLAGE RESIDENTS ASSOCIATION INC.

Prepared by William Plant – Committee Member 15th January 2012

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1.0 Preamble

- 1.1 The Retirement Villages Residents Association Inc.(RVRA) is incorporated under the New South Wales Associations Incorporations Act 2009
- 1.2 The RVRA was formed in 1989 to represent retirement Village Residents. It is the peak organisation to support and advocate for residents in NSW, many of whom are vulnerable.
- 1.3 The RVRA is considered one of the key stakeholders in the industry and it meets regularly with the NSW Minister for Fair Trading, NSW FT and TARS. The RVRA represents residents on the Ministers Retirement Village Advisory Council and has been represented on the Minister's Expert Committee for Standardisation of Contracts.
- 1.4 The RVRA meets regularly with Operator organisations such as the RVA and ASCA and corporations such as Stockland and Lend Lease who are investors in retirement villages.
- 1.5 The RVRA liaises with organisations such as COTA, and NCOSS, to assist retirement village residents, many of whom are over 80 years of age, in a wide range of matters.
- 1.6 The RVRA assists village residents committees and retirement village residents in dispute resolution including support or advocacy in the Consumer, Trader and Tenancy Tribunal.
- 1.7 The RVRA conducts educational seminars and village visits to inform retirement village residents of their rights and obligations, and about the legislation governing the retirement village industry.
- 1.8 The RVRA has around 5000 members across NSW with a single fee of \$15 and a joint fee of \$20. We are advised that there are more than 50,000 retirement village residents. The RVRA provide information and assistance to members and non-members.
- 1.9 The RVRA has around \$100,000 in current assets and no liabilities. Our current annual revenues are around \$100,000
- 1.10 The RVRA management committee has a President, Secretary, Treasurer, and Vice President as office bearers and up to eight ordinary committee members
- 1.11 The RVRA management committee are retirement village residents who voluntary give their time and expertise to manage the association and assist and advise retirement village residents. The only payments made to committee members are for out of pocket expenses.
- 1.12 The office bearers of the committee are involved on an average of more than 20 hours per week and give this time without any monetary payment
- 1.13 The age of retirees coming onto the RVRA committee is generally over 70 years of age and with attrition due to health problems and other age related matters, the service as a committee member is limited to an average of three years.
- 1.14 As approved by members at the AGM in 2009 we have paid administrative assistance to handle the maintenance of the Register of Members and subscriptions and this is under the control of the treasurer and the secretary of the committee.
- 1.15 The RVRA is currently seeking to expand its membership, educational role and assistance to residents which may involve additional paid staff reporting to the RVRA management committee.

- 1.16 This expansion is to be funded by membership growth, private and corporate sponsorship and possible state government grants. Our Constitution is proposed to be amended to clarify our Not-for-Profit status and seek Income Tax exemption as a charitable institution, but not as a DGR.
- 1.17 The RVRA membership are residents of retirement villages and these retirement villages come under the Retirement Villages Act 1999 as amended by the Retirement Villages Amendment Bill 2008 and the Retirement Villages Regulation 2009 and in 10 to 15% of villages, under the NSW Strata Schemes Management Act as well.
- 1.18 The governance documents of the RVRA are based on the model rules contained in the New South Wales Associations Regulation 2010 and the New South Wales Associations Incorporations Act 2009

2.0 Governance -General

- 2.1 The RVRA are of the opinion that New South Wales Associations Incorporations Act 2009 and the Association Incorporations Regulations 2010 and Model Rules generally provide a comprehensive cover of regulation for associations of our size.
- 2.2 The RVRA feel that the additional costs that would be incurred as a Company limited by Guarantee would not be warranted.
- 2.3 With our demographic of retired persons the additional requirements as a Company limited by Guarantee may make attracting people to serve on the committee more difficult.
- 2.4 Therefore if NFP entities are to be integrated into the national scheme we suggest that there be provision in the Act for incorporated associations.
- 2.5 The consultation paper mentions three levels of tiered /proportional requirements based on revenues:
- 2.5.1 Small entity -Revenue up to \$250,000 & not a Deductible Gift Recipient(DGR). Under the Corporations Act a company limited by Guarantee of this size does not have to prepare a financial report.
 - 2.5.2 Medium entity -Revenue of up to \$1 million if a DGR; or between \$250,000 & \$1 million if not a DGR. Under the Corporations Act a company limited by Guarantee of this size does not have to have a financial report audited. A directors' report must be prepared, with more streamlined disclosures, and the company must give annual reports to any member who elects to receive them.
 - 2.5.3 Large entity- Revenue greater than \$1 million. Under the Corporations Act a company limited by Guarantee of this size does have to have a financial report audited. A directors' report must be prepared, with more streamlined disclosures, and the company must give annual reports to any member who elects to receive them.

Submission on the December 2011 consultation paper on the Review of Not-for-Profit Governance Arrangements on behalf of the Retirement Villages Residents Association Inc.

2.6 In NSW, Tier 1 associations (gross receipts exceed \$250,000 or current assets exceed \$500,000) are required to lodge audited financial statements and auditors reports with the Director-General annually, but the RVRA is a Tier 2 association but still prepare audited financial statements for presentation to the annual general meeting.

2.7 It is our opinion that the existing three levels are not sufficient as there should be financial reporting and audit commencing at a lower level and a Basic Tier with revenues of under \$125,000 where no public benefit is received should not be required to have a financial report audited. All others should be required to produce an audited financial report.

2.8 As noted in paragraph 155 of the consultation paper.” “Incorporation under state or territory legislation appears to provide a less costly means for NFP associations to receive the status of a legal entity over registration under the Corporations Act”

2.9 Summary Recommendations

2.9.1 That the ACNC legislation have the category of entity of an incorporated association as the most cost effective means to be a legal entity,

2.9.2 That a basic level entity be introduced with lower revenues suggested at \$125000 with no legal requirement to have a financial report audited.

2.9.3 All other tiers should be required to have a financial report audited.

3.0 Responsible Individuals

3.1 The regulations relating to responsible individuals should be tiered depending on size of the NFP entity or amount of funding it administers. Where the membership of a NFO entity is more than 100 and the members elect responsible individuals and authorise the employment of paid staff or contractors this should be in the governance rules and not mandated in the legislation.

3.2 The core requirement should be the general law duties that cover duties:

- to act in good faith in the best interests of the entity and for a proper purpose;
- to act with reasonable care and skill (including the duty to prevent insolvent trading);
- not to improperly use information or position; and
- to disclose and manage conflicts of interest.

3.3 The entity’s governance documents should cover who responsible individuals must consider when exercising their duties, and to whom they owe duties and not mandated in the legislation.

Submission on the December 2011 consultation paper on the Review of Not-for-Profit Governance Arrangements on behalf of the Retirement Villages Residents Association Inc.

- 3.4 The responsible individuals of NFPs need to consider are their members and the purpose of the entity when exercising their duties. This should be in the entity's governance documents and not mandated in the legislation.
- 3.5 Where responsible individuals are elected by their members in a NFP entity they should not be required to hold particular qualifications or have particular experience or skills.
- 3.6 Standardising the duties required of responsible individuals across all entity structures and sectors registered with the ACNC should be limited to the core general law duties outlined in 3.2 above.
- 3.7 The New South Wales Associations Incorporations Act 2009 has provisions in Part 4 of that Act in sections :
- 28 Committee to be established
 - 29 Register of committee members
 - 30 Committee meetings
 - 31 Disclosure of interests
 - 32 Dishonest use of information
 - 33 Dishonest use of position

And this Part 4 of The New South Wales Associations Incorporations Act 2009 is attached in Appendix A

3.8 Summary

3.8.1 The core duties for Not-for-Profit entities registered with the ACNC should be limited to the core general law duties of:

- to act in good faith in the best interests of the entity and for a proper purpose;
- to act with reasonable care and skill (including the duty to prevent insolvent trading);
- not to improperly use information or position; and
- to disclose and manage conflicts of interest.

3.8.2 The provisions of Sections 28-33 New South Wales Associations Incorporations Act 2009 be the basis of the ACNC legislation in this matter with particular inclusion of the penal clauses for misuse of information or position

4.0 Disclosure requirements and managing conflicts of interest

- 4.1 The disclosure needed to ensure good governance procedures are in place should include approval of any changes at a General meeting and the subsequent approval of the NSW Director General then publishing on the entities web-site.

Submission on the December 2011 consultation paper on the Review of Not-for-Profit Governance Arrangements on behalf of the Retirement Villages Residents Association Inc.

4.2 The remuneration (if any) of elected responsible individuals should be disclosed but the remuneration of paid staff and contractors appointed by the organisation in accordance with its approved governance rules should remain private.

4.3 The New South Wales Associations Incorporations Act 2009 under section 31 has legislated requirements for disclosures of interests and covers the minimum requirements in paragraph 126 of the consultation paper and we are familiar with this. It is not however listed as a matter that must be addressed in the associations' constitution. This should be in the associations' constitution for transparency.

4.4 The RVRA are of the opinion that ACNC governance obligations should stipulate that disclosure of interests be based on the Corporations Act understanding of 'material personal interest'?

4.5 Summary Recommendations

4.5.1 The legislation should have the obligation to have any changes to the entity's governance documents approved at a general meeting and the Commissioner having the right to refuse the change.

4.5.2 The requirements for disclosure of interests should be in the ACNC legislation similar to the NSW legislation and it should be mandated to be in the governance rules of the entity.

4.5.3 That, ACNC governance obligations should stipulate that disclosure of interests be based on the Corporations Act understanding of 'material personal interest'?

5.0 Risk Management

5.1 The model rules should include the following risk management procedures, and these should be subject to acceptance by the appropriate person (i.e. ACNC Commissioner) on the same lines as the NSW Association Incorporation Act where it states "*An association's registration is liable to be cancelled if its committee does not comply with this subsection.*"

5.1.1 It should be a model rule that all payments should be by cheque with two office bearers as signatories.

5.1.2 It should be a model rule that all payments be approved or ratified at the earliest committee meeting.

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- 5.1.3 It should be a model rule that an income and expenditure statement be approved or ratified at the earliest committee meeting.
- 5.1.4 It should be compulsory for all incorporated associations to have insurance policy such as the Associations Insurance package.

And to repeat that any variation to these sub-clauses are subject to approval of the Director General or Commissioner with a consequence of deregistration of the entity.

5.2 The accounting for Government and public funding should be reported separately to the normal financial reporting on an acquittal basis for each project in progress being subject to the procedures in 5.1.

5.3 Funds must be held in an account with an authorised deposit-taking institution or as otherwise prescribed by the legislation.

5.4 On the question “ Should responsible individuals generally be required to have indemnity insurance this cover is included in the standard Association Insurance package including Fidelity Insurance.

5.5 Summary . Risk management procedures should be clearly listed in model rules and enforceable by the governing authority with powers to deregister.

6.0 Governing Rules

6.1 The wide differences in the entities proposed make it very difficult to set anything other than very basic core minimum requirements that registered entities should be required to include in their governing rules.

6.2 The experience of the RVRA with the Model Rules in the NSW Associations Incorporation Regulation 2010 has been very positive and we recommend that the concept of minimum requirements from those model rules be used.

6.3 A similar authority to review individual associations model rules and accept or reject changes with relevant penalties as in the New South Wales Associations Incorporation Act 2009 should be adopted.

6.4 Summary: Model Rules should be used, with any changes from minimum rules approved by the governing authority and non compliance invoking penalties, As noted in the consultation paper organisational governance rules should be proportional to the size of entities

7.0 Members Rights

Submission on the December 2011 consultation paper on the Review of Not-for-Profit Governance Arrangements on behalf of the Retirement Villages Residents Association Inc.

7.1 Similar provisions to the CATSI Act "Rule Book" are in the model rules in the NSW Associations Incorporation Regulation 2010 and should be included in any proposed Model Rules

8.0 OVERALL SUMMARY

8.1 From the RVRA viewpoint it is satisfied that operating under the New South Wales Associations Incorporation Act 2009 there is adequate regulation of our Association and protection of our members rights. As our members come under the NSW Retirement Villages Act 1999 and in 10 to 15% of villages, under the NSW Strata Schemes Management Act as well we work with the NSW State Government on matters that relate to NSW only, The advantage of consistent legislative regulation is excellent

8.2 The RVRA see no advantage in becoming a company limited by guarantee and would respectfully request that if the RVRA is to come under a national regulator as a NFP that the category of an Incorporated Association be included.

8.3 The RVRA is currently seeking to expand its membership, educational role and assistance to residents which may involve additional paid staff reporting to the RVRA management committee. This expansion is to be funded by membership growth, private and corporate sponsorship and possible state government grants. Our Constitution is proposed to be amended in February 2012 to clarify our Not-for-Profit status and seek Income Tax exemption as a charitable institution, but not as a DGR. We recognise that as we will be receiving a possible federal benefit and necessarily register as a charity with the ACNC and will require additional Governance rules for transparency to the public and to our members. We envisage any government grants will be from the NSW Government so we would be anxious not to increase our reporting to two bodies.

Prepared By William Plant

Committee member of the Retirement Villages Residents Association Inc. on behalf of that Association

15th January 2012

Appendix A

The New South Wales Associations Incorporations Act 2009

Part 4 Management of associations

Division 1 Committee members

28 Committee to be established

(1) An association must establish a committee to manage its affairs.

Note. An association's registration is liable to be cancelled if it does not comply with this subsection.

(2) The committee must include 3 or more members, each of whom is aged 18 years or more and at least 3 of whom are ordinarily resident in Australia.

Note. An association's registration is liable to be cancelled if its committee does not comply with this subsection.

(3) The committee may exercise such of the association's powers as are not required by this Act or its constitution to be exercised by the association in general meeting.

(4) A committee member's acts are valid despite any defect in his or her appointment.

(5) Within 14 days after vacating office, a former committee member of an association must ensure that all documents in his or her possession that belong to the association are delivered to the public officer for delivery to his or her successor.

Maximum penalty: 1 penalty unit.

29 Register of committee members

(1) An association must keep a register of committee members in accordance with this section.

Maximum penalty: 1 penalty unit.

(2) The register must contain the following particulars in relation to each committee member:

- (a) the committee member's name, date of birth and residential address,
- (b) the date on which the committee member takes office,
- (c) the date on which the committee member vacates office,
- (d) such other particulars as may be prescribed by the regulations.

(3) The register must be kept in New South Wales:

- (a) at the main premises of the association, or
- (b) if the association has no premises, at the association's official address.

(4) Any change in the committee's membership must be recorded in the register within one month after the change occurs.

(5) The register must, at all reasonable hours, be kept available for inspection, free of charge, by any person.

30 Committee meetings

(1) An association's committee meetings may be held as and when the association's constitution requires.

(2) If the association's constitution so provides, a committee meeting may be held at 2 or more venues using any technology that gives each of the committee members a reasonable opportunity to participate.

(3) In any legal proceedings, a committee meeting held in accordance with subsection (2), or part of such a meeting, is not to be declared invalid on the ground that one or more committee members did not have a reasonable opportunity to participate unless the court is satisfied that:

- (a) substantial injustice has been, or may be, caused, and
- (b) the injustice cannot be remedied by any other order available to the court.

31 Disclosure of interests

(1) If:

- (a) a committee member has a direct or indirect interest in a matter being considered or about to be considered at a committee meeting, and
- (b) the interest appears to raise a conflict with the proper performance of the committee member's duties in relation to the consideration of the matter, the committee member must, as soon as possible after the relevant facts have come to the committee member's knowledge, disclose the nature of the interest at a committee meeting.

Maximum penalty: 60 penalty units.

(2) A disclosure by a committee member at a committee meeting that the committee member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person, is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subsection (1).

(3) Particulars of any disclosure made under this section must be recorded by the committee in a book kept for that purpose and that book must be open at all reasonable hours to inspection by any member of the association on payment of the fee determined by the committee (but not exceeding the maximum fee prescribed by the regulations).

(4) The book must be kept at the same address as the register of committee members.

(5) After a committee member has disclosed the nature of an interest in any matter, the committee member must not, unless the committee otherwise determines:

- (a) be present during any deliberation of the committee with respect to the matter, or
- (b) take part in any decision of the committee with respect to the matter.

(6) For the purposes of the making of a determination by the committee under subsection (5), a committee member who has a direct or indirect interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the committee for the purpose of making the determination, or
- (b) take part in the making by the committee of the determination.

(7) A contravention of this section does not invalidate any decision of the committee

32 Dishonest use of information

A committee member or former committee member of an association who uses information obtained as a committee member dishonestly with the intention directly or indirectly of:

- (a) gaining an advantage for himself or herself or for any other person, or
- (b) causing detriment to the association,

is guilty of an offence.

Maximum penalty: 240 penalty units or imprisonment for 2 years, or both

33 Dishonest use of position

A committee member of an association who uses his or her position as a committee member dishonestly with the intention of directly or indirectly:

- (a) gaining an advantage for himself or herself or for any other person, or
- (b) causing detriment to the association,

is guilty of an offence.

Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.