

2023

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TENTH ASSEMBLY

**ACT RETIREMENT VILLAGES OMBUDSMAN - ASSEMBLY RESOLUTION OF 22 MARCH 2023 –
GOVERNMENT RESPONSE**

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September 2023**



ACT
Government

Government Response to Proposal for a Retirement Villages Ombudsman – Assembly Resolution of 22 March 2023

SEPTEMBER 2023

A. Introduction

1. On 22 March 2023, the ACT Legislative Assembly passed a Resolution on dispute resolution options for retirement village residents in the ACT. The Resolution called on the ACT Government to investigate the establishment of an ACT retirement villages ombudsman that is non-adversarial and accessible, with the power to make binding decisions to resolve disputes between a resident of a retirement village and the operator of the village. The ACT Government was required to report back to the Assembly by the final sitting day in September 2023.
2. This report responds to the Resolution, as well as to two petitions filed in the Assembly in November 2022 on the same topic (E PET-038-22 and E PET-008-23).
3. Housing is fundamental to wellbeing. The Government understands that disputes in relation to housing, at any stage of life, can be extremely stressful. Residents of retirement villages should have access to affordable, fair and user-friendly dispute resolution options and this is a key aim of the legislation – the *Retirement Villages Act 2012 (RV Act)*.
4. The Government recognises that retirement village living is an option that is attractive for many older Canberrans. The Government's *Age-Friendly City Plan* identifies the need to increase the supply of housing options for older Canberrans, so that people can transition to the later stages of their life with respect and dignity, in housing of their choice that fits their needs and their lifestyle. For retirement village living to work, it is important that residents feel safe and supported in their homes.
5. The current dispute resolution system for retirement villages is the result of a comprehensive review of the RV Act in 2016. The review was informed by close consultation with an advisory group, which included the ACT Retirement Villages Residents Association (**RVRA**), as well as broader public consultation. Concerns similar to those in the Resolution were raised at that time – that there is a need for a less formal alternative to the ACAT process to resolve disputes. As a result of that review, the Government introduced two new dispute resolution options for residents, being the internal disputes committee mechanism and the ACT Human Rights Commission, in 2016 and 2019 respectively.
6. This report sets out the Government's views on the current proposal to establish a retirement villages ombudsman, following its analysis and investigation of the issues raised in the Resolution. The report is structured as follows:
 - *Part A – Introduction*
 - *Part B – What we did*: this section discusses the consultation and evidence base that have informed this report.
 - *Part C – Current Landscape*: this section analyses current dispute resolution options. A key aim of the investigation was to understand what works and what doesn't work in the current landscape.
 - *Part D – What we heard*: this section describes the key messages arising from the investigation.
 - *Part E – Government Response*: this section outlines proposed next steps to respond to the Resolution. For the reasons outlined, the Government considers that establishing an ombudsman is not the most effective response to be pursued at this time, and other measures are proposed instead to support residents in dispute resolution.

B. What we did

7. The Justice and Community Safety Directorate (**JACS**) conducted targeted stakeholder consultations to inform the Government's response. The stakeholders consulted included:
 - the RVRA as the peak body for residents
 - service providers and advocacy groups for residents and older people, including the Ministerial Advisory Council on the Ageing, the ACT Vintage Reds, COTA and Legal Aid ACT
 - the ACT Law Society
 - retirement village operators and the Property Council of Australia's Retirement Living Council, and
 - other ACT Government entities, including the ACT Human Rights Commission, the Community Services Directorate (Office for Seniors and Veterans), Access Canberra, and the ACT Civil and Administrative Tribunal.
8. Two advocacy groups and an individual also provided written material to the Government on the proposal.
9. JACS is grateful to everyone who contributed their time, insights and expertise through this process.
10. This Report has also been informed by recent research on Australia's retirement village sector and dispute resolution more generally, including:
 - Australian Housing and Urban Research Institute, *Business modes, consumer experiences and regulation of retirement villages*¹
 - Parliament of Victoria – Legislative Council Legal and Social Issues Committee, *Inquiry into the Retirement Housing Sector*²
 - NSW Government, *Inquiry into the NSW Retirement Village Sector Report*³
 - Productivity Commission, *Access to Justice Arrangements: Productivity Commission Inquiry Report*⁴
 - Productivity Commission, *Caring for Older Australians: Productivity Commission Inquiry Report*⁵
 - NSW Retirement Village Residents Association, *Ageing Without Fear Survey Report*⁶
 - Royal Commission into Aged Care Quality and Safety, *Final Report: Care, Dignity and Respect*⁷

¹ Travers, M et al, Australian Housing and Urban Research Institute, [Business models, consumer experiences and regulation of retirement villages](#), 14 December 2022.

² Legislative Council Legal and Social Issues Committee, Parliament of Victoria, [Inquiry into the retirement housing sector](#), March 2017.

³ Greiner, K, NSW Government, [Inquiry into the NSW Retirement Village Sector Report](#), 15 December 2017.

⁴ Productivity Commission, [Access to Justice Arrangements – Productivity Commission Inquiry Report](#), 5 September 2014.

⁵ Productivity Commission, [Caring for Older Australians – Productivity Commission Inquiry Report](#), 8 August 2011.

⁶ NSW Retirement Villages Residents Association, [Ageing Without Fear: Survey Report](#), 15 June 2023.

⁷ Pagone QC, T and Briggs AO, L, Royal Commission into Aged Care Quality and Safety, [Final Report: Care, Dignity and Respect](#), 26 February 2021.

- Consumer Policy Research Centre, *The experiences of older consumers: Towards markets that work for people*⁸
- Australian Institute of Health and Welfare, *Older People*, 28 June 2023.⁹

11. JACS has prepared a summary of dispute resolution options for retirement village residents in other jurisdictions, including those referred to in the Assembly Resolution. This is attached to this report.

⁸ Martin-Hobbs, B and O’Neill, E, Consumer Policy Research Centre, [*The Experiences of Older Consumers: Towards Markets that Work for People*](#), 7 July 2020.

⁹ Australian Institute of Health and Welfare, [*Older People*](#), 28 June 2023.

C. Current landscape

Existing dispute resolution options

12. In conversations with retirement village residents and operators, JACS consistently heard that if residents encountered a dispute, most often the first step would be to raise the dispute with the village's residents committee (if the village had one), or their retirement village manager.
13. In addition to these informal, localised avenues, the RV Act and *Human Rights Commission Act 2005* (**HRC Act**) provide several avenues for a resident of a retirement village to resolve a dispute. These vary in degrees of accessibility, formality and enforceability. They include:
 - a village's internal disputes committee;
 - the ACT Human Rights Commission (**the Commission**); and
 - the ACT Civil and Administrative Tribunal (**ACAT**) (via alternative dispute resolution and/or a hearing).
14. Access Canberra can also assist in the resolution of complaints concerning breaches of retirement villages laws and of the ACT's consumer law legislation, including (most relevantly) the Australian Consumer Law.¹⁰
15. Nothing in the RV Act, or other legislation, prevents a resident or operator from resolving a dispute through the court system. However, this is likely to be more costly and time consuming than other options.
16. Some retirement villages are also signatories to the Retirement Living Code of Conduct, which is an industry self-regulation initiative under the auspices of the Property Council. Part A5 of the Code of Conduct sets out these operator's additional undertakings in regards to dispute resolution.

Internal disputes committee

17. The RV Act provides that a retirement village must establish a disputes committee to resolve disputes arising between the operator and the residents. As noted above, this dispute resolution avenue was introduced following the 2016 review of the RV Act, in response to the stated need for a less formal alternative to ACAT.
18. The internal disputes committee mechanism is intended to provide residents with a free and quick method of resolving disputes, as within 30 days of receiving a complaint, the disputes committee must:
 - issue a written decision that resolves the dispute
 - arrange for external mediation, or
 - tell the parties that the dispute is unresolved.

¹⁰ See Part 8 – Disputes, *Retirement Villages Act 2012*. See also *ACT Civil and Administrative Tribunal Act 2008*, *Human Rights Commission Act 2005*, and *Fair Trading (Australian Consumer Law) Act 1992*.

19. The parties to the dispute are required under the RV Act to take all reasonable steps to give effect to any decision of the committee.¹¹

Access Canberra

20. Since 1 July 2019, Access Canberra has received 11 complaints regarding retirement villages. Where Access Canberra receives a complaint, it will assess the complaint and determine whether any appropriate action may be taken. This may include providing information to the complainant or engaging with the village operator. A more serious complaint could be referred to another area of Government (noting, for example, that there a range of offences under the RV Act). However, Access Canberra does not conduct formal dispute resolution for complaints concerning breaches of the RV Act and it cannot issue binding decisions.

21. Access Canberra, through its Fair Trading function, can conciliate disputes between residents and retirement village operators that concern breaches of the Australian Consumer Law.¹² This involves the Commissioner for Fair Trading acting as an impartial third party to help the parties to agree to a resolution of the complaint.¹³ Some aspects of retirement village disputes – for example, contract terms or representations made by an operator or agent during the initial sales and entry process – may engage protections under the Australian Consumer Law.

22. Access Canberra also plays an important role in educating businesses on their obligations, with a view to ensuring compliance with these obligations. Some of this regulatory activity is less visible to residents. For example, from November 2022 to February 2023, Access Canberra conducted a Retirement Village engagement program. The program focussed on educating operators about their legal obligations and providing guidance on capital maintenance and capital replacement rules (which have been the subject of disputes within villages in recent years). Access Canberra staff engaged with 20 operators that run 39 retirement villages in the ACT during the program.

23. Activities undertaken during the engagement program included:

- Access Canberra staff provided general awareness to the residents of the villages in relation to scams, including how to spot, report and protect themselves from scams through the provision of relevant [resources](#).
- The team took 17 questions on notice from village operators and referred them to relevant areas within Access Canberra or the ACT Government for additional information.
- Some of the concerns related to motorists speeding and illegal parking. After liaison within Government, enforcement was mobilised in this area. Other queries included getting solar panels, bulky waste collection, graffiti, liquor and food licensing and requesting a new bus service.
- The team distributed 1,260 copies of The Little Black Book of Scams, approximately 410 copies of Optus Data Breach Factsheet to the village operators and 55 calendar diaries that included important information for the residents provided by the Older Persons ACT Legal Service at Legal Aid.

¹¹ S175C Retirement Villages Act 2012.

- The team delivered talks to residents on two occasions at their resident committee meeting. The topics covered included information on the legislative changes to the RV Act in recent years and scam awareness.

ACT Human Rights Commission

24. The Commission provides an independent, fair and accessible forum to encourage the resolution of complaints in respect of which it has jurisdiction.
25. The Commission’s jurisdiction with respect to retirement villages is broad. The Commission may consider complaints in relation to alleged breaches of the RV Act but its jurisdiction is not limited to this. It can also consider complaints about conduct inconsistent with the “generally accepted standard of service delivery” expected of retirement village operators, or conduct that shows a service is “not being provided appropriately”.¹⁴ This is important as research finds retirement village disputes are commonly matters of contract or commercial practice (and not necessarily directly linked to statutory obligations).¹⁵
26. The Commission cannot make binding decisions on complaints, but agreements reached during conciliation of complaints are able to be enforced as if they were an order of ACAT, and there is a pathway for the complainant to request referral of the matter to ACAT if it cannot be resolved through conciliation.
27. The Commission’s 2021-22 Annual Report found high satisfaction with its complaints handling process – 75% of parties reported the complaints process was fair, and 77% reported the process was accessible.¹⁶
28. The Commission also has a range of other statutory powers which enable it to investigate and make recommendations on retirement villages complaints and advocate to Government. These are described in Part E of this report.

ACT Civil and Administrative Tribunal

29. A retirement village resident can submit an application to the ACAT in relation to a dispute arising under the RV Act or where the resident considers that a term of their contract is “unjust, unconscionable, harsh or oppressive”. The ACAT is not bound by its ordinary \$25,000 monetary limit when determining retirement villages disputes.¹⁷
30. The ACAT is required to ensure its procedures are as simple, quick, inexpensive and informal as is consistent with achieving justice, and are implemented in a way that is proportionate to the importance and complexity of the subject matter of the proceeding. In pursuit of this requirement:
 - alternative dispute resolution (**ADR**) is offered in all matters, to assist in the efficient resolution of the dispute; and

¹⁴ S41 *Human Rights Commission Act 2005*.

¹⁵ Parliament of Victoria - Legislative Council Legal and Social Issues Committee, [Inquiry into the retirement housing sector](#), March 2017, p. 82 (‘the Victorian Inquiry’).

¹⁶ ACT Human Rights Commission, [Annual Report 2021-22](#), p. 33. This statistic relates to the Commission’s complaints processes across all its jurisdictions (it is not specific to older persons or retirement villages complaints).

¹⁷ SS176-177 and 180 *Retirement Villages Act 2012*.

- legal representation is not required.¹⁸
31. The fee for a natural person for retirement village disputes is \$176, and the ACAT has fee waiver processes, including for people on a pensioner concession card.
 32. ACAT advises that retirement villages disputes are individually case managed, meaning that (unlike in higher volume ACAT jurisdictions) an initial directions hearing is always scheduled to determine the appropriate conduct of the matter. Retirement villages applications are also directed to alternative dispute resolution as a priority.
 33. ACAT has dealt with 14 retirement villages matters since April 2014. Of these, 5 were determined after a hearing, 4 were settled by consent, and 5 were discontinued.
 34. The time taken to resolve retirement villages matters varies greatly depending on whether the matter settles by consent (or is discontinued) or proceeds to a final hearing. Those matters that were settled by consent were typically finalised in 30 to 70 days. Of the matters that have proceeded to a final hearing since 2014, the time to completion (from application to final orders) varied between 204 and 352 days. ACAT advises that some decisions involved complex legal issues.

Supports available to residents seeking to resolve a dispute

35. In the ACT, there are a number of organisations providing specialist support to older people, including COTA, ADACAS, Care and the Older Persons' ACT Legal Service (operated by Legal Aid ACT). While these services can offer support for residents in retirement villages, there is currently no free legal service in the ACT that routinely provides legal advice on (or has specialist skills in) disputes arising under the RV Act.
36. JACS heard, from consultation with service providers, that the effectiveness, or otherwise, of an external dispute resolution service depends in part on community awareness, and supports available to assist individuals navigating its processes.

¹⁸ While ADR is offered in all matters, there will be occasions where it not possible to resolve the matter through ADR. For example, it may not be appropriate to resolve matters involving domestic or elder abuse to ADR, or if the parties require determination of a legal point, a hearing may be required: ACT Civil and Administrative Tribunal, [Annual Review 2021-22](#), p. 37.

D. What we heard

Key messages

37. The key messages identified during consultations and research include the following.

Barriers to accessible justice

38. Existing research show that there are barriers to dispute resolution for older people, including retirement village residents. These include, for example:

- health conditions associated with older age which make it more challenging to communicate and understand information, for example, sensory impairment and disability;¹⁹
- difficulty accessing technology, which may impact access to digitalised dispute resolution options (amplified through the COVID-19 induced acceleration of digitalisation);²⁰ and
- social isolation and a lack of support networks, which may reduce residents' ability to confidently make decisions and self-advocate, and make it more likely people will 'do nothing' when confronted with an issue or dispute.²¹

39. A further key theme in consultations with residents was the power imbalance that can exist between residents and village operators, and this is supported by research.²² For operators, the village is a business from which they are attempting to maximise profit. For residents, the village is their home. Some residents reported not raising issues for fear of being evicted or victimised, particularly where it is not practical to move villages in a relatively small market or they do not have the financial means to secure alternative accommodation.²³

40. At times, where residents of retirement villages encounter these barriers such as these, this may result in an individual deciding not to seek support or raise a dispute. This was echoed in the Government's consultations, with residents' representatives noting that many residents were afraid to 'rock the boat' and wanted to live a peaceful, dispute-free, life in the village.

41. The barriers noted above may be magnified where dispute resolution settings are relatively more formal, such as in ACAT. Residents and operators were generally complimentary of ACAT processes. Residents noted the ACAT's ability to make binding, enforceable decisions was valuable, however the costs and formality of proceedings presented a barrier (for example, gathering and presenting evidence). Residents felt that ACAT does not present a genuinely accessible option, due to the stress

¹⁹ Australian Institute of Health and Welfare, [Older Australians](#), 28 June 2023.

²⁰ Consumer Policy Research Centre, *The experiences of older consumers: towards markets that work for people*, July 2020.

²¹ Commissioner for Senior Victorians, [Ageing is everyone's business: A report on isolation and loneliness among Senior Victorians](#), January 2016.

²² Travers, M et al, Australian Housing and Urban Research Institute, [Business models, consumer experiences and regulation of retirement villages](#), December 2022, p. 82 ('AHURI Report').

²³ [Victorian Inquiry](#), p. 72.

and complexity of proceedings, and noted that operators tend to have an advantage in Tribunal proceedings as they are institutional 'repeat players' with access to legal advice and representation.

42. In contrast, operators with experience in ACAT proceedings found the process to be effective and efficient.

Retirement village contracts are complex

43. A key message from both consultations and research is that retirement village contracts can be immensely complex and difficult to understand without legal and financial advice. The complexity of these contracts can be challenging for residents, particularly when leaving a village, or when a dispute arises. This is so notwithstanding that many residents obtain independent legal advice before entering into the contract, and the RV Act makes express provision for prospective residents to obtain this advice.²⁴ During consultation, some residents advocated for the introduction of a standard form contract for all retirement villages. A standard form contract was introduced for all retirement villages in NSW in 2013.²⁵

Dispute resolution primarily occurs locally

44. Both research and consultations suggest that the first point of contact for residents with a dispute is usually their village manager, or the residents committee.²⁶ Feedback indicated that these are often successful and efficient avenues for dispute resolution. Residents and operators alike noted their preference for a localised and constructive method of dispute resolution, as this was likely to lead to a peaceful and harmonious village.
45. However, these localised options have limits. Residents also noted they often felt uncomfortable raising disputes with the residents committee where the dispute involved another resident, or where there was a perceived conflict of interest between individuals holding positions on the residents committee and the retirement village operator. Further, some residents were critical of the amount of time it took an operator to respond to concerns raised directly with them. This concern is reflected in existing literature.²⁷

Common types of disputes

46. Both residents and operators gave largely similar feedback on the types of disputes that arise. There was no one predominant cause of disputes, and disputes varied in complexity and seriousness, from disputes over the cosmetic maintenance of the village, to protracted disputes over building standards and quality. The most common types of disputes include:
- Financial disputes, including over the annual budget, increases in fees, or the treatment of capital gains upon departure from the village.

²⁴ Ss47-48, *RV Act 2012*.

²⁵ NSW Government, Fair Trading, [Retirement Village Contracts](#), (accessed 24 July 2023).

²⁶ NSW Government, [Inquiry into the NSW Retirement Village Sector Report](#), December 2017, ('the NSW Inquiry'), p. 64.

²⁷ NSW Inquiry, p. 64.

- Maintenance disputes, both over common facilities, such as pools and gardens, and individual units, such as plumbing or electrical concerns.
- Building standards and construction disputes, including in the initial post-construction period where defects in a building have become apparent after the resident has moved in.
- Traffic disputes (e.g. the speed limit to apply in a village) and disputes around amenity (e.g. the appearance of gardens).
- Interpersonal disputes between residents.

47. A common cause of disputes was a lack of a timely response from the operator in some villages in response to complaints. This was perceived at times to be stalling behaviour.

Internal disputes committees are not routinely used

48. Consultations with both residents and operators indicated that internal disputes committees are not widely known about or well utilised. At least some retirement villages have not established the committee as required under the RV Act, or where the committee had been established, it was not commonly used to resolve disputes. Some stakeholders commented that the internal disputes committee mechanism may be of limited utility, if residents do not perceive it as sufficiently independent from the operator, despite requirements that the committee include a representative appointed by residents, and a neutral representative. However, some stakeholders noted it could be challenging to find a suitable neutral representative.

Awareness of the HRC's functions is limited

49. It was apparent from consultations that there is a lack of awareness among residents about the HRC, and the full scope of its powers and functions. Operators consulted were more aware of the HRC and described steps taken to educate residents about available external support services, but acknowledged that levels of awareness for some residents were low.

Data

50. A concern raised by some stakeholders is that there is limited publicly available data on the retirement village sector in the ACT, for example, information on the number of villages, the number of residents, and the types of disputes which are arising. The ACT Land Titles Office maintains a register of retirement villages (pursuant to the requirement under s 42 of the RV Act that operators must register the village with the Registrar-General for land titles). One stakeholder estimated that there are around 4800 residents in ACT villages. Data published by the Property Council of Australia finds the average age of retirement village residents Australia-wide is 81.²⁸

²⁸ Property Council of Australia, *Retirement Living*, <https://www.propertycouncil.com.au/news-research/overview/the-data-room/retirement-living> (accessed 5 July 2023).

E. Government response

Retirement villages ombudsman

51. The Government understands that residents of retirement villages, and older people more generally, do face genuine barriers to the timely and accessible resolution of disputes. As such, creating a new body might appear an attractive solution to these problems. In recent years, NSW and Victoria have also considered similar issues, and an ombudsman as a potential solution, although neither has since established an ombudsman.²⁹
52. The Government acknowledges there would be potential benefits to creating an ombudsman. For example, it may incentivise industry to implement more effective internal dispute resolution mechanisms, reducing financial and time cost to residents.³⁰ There is also some evidence that ombudsman schemes can result in culture change within industry, and more effective engagement between individuals, consumer advocates and industry.³¹
53. However, as was stated in the Greiner Inquiry in NSW, the introduction of an ombudsman “would not necessarily provide a quick solution to complex problems.”³² For the reasons that follow, the Government does not consider that the ombudsman proposal should be pursued further at this time.

The current system has advantages that have not yet been fully utilised

54. This report has identified opportunities to enhance the existing dispute resolution framework, by better promoting the use of internal disputes committees and of the Human Rights Commission. As noted above, these options were introduced by Government with the aim of ensuring that residents of retirement villages have access to affordable, fair and user-friendly dispute resolution options. They are currently underutilised. Efforts to promote their uptake could be readily increased, efficiently benefitting residents. The Government considers that before creating a new body, the advantages and disadvantages of the existing framework should be more fully tested.
55. In particular, it is important to emphasise the potential benefits of the Human Rights Commission, both in terms of its broad statutory powers and its constructive, informal approach to dispute resolution. Those jurisdictions which have considered establishing an ombudsman in recent years (e.g. NSW and Victoria) do not have an equivalent body to the Commission where the residents can take disputes.
56. As noted above, the Commission’s main function in respect of complaints is to offer a free conciliation service. However, the Commission also has extensive powers to gather information during the complaints process (by requiring people to produce documents or attend to answer questions)³³ and to make reports after considering a complaint. These powers apply even where conciliation is not

²⁹ Greiner, K, NSW Government, [Inquiry into the NSW Retirement Village Sector Report](#), 15 December 2017, p. 72-74.

³⁰ Productivity Commission, [Access to Justice Arrangements: Productivity Commission Inquiry Report Volume 1](#), September 2014, pp. 337-38 (‘the Access to Justice Report’).

³¹ [Access to Justice Report](#), p. 337.

³² Greiner, K, NSW Government, [Inquiry into the NSW Retirement Village Sector Report](#), 15 December 2017, p. 72.

³³ s73, *Human Rights Commission Act 2005*.

successful. The Commission must give a final report to the parties, in closing a complaint.³⁴ If the Commission is satisfied the person complained about has acted inconsistently with an applicable standard, the final report may recommend the person take specific actions (which need not be limited to the matters raised in the complaint).³⁵

57. The Commission may also give a third party a report (including, for example, a Minister or a retirement village operator who is not party to the complaint, or another entity). The third-party report may also make recommendations for actions to be taken (e.g. improvements to service delivery).³⁶
58. Where a final report makes recommendations to an entity, it is an offence for an entity to fail to tell the Commission in writing about the action the entity has taken in relation to the recommendation within a specific timeframe.³⁷
59. The Commission may also, of its own initiative, give the Minister a written report about any matter of public importance related to the Commission.³⁸ The Commission also has other statutory functions which mirror the advocacy or investigative functions afforded to some ombudsmen schemes. These include:
- promoting awareness and undertaking educative activities;³⁹
 - undertaking Commission-initiated considerations (own motion investigations of matters in respect of which a complaint could be made);⁴⁰ and
 - contributing to legislative and policy development.⁴¹
60. It is also important to note that the Commission's retirement village jurisdiction is complementary to its other jurisdictions that may relate to older people, which include complaints related to:
- discrimination;
 - health services; and
 - the treatment of vulnerable people (including for example, complaints related to elder abuse).
61. This means that an individual with an issue crossing multiple areas within the Commission's jurisdiction can lodge a single complaint. This reduces complexity and confusion for older Canberrans and enables a wholistic and efficient resolution of multi-faceted complaints.

³⁴ For retirement village complaints, the final report must include a retirement village referral statement, unless the complaint was resolved through agreement at conciliation or withdrawn by the complainant. The retirement village referral statement informs the complainant that they may ask the Commission to refer the complaint to the ACAT within 60 days after the day the notice is given (or such later period as ACAT allows) – ss 80, 82A, 88A, *HRC Act 2005*.

³⁵ S 81, *HRC Act 2005*.

³⁶ S 83, *HRC Act 2005*.

³⁷ S 85, *HRC Act 2005*.

³⁸ ss 84 and 87, *HRC Act 2005*.

³⁹ S14(1)(b-c), *HRC Act 2005*.

⁴⁰ S48 *Human Rights Act 2005*.

⁴¹ S14(1)(d) *Human Rights Commission Act 2005*. See also s87 *Human Rights Commission Act 2005*; the Commission may, on its own initiative, give the Minister a written report about any matter of public importance related to the Commission's functions or a matter. If the Commission gives the Minister such a report, the Minister must present the report to the Legislative Assembly within 6 sitting days after the day the Minister receives the report.

62. Further, the Commission's approach to dispute resolution offers benefits. The Commission applies a human rights lens to complaints which is intended to empower vulnerable persons. The Commission's practice is restorative, that is, it aims to preserve constructive relationships by using a shared approach to problem solving based on respect, accountability and support. This is important in a retirement village context, as residents and operators need to have an ongoing relationship.
63. The Commission has a strong focus on early and informal resolution of matters. Accessing the service is usually just by making a phone call or sending an email. Where possible, complaints will be resolved through phone calls or, where useful, a visit to the village to talk through the issues with the parties. Where appropriate, the Commission will also support residents to resolve matters without making a complaint.
64. For example, recently where a resident had concerns about their neighbour's behaviour, the Commission assisted the resident to approach the operator informally with their concerns, by helping them draft a number of emails. This resulted in the operator mediating the issues successfully with the residents.
65. Another example of the Commission's work is the support they provided to residents of some villages during COVID lockdowns. The Commission assisted these residents to informally raise with their operators their concerns about restrictions that were being imposed. Those restrictions were intended to be protective but for some residents increased their anxiety. The Commission dealt with the residents' concerns confidentially and informally, so they could be addressed quickly while recognizing the difficult environment operators were dealing with.
66. Given the breadth of its operations, and its accessible and responsive approach to complaints, the functions of the Commission are substantially similar to the functions of a typical ombudsman. While the Commission is not able to issue binding decisions, those complaints that cannot be resolved through its processes may be referred to ACAT.

A new body may create other challenges without substantially increasing access to justice

67. The Government considers that creating a new ombudsman may generate other challenges. In particular, there is a risk that it would fragment the dispute resolution system, in circumstances where residents already have multiple options. Increasing the proliferation of dispute resolution options may confuse consumers about where to go, especially where the new ombudsman would have a very similar jurisdiction (in terms of subject matter) to the Commission. Uncertainty over where to go may result in an individual deciding to do nothing, leaving the dispute unresolved.
68. Moreover, the introduction of a retirement village ombudsman will not address some of the underlying structural barriers to justice identified in Part D above. For example, a lack of access to technology, power imbalances, age and health status will still present barriers to lodging a dispute.
69. It is also important to recognise that, outside industry schemes, it is rare for an ombudsman to have capacity to make binding decisions, which residents submitted needed to be a key feature of a retirement village ombudsman. Productivity Commission research from 2014 indicated that, of the

ombudsman schemes with power to make binding decisions, only 1.1% of complaints reached the stage where a binding decision or determination was made.⁴²

70. The proposal for an ombudsman to have powers to make legally binding decisions on complaints also arguably involves a trade-off with accessibility. This is because it is difficult to establish a forum which is both informal and accessible, but also has appropriate regard to procedural fairness. For example, a binding decision must be based on relevant and cogent evidence, creating an onus on residents to gather, and present, evidence to the decision-maker, and the person in respect of whom the complaint is made must be given the opportunity to respond. This may duplicate some of the challenges residents noted in accessing ACAT's services.

High cost

71. Creating a retirement village ombudsman would be a significant justice sector reform, and involve substantial cost. During consultations, there was no consensus between stakeholders on how an ombudsman scheme should be funded. Some stakeholders proposed that Government should fully fund the new body, while others considered that operators and residents should share the cost.
72. Across Australia, ombudsman schemes are funded in a variety of ways. It is likely a retirement villages ombudsman will increase costs for industry (at the very least, due to increases in legal and compliance costs), which may be passed onto residents in the form of higher fees and charges. This is an important consideration, given financial disputes are common.
73. The proposal for Government to fully fund the new body raises issues of equity across the justice sector. Significant justice system reforms, such as the creation of a retirement village ombudsman, are time-and resource-consuming to implement, requiring legislative change, education and awareness campaigns, and sufficient ongoing public funding to ensure the body's effective operation (and as noted by stakeholders, ideally also increased funding for support services). Additional regulatory bodies may enhance compliance, but Government must always consider the relative benefits of using finite public funds.
74. At present, residents of retirement villages have access to more types of statutory dispute resolution than is typical in other housing regulatory settings, with two legislated mechanisms for dispute resolution in addition to ACAT (internal disputes committees and the Commission). Canberrans who rent, or those who live in unit titled (strata) buildings, also experience barriers to justice when seeking to resolve disputes in relation to their homes, including issues such as power imbalances. Large numbers of people are affected by these housing disputes – for example, it is estimated that one-third of Canberran households rent. Currently, the only form of statutory dispute resolution available under tenancy and strata laws is ACAT. The Government has committed to investigating (pursuant to an Assembly Resolution) whether a new regulatory body for tenants is needed.

⁴² Access to Justice Report, p. 340.

The way forward – alternative options to improve the system

Making internal dispute resolution more effective

75. The Government's investigation shows there are opportunities to increase the effectiveness of internal disputes committees. As a first step, it is important to ensure that all villages have established an internal disputes committee as required under the RV Act. This will offer residents access to a localised, informal method of dispute resolution. As the internal committee is required to finalise disputes within 30 days, it will also provide residents with an avenue for the timely resolution of disputes; a feature that residents submitted was essential.
76. The Government intends to write to village operators in the ACT to remind them of their obligation to establish an internal disputes committee. The Government expects operators to take steps to make sure that residents are aware of the committee and its functions.

Promoting awareness of the ACT Human Rights Commission

77. The Government has heard a clear message that not enough residents know about the Commission and its functions. As a result of this feedback, the Commission is taking steps to promote its services.
78. The Commission has also participated in a number of recent meetings including public consultations with the RVRA to understand their concerns and develop a closer working relationship with the Executive Committee. The Commission has developed a specific flyer for retirement villages which has recently been provided to the RVRA and is being distributed to Retirement Villages (and is attached to this Report).
79. The Commission has recently included print advertisements in free print publications which target the rights of older people, and covering the Commission's vulnerable people, retirement village and services for older people jurisdictions. The Commission has also run radio advertisements on mainstream stations and community radio in community languages, particularly focused on its vulnerable people, retirement villages and services for older people jurisdictions.
80. Based on the feedback from this process the Commission will endeavour to directly target information about its services to retirement village residents through distribution of the flyer attached, offering information session to village operators and residents, and working with the RVRA to improve complaint pathways for village residents.
81. The Government has also recently updated the *Retirement Villages Handbook*, an online resource for residents. The *Handbook* now contains more information on dispute resolution options – in particular, the Commission – and on relevant support services.

Exploring legislative and regulatory reforms to improve the system

82. The Government will also work with the RVRA and other key stakeholders to consider whether other improvements to the legal and regulatory framework can be made with a view to supporting residents to better understand and enforce their rights. For example, noting that the complexity of retirement village contracts was a key theme in consultations, the Government will explore whether a standard form contract should be introduced in the ACT.

Attachment – Summary of dispute resolution services for retirement village complaints – cross jurisdictional comparison

Jurisdiction	Summary of dispute resolution services for retirement village complaints
South Australia	<ul style="list-style-type: none"> In South Australia, the Aged Rights Advocacy Service offers a free, confidential and state-wide advocacy service, available to people in residential care (including retirement villages) or in the community accessing aged care services. The ARAS provides information, support for decision-making, assistance for people to exercise their rights, education and community awareness session, and input into policy which impacts older people. The ARAS does not mediate disputes, but will support a resident or group of residents when they need to attend the South Australian Civil and Administrative Tribunal. South Australian Civil and Administrative Tribunal: may hear disputes between residents and operators relating to the <i>Retirement Villages Act 2016 (SA)</i> or the private contract between the resident and the retirement village operator, and make binding decisions.
Victoria (see also the Victorian Inquiry into the retirement housing sector)	<ul style="list-style-type: none"> Dispute Settlement Centre of Victoria: Can support residents with a dispute against another resident, or against a retirement village manager to resolve a dispute, but cannot force an outcome. Consumer Affairs Victoria: Can provide information and advice, but cannot otherwise assist in the resolution of disputes. Victorian Civil and Administrative Tribunal: may hear disputes between residents and operators under VIC retirement villages laws and make binding decisions. These dispute resolution forms exist in addition to the retirement village’s internal dispute resolution process. A resident is not required to use the retirement villages internal dispute resolution process first.
New South Wales (see also the Inquiry into the NSW retirement village sector)	<ul style="list-style-type: none"> The NSW Government, when in Opposition, committed to investigating how a retirement village ombudsman could be brought into effect. The Government acknowledged the Greiner Inquiry findings of 2018. While the Greiner Inquiry did find failings with the current dispute resolution forums, it instead recommended expanding the services and responsibilities of NSW Fair Trading, in particular, extending its mediation functions to retirement village disputes.⁴³ Fair Trading NSW: If a potential breach of the <i>Retirement Villages Act 1999</i> is identified, a resident can lodge a complaint with NSW Fair Trading, who can offer to support a resolution process if both parties agree to participate. It has a very limited role in handling contractual disputes or matters of statutory interpretation. Fair Trading does not offer mediation for retirement village disputes, although it does for strata, community housing and residential tenancy disputes. NSW Civil and Administrative Tribunal: The NCAT has jurisdiction to hear and determine matters under the <i>Retirement Villages Act 1999</i>. There is no monetary limit on their jurisdictions. The Greiner inquiry found residents were critical of the lack of dispute resolution options outside of NCAT. The Inquiry also found NCAT was a fair and cost-effective pathway for residents to receive a final and binding decision.
Queensland	<ul style="list-style-type: none"> Queensland Civil and Administrative Tribunal: The Queensland Civil and Administrative Tribunal can consider disagreements that occur between a resident(s) and the retirement village operator, and issue binding decisions. Except in limited circumstances (for example, where a resident is to be, or has been, evicted from the village), the parties must first attempt to resolve the matter internally, and the <i>Retirement Village Act 1999 (Qld)</i> sets out the procedure to be followed dealing with an internal dispute. QCAT may resolve disputes either through mediation or a hearing. Except in limited circumstances, the parties must attempt to resolve the matter through mediation before applying for a hearing. The average time to finalisation for body corporate and community living disputes (including retirement village disputes) is 58 weeks.

⁴³ NSW Government, [Inquiry into the NSW retirement village sector](#), December 2017, pp. 74-75.

Jurisdiction

Summary of dispute resolution services for retirement village complaints

[Ontario Government's Retirement Homes Regulatory Authority](#)

- The Retirement Homes Regulatory Authority administers the dispute resolution process outlined in the *Retirement Homes Act 2010*.
- Section 2 of the *Retirement Homes Act 2010* defines a 'retirement home' as a residential complex or the part of a residential complex that is occupied primarily by persons who are 65 years of age or older; ... and where the operator of the home makes at least two care services available, directly or indirectly, to the residents.'
 - In Canada, a 'retirement home' is akin to an 'aged care facility' in Australia, and a 'residential home' is akin to Australia's retirement villages.
 - The *Retirement Homes Regulatory Authority* is akin to Australia's Aged Care Quality and Safety Commission.
- The Retirement Homes Regulatory Authority can only consider complaints of conduct in breach of the *Retirement Homes Act 2010*. It cannot consider complaints about, for example, tenancy disputes, maintenance disputes and evictions.
- The dispute resolution process is not quick. On average, a complaint that requires an inspection will take 150 days to resolve.
- There is an appeals process through the Complaints Resolution Officer. This takes on average 90 days to complete.
- The Retirement Homes Regulatory Authority does not have the power to order compensation to residents.
- It can provide information or education to the licensee, provide the licensee with a written warning, or take further enforcement action where appropriate.

[New Zealand Te Ara Ahunga Ora Retirement Commission](#)

- The Te Ara Ahunga Ora Retirement Commission ('the Retirement Commission') has three main functions:
 - raising public understanding and advising government on income policies to improve outcomes for individuals
 - monitoring the effects of the retirement villages legal framework (including supporting dispute resolution), and
 - assisting individuals to improve their financial capability and plan for retirement.
 - Part 4 of the *Retirement Villages Act 2003* establishes a two-tiered dispute resolution regime for registered retirement villages.
 - **Step 1 – Informal or formal complaint to operator:**
 - A retirement village must have a complaints policy outlining the process for dealing with complaints, including both complaints between residents, and between a resident and the operator.
 - The operator must attempt to resolve the complaint within 20 business days, and if not resolved, refer it to a statutory supervisor and then a mediator.
 - **Step 2 – Dispute Notice:**
 - A Disputes Panel is appointed by the Retirement Commission. The Disputes Panel must consult the parties before the hearing, and unless the parties agree, a hearing will be conducted, allowing each party to state their case and bring forward evidence to support it.
 - The panel must then decide the dispute according to the general principles of the law and the substantial merits and justice of the case. The panel gives a written decision that sets out its finding on the facts and the reasons for its decision. Decisions may be appealed, and as necessary enforced, through the courts.
 - The Retirement Commission cannot assist in the resolution of health or disability disputes; these must proceed through the Health and Disability Commissioner's office.
 - There are no costs to file a complaint, and the operator is responsible for paying the costs incurred by the disputes panel. However, the disputes panel may award costs and expenses incurred to any party or the operator.
 - There is no monetary limit on disputes that can be taken to the disputes panel.
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Jurisdiction	Summary of dispute resolution services for retirement village complaints
Dispute resolution options in the UK	<ul style="list-style-type: none"> • There are a variety of disputes resolution options in the UK. The correct forum to lodge a dispute depends upon the relationship between operator and resident, the nature of the dispute and the type of accommodation. • Trade body (including ARHM, ARMA and ARCO):⁴⁴ Each body has a Code of Conduct to which members must conform, and can provide information on complaints management. • Housing ombudsman: Can consider disputes retirement villages where the operator is a member of the Housing Ombudsman service. Membership is mandatory for social housing providers (including not-for-profit housing associations administering retirement villages) but optional for private sector accommodation providers. There are strict limits on the Housing Ombudsman’s jurisdiction, for example: <ul style="list-style-type: none"> ○ It can only consider disputes between tenants / landlords. ○ A resident must have exhausted the landlord’s complaints procedure; ○ It cannot consider complaints involving fees and charges; and ○ It cannot consider complaints where the resident has not complied with the landlord’s time limits in the complaints procedure. • First tier property tribunal: Can consider disputes about leases; legal advice is recommended. • Property ombudsman: Can consider disputes where a resident believes they were mis-sold a property. • Local Government and Social Care Ombudsman: Can consider complaints about adult social care providers, such as aged care homes and home care agencies. There is some overlap with the Housing Ombudsman, and there is a memorandum of understanding between the two agencies concerning how they will deal with disputes.
South African Community Schemes Ombud Service	<ul style="list-style-type: none"> • The Community Scheme Ombud Service (CSOS) has the power to regulate the conduct of parties within community schemes. A community scheme is defined as a ‘living arrangement where there is shared use of and responsibility for land/buildings such as sectional title, homeowners’ associations, retirement housing schemes, share block companies and housing cooperatives.’ • The CSOS provides a dispute resolution service with the power to issue binding adjudications. It can only hear disputes between resident and association, not resident and resident. • Applicants must have exhausted all internal dispute resolution options to lodge a dispute with the CSOS. • Applicants must complete the requisite application form, and bear the ‘onus of ensuring that all relevant information has been submitted to make their case.’ <p data-bbox="432 1290 1541 1429">This differs slightly from the Australian conceptualisation of an ombudsman service, where ombudsmen schemes actively pursue the resolution of disputes, and assist the parties to come to a resolution, compared with Tribunals and Courts, where the primary control of the case rests with the parties, and the role of the independent adjudicator is predominantly the determining of a dispute.</p>

⁴⁴ Association of Retirement Housing Managers, Association of Residential Managing Agents, and Association of Retirement Community Operators.