

# Retirement Living **Code of Conduct**

# Retirement Living Code of Conduct

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## FOREWORD

The *Retirement Living Code of Conduct* is an initiative of the two peak bodies representing retirement living across Australia – the Retirement Living Council (RLC) and Leading Aged Services Australia (LASA). Through their collective membership, they represent more than 50% of retirement communities across the for-profit and not-for-profit sectors.

The Code of Conduct is a key component of the retirement living industry's **eight-point plan** (found at the link) policy platform delivering quality resident experience. The Code does not seek to replace legislation but is intended to provide a basis for implementing regulation in a way that creates high and consistent standards, that serve to meet the expectations of residents, stakeholders and the broader community.

The Code is particularly focused on the wellbeing of residents, through fairness in marketing and sales practices; maintaining good relationships with residents and stakeholders; and specific processes when residents move out. There is a particular emphasis on improving the handling of complaints and reaching resolution in disputes. These mechanisms have been developed in a way that will complement existing dispute resolution processes, and they aim to be adaptable to the role of an industry ombudsman or ambassador.

This Code uses the term “Retirement Communities” to capture a breadth of seniors housing types, particularly Retirement Villages (in their various forms). Retirement Communities combine high quality fit-for-purpose housing, many with tailored support services, designed to meet the specific needs of older people, with a community environment.

The well-documented future growth of Australia's senior population presents a real challenge for governments to manage the health and housing needs of older people. Retirement Communities play an important – and underrated – role in helping seniors lead a happy and independent life for longer, saving taxpayers more than \$2 billion annually through lower health and aged care costs. They are central to providing affordable housing, preventative health and important community services to senior Australians in both regional and urban areas.

There are Retirement Communities in every Australian state and territory. As of 2014, there were approximately 2270 retirement villages across Australia accommodating about 200,000 residents. This number is increasing year on year.

Launched in December 2018, the Code recognises Retirement Communities are governed by a complex and diverse set of legislation and regulations. The Code seeks to create an accepted standard to help operators provide a trustworthy and high-quality service to those living in, and considering moving to, a Retirement Community. The Code has been developed by the peak bodies after extensive consultation with key industry stakeholders, including governments, operators and, most importantly, residents and resident representative bodies. In forming the Code, domestic and international best-practice examples have been considered. The development of this Code was also guided by the Australian Competition and Consumer Commission's *Guidelines for developing effective voluntary industry codes of conduct*.

We encourage industry participants, residents, prospective residents and interested stakeholders to familiarise themselves with the provisions outlined in the Code. We hope you find it a helpful aid to promoting and protecting resident rights and providing a benchmark for promoting best practice.

## BACKGROUND

### Introduction

The Retirement Living Code of Conduct is a voluntary industry code and is an initiative of the peak bodies representing Retirement Communities across Australia. The Code is maintained by the Code Administrator on behalf of the peak bodies and comprises five sections:

1. Foreword
2. Background – Introduction, Purpose and Objectives of the Code;
3. Commitments – the Rules of the Code;
4. Administration – the Governance and Administration of the Code;
5. Appendices – additional resources for the implementation and administration of the Code.

### Vision for the Industry

Our Vision is to promote and protect the independence, privacy, dignity, happiness, safety and security of older people through the provision of specialised, quality, fit-for-purpose housing, with tailored support services, within a community environment.

### Objectives of the Code

1. Promote and protect the interests of current and future residents;
2. Help implement regulation in a way that creates high and consistent standards regarding the marketing, sales and operation of Retirement Communities that are above and beyond statutory obligations;
3. Promote trust and confidence in the sector;
4. Provide a framework to assist open, transparent and efficient resolution of complaints by residents against signatories to the Code;
5. Provide industry leadership to promote effective self-regulation that complements and builds on existing regulatory arrangements.

### Architecture of the Code Commitments

The Code Commitments are the rules to which signatories are committing. They are written in the first person, from the perspective of the Retirement Community operator. Operators who are Signatories are making these commitments to current and potential residents and other stakeholders. The sub-sections mirror the key phases of the resident experience within Retirement Communities:

- A. General Provisions
- B. Moving into the Community
- C. Living in the Community
- D. Leaving the Community

The appendices contain additional information regarding administration of the Code, the operation of the Code Administrator, Code Review Panel, and complaint handling. They also include resources to assist operator signatories understand and meet the Code Commitments.

### Regulatory Framework

The Retirement Living Code of Conduct is intended to co-exist with relevant state and federal legislation, including various state retirement village acts and the Australian Consumer Law. The

existing regulatory and legal obligations of Code Signatories and residents are not replaced or restricted by this Code.

The Code is intended to provide a basis for implementing regulation in a way that creates high and consistent standards, which serve to meet the expectations of residents and the broader community, whilst recognising the rights and obligations of both operators and residents.

## Code Resources

The Code Administrator provides additional Code Resources in order to:

- Assist signatories understand and meet the Commitments of the Code;
- Assist stakeholders understand the structure and operation of the Code;
- Assist with the promotion and adoption of the Code; and
- Generally assist in achieving the Code's objectives.

Current Code Resources are listed in Appendix C.

## Implementation of the Code

The Code will be implemented on a staged basis. The initial Transitional Stage will commence on 1 January 2019 and continue for a period of 12 months. The Operational Stage will commence at the end of the Transitional Stage.

The Transitional Stage is intended to:

- Allow intended signatories to ensure they are Code Compliant;
- Form and implement the Code Panel;
- Continue to build Code Resources to assist operators meet their obligations.

Code sanctions for alleged breaches do not apply during the Transitional Stage.

## About Retirement Communities

Retirement Communities incorporate specialised, quality fit-for-purpose housing in a community environment, often incorporating support services, designed to meet the specific needs of older people. They allow residents to maintain their privacy and independence and aim to provide a safe and secure environment with the reassurance of a variety of additional services. These can include on-site staff, communal facilities and in many cases optional care and support as needed.

The industry brings a diversity of housing ideal for many ageing Australians as they seek an affordable and vibrant lifestyle. This Code uses the term "Retirement Communities" to encapsulate a broad range of communities, including Retirement Villages.

To live in a Retirement Community, a prospective resident enters a contract with the owner or operator. There are various types of tenure in Retirement Communities. Some provide freehold title to homes within the community, but it is more common for Retirement Village occupancy to be via a long-term or lifetime lease or licence agreement between the resident and operator. Others provide a rental tenancy agreement.

A home in a Retirement Community is not an investment property, nor is it a vehicle to build personal wealth. It is a lifestyle choice, a place to live and a hub for services; a place to enjoy facilities, activities and the company of others.

As of 2016, more than 180,000 seniors across the nation call a Retirement Community their home.

# COMMITMENTS

## A GENERAL PROVISIONS

### A1 Values and Principles

- A1.1 We exist for the wellbeing of residents and stakeholders and recognise our obligation to be trustworthy in every aspect of our operations.
- A1.2 We adhere to the following general principles in all our dealings with our current, potential and future residents, and relevant stakeholders:
- a) Act with integrity;
  - b) Act professionally;
  - c) Maintain regulatory compliance;
  - d) Be fair and reasonable;
  - e) Strive for clarity;
  - f) Be transparent and accountable; and
  - g) Respect the dignity of residents and stakeholders.

### A2 Complying with the Code and Relevant Laws

- A2.1 As a signatory to the Code, we will comply with the Code Commitments in relation to our Retirement Communities. Our activities will be consistent with the Vision and Objectives (see Background section), Values and Principles (see this section A) of the Code and we will not bring it into disrepute. We will readily implement any relevant guidance from the Code Administrator on Code compliance matters.
- A2.2 We will comply with all relevant laws. We will hold all the licences, registrations and permissions required to enable us to own, operate and carry out our activities within our Retirement Communities lawfully.
- A2.3 We will train and develop our employees, as necessary, to deliver both their legal obligations to residents and their responsibilities under this Code.

### A3 Monitoring Compliance with the Code

- A3.1 We will nominate a suitably experienced Code Compliance Officer. Where possible, that person should not be the community manager. The Code Compliance Officer will:
- a) Provide a first point of contact for our residents and stakeholders and the Code Administrator on Code compliance matters.
  - b) Maintain an overview of the implementation of the Code across all our Retirement Communities.
  - c) Communicate information on the Code, and any guidance on compliance matters from the Code Administrator, to residents and staff in our communities.
  - d) Ensure that we implement any guidance from the Code Administrator on compliance matters and any future amendments to the Code, by amending our materials, processes and systems, as necessary, as soon as possible.
- A3.2 We will internally audit our own compliance with the Code annually, act to rectify any failings as necessary and provide written confirmation to the Code Administrator of compliance. The Annual Compliance Certificate form is contained in the Code Resources.
- A3.3 We will readily facilitate any compliance assessment, audit or investigation by the Code Administrator or Code Review Panel.

A3.4 We commit to the Code Administrator's Complaint Management Framework, the principles of which are set out under the Administration section of this Code.

## **A4 Promoting the Code of Conduct**

A4.1 We will inform residents and stakeholders that we subscribe to this Code and make them aware of its benefits. In particular we will:

- a) Reference we are a Code signatory in our marketing materials and legal documents;
- b) Display the Code Compliance certificate prominently at our Communities;
- c) Make the Code available via our website;
- d) Make hard copies of the Code available to residents free of charge upon request.

A4.2 We will cease using or distributing Code material if we cease to be a signatory.

## **A5 Handling and resolving complaints**

A5.1 We will proactively, respectfully and cooperatively manage complaints made by prospective residents, current residents and former residents.

A5.2 We will maintain a complaints-management system that is resident-focused and provides for continual review and monitoring.

A5.3 We will advise residents that they have a right to refer a complaint to other avenues such as the Code Administrator (or the Code Review Panel), independent mediation or the relevant state regulatory authority.

A5.4 As a part of the complaints-management system, we will maintain clear written policies and procedures for handling and resolving complaints and disputes, which will also clearly identify our role in addressing resident-to-resident disputes. We will make these procedures available to residents and will ensure this provides a clear framework for all parties to participate in a process that aims to resolve issues without the need for external referral wherever possible. The procedure will include our full contact details.

A5.5 Our procedures will assure residents that we will acknowledge a formal complaint, treat it confidentially and provide an initial response in writing as soon as possible. Where residents making a complaint tell us they are not satisfied with our response, we will not require them to write again to pursue the complaint through any escalation procedure. We will escalate the complaint as set out in paragraph A5.8 below. We will maintain a complaints register where we record: the names of the resident making the complaint; key dates when we received, acknowledged and responded to the complaint; the substance of the complaint; and the person responsible for managing the complaint.

A5.6 We will ensure that all our resident-facing staff understand our commitment to resolving complaints and that they have suitable processes and capabilities for resolving complaints.

A5.7 Where possible and reasonable, we will endeavour to resolve complaints at the community or operator level within 15 working days of receiving the complaint (and which has sufficient details so as to understand the nature of the complaint). A resident may agree to a longer time frame to obtain information or undertake relevant investigation. If a later time is agreed upon, we will keep the resident informed of progress on a regular basis.

A5.8 We will follow a cascading complaints-handling policy, which allows complaints to be escalated in a way that seeks to resolve them in a cost effective and efficient manner that is fair and reasonable to all parties. The escalation pathways will be detailed in writing in our policies, but this does not preclude the resident from pursuing their rights elsewhere. Also, this Code does not preclude an operator from offering or maintaining additional complaints handling and dispute resolution processes. However, the escalation pathway should include the following stakeholders:

- a) The Community Manager (if agreed by the resident);



- b) A senior manager or executive of the signatory who is not the manager of the Retirement Community;
  - c) The Code Administrator (or the Code Review Panel) for its referral to an external independent dispute resolution service, procedures and processes which are outlined in this document and the Code Resources;
  - d) The relevant authority with legislative authority to consider the Complaint.
- A5.9 We will co-operate with the Code Administrator (or the Code Review Panel), independent mediator or any regulatory authority during any investigation and abide by any agreement we make.
- A5.10 A resident may appoint a representative to act on their behalf. We will respect and cooperate in the same way with an intermediary or representative acting on behalf of residents as we would with the residents themselves.

## **B MOVING INTO THE COMMUNITY**

### **B1 Marketing and selling homes in the community**

- B1.1 We will ensure our sales and marketing material is honest, current, clear, accurate and complies with relevant laws.
- B1.2 We will ensure the available sales and marketing information is comprehensive and accurately represents the actual or intended nature of the Retirement Community in terms of the type of tenure, available properties, the facilities on offer, care services available, financial costs and obligations, and information about our current residents.
- B1.3 We will respect any person's express wish not to receive unsolicited visits, canvassing, mail-outs, emails, text messages or telephone calls.
- B1.4 We will use transparent, ethical sales practices and we will ensure that our staff are fully supported in meeting the needs of potential residents.
- B1.5 We will provide current, clear, comprehensive, written information about:
- a) The Retirement Community including its facilities;
  - b) The Retirement Community operator and the role of the village manager;
  - c) The type of accommodation available;
  - d) Type of tenure of that accommodation;
  - e) The services that are available; and,  
The financial obligations and costs associated with moving into, living in and moving out of the community.
- B1.6 We will provide current, clear, written information on the process and cost of reserving a residence in the Retirement Community and how any deposit is protected and may be returned. We will provide clear information about any non-refundable payments.
- B1.7 In providing information about services including management and care, we will clearly distinguish between standard and optional or additional charges.
- B1.8 We will provide incoming residents, where possible, practical and reasonable, with information about any charges payable to third parties (e.g. utility companies, local authorities) and their indicative costs.
- B1.9 We will advise incoming residents, where possible, if we have an ownership interest in any other firm involved in operating the Retirement Community and if we receive a commission from third-party suppliers relating to any of the services paid for by residents through the service charge.

## B2 Contracts and disclosure

- B2.1 We will provide prospective residents with disclosure information or other written documents (as required by relevant laws) in a timely manner. At the time of providing any disclosure information, we will also provide a copy of the Code of Conduct overview and the full copy of the Code upon request.
- B2.2 We will encourage all potential residents to seek independent legal advice before signing a contract to purchase or lease a residence, and that this advice should be in language they understand. We encourage potential residents to share this information with family members and trusted advisers.
- B2.3 We will encourage all potential residents to seek independent financial advice before signing a contract to purchase or lease a residence.
- B2.4 We will ensure there are transparent and easy-to-understand descriptions in contracts of entry payments, ongoing service fees, reinstatement costs, and deferred fees and payments, so residents have clarity and certainty regarding costs associated with living in the Retirement Community. We will ensure contracts comply with the Relevant Laws.
- B2.5 We will provide clear information about which maintenance services will be included as part of the overall service offering at the community and which services are additional and must be separately funded by residents.
- B2.6 We will provide new resident contracts in writing and in plain English. Contracts will:
- a) Seek to implement, if appropriate and permitted by the relevant laws, contract recommendations of the peak bodies, such as the RLC's National Guide to Creating Simple and Effective Retirement Living Contracts;
  - b) Clearly set out our rights and responsibilities, and those of the residents;
  - c) Accommodate special requests from prospective residents to provide the contracts in other formats such as larger print versions.
- B2.7 Where we are required to report to residents on the financial affairs of the Retirement Community, we will provide information on the community's operating budget with the contract, including:
- a) The current year's resident charges and other sources of income for the Retirement Community;
  - b) The current year's expenses;
  - c) Details of the most recent surplus or deficit;
  - d) The previous year's audited budget statement;
  - e) The capital works fund (or sinking fund), and planned expenditure.
- B2.8 Along with the contract, we will provide information on the community rules, including information about:
- a) The keeping of pets;
  - b) Visitors and guests;
  - c) Parking, including for caravans and boats if applicable;
  - d) Use of common property and community facilities;
  - e) The disposal of rubbish.
- B2.9 We will provide information to potential residents on the process of leaving the community, including an overview of the re-selling process.
- B2.10 We will make clear, in the contract, and/or in our policies, how we manage the circumstances

under which we may ask a resident to move temporarily or permanently to another address within or outside the Retirement Community. In any such cases, we shall consult with the resident, and with other family members or healthcare professionals if consented to by the resident.

- B2.11 We will make other operator or community policies and procedures referred to in this document available to the resident upon request.

### **B3 Before moving and new resident arrivals**

- B3.1 For properties under construction, we will give residents a realistic expected completion or moving-in date. We will provide as much notice as possible of any delays and offer residents an opportunity to organise alternative arrangements. Wherever possible we will provide on-site accommodation to minimise undue hardship or distress.
- B3.2 Before the resident moves in, we will ensure that the property is well-presented, clean and that a condition report has been prepared.
- B3.3 In handing over a property to an incoming resident, we will conduct a full orientation to their accommodation, explaining how key services and appliances operate. We will also provide an induction on the community, with information on the roles and responsibilities of staff, our resident service arrangements and how they can contact us for assistance.

## **C LIVING IN THE COMMUNITY**

### **C1 Managing our relationships with residents and stakeholders**

- C1.1 We will maintain appropriate and effective service arrangements for residents.
- C1.2 We will welcome all forms of feedback from residents, whether positive or negative. We will treat all feedback seriously, review it, and use it to promote continuous improvement in our services.
- C1.3 We will invite feedback from residents (in the form of a survey) on our facilities and services, including those provided by any contractors, at least once a year. We will report back to residents on the findings and on any resulting actions. If we cannot act on any suggestions, we will explain why.
- C1.4 We will ensure any personal care services we offer or facilitate comply with the requirements of the relevant regulator. Personal care services provided by us will be clearly described in our contracts.
- C1.5 We will take steps to ensure there is consultation with residents in relation to any proposed action or change that could have a significant impact on the residents' financial affairs, the amenity of the Retirement Community or their way of life, including changes to the dispute resolution policy, changes to community rules or changes to the operator's marketing policies for re-sales.
- C1.6 We will maintain written policies and procedures regarding the frequency and conduct of meetings with residents and the rights of our residents to consultation.
- C1.7 We will maintain written policies and procedures about accessing the homes of residents. These will be consistent with our contractual and statutory obligations.
- C1.8 We will maintain a written privacy policy consistent with the relevant laws that enables a resident to have access to personal information held by the operator related to them.
- C1.9 We will place as few restrictions as possible on residents' day to day living arrangements, so that they are able to enjoy their own lifestyle and live with maximum independence.

### **C2 Relationship with resident representative bodies**

- C2.1 We will seek to maintain regular and effective communication and consultation with Resident

Committees and/or Owners' Corporations and ensure there are clear policies and procedures detailing how we engage with these groups and how we will present matters requiring resident consent.

- C2.2 We will agree to a clear process for consulting and responding to resident or consumer associations, where they are representing residents. We will facilitate any requests for consultation from residents on such matters, wherever possible.

### **C3 Managing our staff**

- C3.1 We will provide strong and supportive leadership and foster a culture that supports staff in meeting the needs of our residents.
- C3.2 We will maintain written policies and procedures regarding the management of our staff. These will include procedures for inducting new staff and contractors.
- C3.3 We will appoint managers possessing the requisite skills and abilities to manage a Retirement Community
- C3.4 We will provide ongoing staff development and training as required and we will foster a culture of continuous improvement with a focus on quality outcomes for residents.

### **C4 Managing property and safety**

- C4.1 We will maintain written policies for workplace health and safety which comply with the relevant laws. We will maintain written policies and procedures concerning general safety and security, electrical safety, fire safety and emergency management.
- C4.2 Our property management policies and procedures will include considerations of maintenance, upgrading, short-term and long-term capital expenditure, the age and type of infrastructure and ongoing compliance with the relevant laws.
- C4.3 Through budget processes, we will distinguish between capital replacement and capital maintenance costs and provide clarity on who pays for these costs.

### **C5 Maintain fit-for-purpose products**

- C5.1 We will ensure that new buildings comply with relevant building regulations and standards and that defects and warranties are handled under those regulations.
- C5.2 In the design of new buildings, we will seek to adopt universal and adaptable design principles. For older, existing buildings, we will carefully consider requests from residents to make adaptations to assist mobility and access.

## D LEAVING THE COMMUNITY

### D1 Clarity of contracts

- D1.1 We will be clear in new contracts about: the work that may need to be done on a home before it is marketed; the differences where applicable between reinstatement and upgrade works; who is responsible for the costs of these works; and when the resident (or their estate) will receive their financial entitlements in relation to the resale.
- D1.2 We will document in new contracts as many of the circumstances that may give rise to the termination of a resident's contract, including:
- a) The resident giving notice they would like to terminate the contract;
  - b) The resident's death;
  - c) The resident breaching their contract or a community's rules;
  - d) The resident's care needs changing.

### D2 Communication

- D2.1 We will respectfully and clearly communicate with the outgoing residents, their legal representatives, guardians or their estates, information about the moving out process, including:
- a) Any planned or proposed physical works to their home;
  - b) The re-selling process, including choices about the selling agency (where applicable);
  - c) Relevant financial costs;
  - d) The expected timing of each part of the process;
  - e) The timing of the resident's access to their funds.
- D2.2 The financial information we provide should include, if applicable:
- a) Reinstatement or upgrade costs;
  - b) Ongoing holding costs, such as resident charges;
  - c) Selling costs such as sales commissions;
  - d) Deferred payments.

### D3 Re-selling

- D3.1 Where we are undertaking the re-sale and marketing, we will keep outgoing residents, their legal representatives, guardians or their estates regularly updated with information about the number and timing of prospective purchasers and genuine offers made.
- D3.2 Where we are the selling agent, we will treat the sale of previously occupied homes and new homes with equal attention and seriousness.
- D3.3 Where a valuation is required, or a value is to be agreed, we will provide clear communication about the process, costs and rationale as to the sales price or valuation.
- D3.4 We will pay the resident's exit entitlement within the timeframe and in the manner set out in the resident contract and the relevant laws.

## ADMINISTRATION

### Code Administrator

The Code Administrator handles the administration of the Code on behalf of the Peak Bodies. The Administrator will:

- Manage the implementation, promotion and effectiveness of the Code;
- Manage the administration process of signatories;
- Manage the Code Register and the Code website and administration portal;
- Manage the Complaints Register;
- Manage the Breach Register;
- Monitor Code compliance, undertake compliance audits, and investigate alleged breaches of the Code;
- Report on Code related matters and complaints;
- Determine when breaches of the Code have occurred;
- Apply appropriate sanctions;
- Refer matters to the Code Review Panel according to its Terms of Reference;
- Record complaints and refer them to external independent dispute resolution if required;
- Make recommendations to the Code Review Panel as to changes to the Code.

### Code Review Panel

The Code Review Panel undertakes independent oversight, monitoring and review of the Code, its content and matters referred to it by the Code Administrator. The Panel operates according to the Panel Terms of Reference.

The Panel is an independent body, comprising at least three members, none of whom is a Code Signatory. The Panel will meet regularly and must have relevant experience in dispute resolution. The members will comprise:

- A resident representative with relevant experience in consumer affairs and law, and retirement villages law and practices;
- An operator representative with experience in the operation of Retirement Communities;
- An independent Chair with relevant experience in the regulatory environment, law, consumer affairs, arbitration and governance.

The Panel will:

- Review amendments to the Code proposed by the Code Administrator;
- Ensure that the Code is regularly reviewed according to the Panel Terms of Reference;
- Hear appeals against sanctions imposed by the Code Administrator;
- Regularly review the Complaints Register;
- Annually review the Code Register, and monitor signatory compliance;
- Oversee the Code Administrator's functions in managing Code Compliance and reporting.

### Code Adoption and Code Register



All Retirement Community operators are encouraged to subscribe to the Code.

Each organisation that subscribes to the Code becomes a signatory and is placed on a Code Register which will be made publicly available online. The Code Register is maintained by the Code Administrator. The Code Register will show the current date of the Compliance Certificate (and hence if a certificate has not yet been issued).

## Code Reporting and Review

The Code Administrator commits to regular and open reporting through its website, including the reporting of the volume and nature of complaints.

The Code Administrator commits to regular review of the Code and ongoing consultation with resident organisations and stakeholders to ensure the Code remains current and relevant, that its objectives are being met and it remains broadly accepted by stakeholders. A review should be undertaken at least every two years.

The Code Review Panel is responsible to consider (and adopt as appropriate) changes and ensure that the review process outlined in the Panel Terms of Reference is undertaken.

## Compliance and Auditing

From the Operational Stage, signatories must ensure they are Code compliant. Sanctions will not apply during the Transitional Stage.

Signatories must annually certify they have met the Commitments of the Code, commencing at the start of the Operational Stage. Upon receipt of the Annual Compliance Statement and Annual Compliance Checklist (contained in the Code Resource, *Annual Compliance Process*), the Code Administrator will issue a Compliance Certificate to the Signatory and update the Code Register.

Code signatories commit to maintaining an in-house system for Code Compliance.

The Code Administrator may initiate an audit of Code Compliance.

Where a Code signatory has also embarked upon industry accreditation through the ARVAS Scheme, signatories will be independently audited on adherence to the Code of Conduct as a part of that accreditation.

## Complaint-Management Framework

The Code provides a complaint-management framework to assist the speedy and cost-effective resolution of complaints where possible. This framework does not replace complaint-management processes established by law and nothing within this Code limits the right of parties to pursue those legal paths. The five key elements include:

1. A requirement for signatories to have a complaints management system within their organisation which includes written policies and procedures to handle complaints (outlined in Section A4 of the Code Commitments);
2. The provision of Code Resources including templates and tools to assist signatories understand and meet these obligations, including template policies, procedures and forms and suggested process diagrams to assist operators and residents understand the available pathways for escalating grievances;
3. The facilitation, by the Code Administrator, of external independent dispute resolution services where appropriate to consider a Complaint, along with the tracking of that Complaint or dispute.
4. Consideration by the Code Administrator of admitted or alleged breaches of the Code Commitments by signatories, including disciplinary action by the Code Administrator.
5. Oversight by the Code Review Panel of recording and reporting of complaints, and review by the

Code Review Panel of appeals against sanctions imposed.

## Principles Underlying the Framework

The complaint management framework and the templates and tools provided in the Code are based on AS/NZS 10002:2014 "Guidelines for complaint management in organisations". Signatories are provided with a Code Resource, *Complaints Handling Guidelines*. Elements of the Code requirements for complaint management include:

- There is an active interest of the peak bodies (through the Code Administrator) and the operators (by them being Signatories) to build and maintain effective complaints management systems.
- Everybody has a right to complain. The signatories must adopt a people-focused and proactive approach to seeking and receiving feedback and complaints.
- The Signatories must implement a complaints management system that: includes appropriate and current written policies and procedures; expresses clear lines of responsibility with appropriate delegations; includes a clear escalation process with residents encouraged to resolve complaints in a cascading manner with initial resolution of Complaints at the Retirement Community level to be encouraged; all of which are clearly articulated to residents and stakeholders.
- The handling of complaints should be timely and responsive, fair and equitable, transparent, and respectful of the privacy of the resident.
- Staff should be made aware of the complaints management system and appropriately trained to meet their responsibilities.

## The Code Administrator's Role

The Code Administrator is not a dispute resolution body. However, the Code Administrator will keep a register of certain types of complaints, and refer escalated complaints to an external independent dispute resolution service if appropriate, observing the following:

- The Code Administrator will maintain its own complaints management system, consistent with the principles above, detailing how complaints can and should be made to the Code Administrator and how they are handled.
- The Code Administrator's system will include a Complaint Register that records the initiation, progress and resolution of complaints made to it.
- The resident and operator must first have attempted to resolve the complaint at the community or operator level before the Code Administrator will handle a complaint.
- Escalated complaints need to be made in writing to the Code Administrator. Certain types of complaints (such as resident-to-resident complaints) will not be accepted or recorded by the Code Administrator.
- In order to resolve the complaint, the Code Administrator will facilitate the involvement of an external independent dispute resolution service for complaints that have met the Code Administrator's Policy and Procedures. The intention is to assist the speedy and cost-effective resolution of complaints, where possible, before escalating the matter to the relevant statutory authority.
- The resident and operator (the "parties") must both agree to the selection of the independent dispute resolution service, which will be charged at the agreed commercial rates (if applicable) and the costs will be borne by the parties in an agreed ratio.
- The Code Administrator will record the outcome of a dispute resolution process (subject to confidentiality provisions) but will not be a party to the process. Nor will it act as a mediator, agent or representative of the parties.



- Nothing in the complaints management process prevents the resident or the operator from pursuing other avenues, including their own independent mediation, or their statutory rights, including making an application directly to the relevant statutory body. This will be made clear to the parties. No part of the process can prejudice the rights of the parties.

The Code Administrator will separately consider breaches of the Code by signatories which may arise from notification of a complaint, according to the Code Breaches section below.

## Code Breaches

The Code Administrator will investigate alleged or potential breaches of the Code. An investigation of these breaches can be initiated from:

- Self-reporting by signatories;
- An allegation of a Code breach lodged through the online Code portal;
- A review initiated by the Code Administrator;
- A review initiated by the Code Review Panel.

The Code Administrator will keep a record of breaches and the outcome of investigations. Following its breach guidelines, signatories who are deemed to have breached the Code will have sanctions imposed according to the matrix below. If a party other than the Signatory is reporting the breach, then:

- Written evidence of the breach must be presented by that third party;
- The Code Administrator will provide written details of the alleged breach to the Signatory (observing privacy requirements);
- The signatory will have 21 days to respond in writing to the Code Administrator regarding the alleged breach. If the breach is not disputed, then the Code Administrator will notify the signatory of the sanction imposed according to the Breach Matrix and list of sanctions set out below;
- If the breach is disputed, then the Code Administrator will investigate the breach. If the Code Administrator is satisfied, on reasonable grounds, that the breach has occurred, then a sanction will be applied according to the Breach Matrix and list of sanctions set out below, or the Code Administrator may refer the matter to the Code Review Panel for determination;
- Decisions by the Code Administrator, including a decision as to whether a breach has occurred, and the sanction imposed, can be appealed by the signatory to the Code Review Panel.

Generally, the Code Administrator and Code Review Panel will not take a view on questions of legal interpretation, the outcome of confidential mediation settlements, or tribunal or court rulings. The legal system is the appropriate channel for criminal matters and significant civil matters, including the imposition of penalties and disciplinary action.

## Breach Matrix

Section of the Code	Breach Level
<b>Part A: General Provisions</b>	
Implement any relevant guidance from the Code Administrator	Medium
Current licences, registrations and permissions as required	Severe
Maintain a Code Compliance Officer	Medium
Inform customers and residents that we subscribe to this Code	Minor
Maintain a complaints handling system	Major
Have written policies and procedures for handling and resolving written complaints and disputes	Medium
Handled complaints according to our complaints handling system	Major
Repeated systemic Code breaches [for example, more than # medium to major breaches within #].	Severe
<b>Part B: Moving into the Community</b>	
Advertising and marketing material comply with relevant laws	Major
Provide current, clear written information	Medium
Ensuring that contracts comply with the relevant laws	Severe
Distinguish between standard and optional or additional charges	Medium
Provide every intending resident with a copy of the Code of Conduct Overview	Minor
Encourage all potential residents to seek independent legal advice	Medium
Provide clear information relating to services included as part of the standard service offering	Medium
Conduct a full accommodation orientation	Medium
<b>Part C: Living in the Community</b>	
Invite formal feedback from residents in the form of a survey	Minor
Reasonable consultation with residents of the Retirement Community in relation to any matter that could have a significant impact	Medium
Written policies and procedures regarding the frequency and conduct of meetings with residents	Medium
Written policies and procedures about accessing the homes of residents	Medium
Written policies and procedures regarding the management of our staff	Medium
Provide ongoing training, as required	Medium
Written policies for workplace health and safety	Major

<b>Part D: Leaving the Community</b>	
Respectfully and clearly communicate with the outgoing residents, their guardians or their estates with information regarding the moving out process	Major
In re-selling (where appropriate) keep outgoing residents, their legal representatives, guardians or their estates regularly updated with information about the number and timing of prospective purchasers and genuine offers made.	Medium
Pay resident exit entitlement within the timeframe and in the manner set out in the resident contract and the relevant laws	Major

## Sanctions and Removal

If a breach is found to have occurred, then a Sanction will be imposed by the Code Administrator according the following table:

Breach Level	Action / Sanction
<b>Severe</b>	<p>The signatory is to provide the Code Administrator with a written plan to rectify the issue and appoints an independent auditor to audit the areas of activity where the breach(es) occurred at the signatory's cost. Audit results and actions to prevent the breach occurring again to be sent to the Code Administrator.</p> <p>Severe breaches will be reported on the Code website, without naming the signatory, unless the signatory has failed to remedy the Breach within the specified time.</p> <p>In cases of repeated breaches at a severe level the Code Administrator will remove a signatory from the Code Register and record the reason for the removal.</p>
<b>Major</b>	<p>The signatory is to provide details to the Code Administrator with a written plan to rectify the issue (at their cost) and prevent reoccurrence.</p> <p>If more than three major breaches occur within a 12-month timeframe, the signatory must appoint an independent auditor, at the signatory's cost, to audit the areas of activity where the breach(es) occurred. Audit results and actions to prevent the breach occurring again to be sent to the Code Administrator.</p>
<b>Medium</b>	<p>The signatory is to provide details to the Code Administrator with a written plan (which it then follows) to rectify the issue (at their cost) and prevent reoccurrence.</p>
<b>Minor</b>	<p>The signatory will rectify the breach and provide a written undertaking to the Code Administrator that the breach will not be repeated.</p>

## **Cost to Code Signatories**

The Code of Conduct is designed to be a cost-effective, self-regulatory industry code that sets and maintains commonly accepted high standards regarding the marketing, selling and operation of Retirement Communities.

To provide the required administrative function, including that of the Code Administrator and the Code Review Panel Signatories will be required to pay an annual fee as determined by the Code Administrator according to a published schedule of fees.

## **Appeal to Code Review Panel**

Appeals referred to the Code Review Panel by the Code Administrator will be considered by the Code Review Panel according to the Panel Terms of Reference.

## APPENDIX A

### Definitions

#### Breach Register

The system maintained by the Code Administrator for recording and tracking breaches of the Code by Signatories.

#### Code Administrator

The Code is administered by the Peak Bodies through their representative, the Code Administrator. The role and function of the Administrator and its relationship to the Code Review Panel is described in the section "Administration".

#### Code Review Panel

The Code Review Panel (the Panel) is an independent body responsible for the oversight of the Code, the determination of matters referred to it, conducting its own inquiries. The Panel operates according to the Panel Terms of Reference.

#### Code Commitments

The rules of the Code of Conduct contained in the section "Commitments" to which Signatories commit.

#### Code Compliant

Complying with the Code Commitments.

#### Code Register

The system maintained by the Code Administrator for recording current Signatories, including the status of their compliance.

#### Code Resources

Additional Code documents and resources that complement the objectives of the Code, and which may be periodically updated by the Code Administrator.

#### Community Manager

A person primarily responsible to manage the day-to-day affairs and operations of a Retirement Community and interface with the residents.

#### Complaint

A complaint made by a resident, former resident or their representative about an Operator's management of a Retirement Community.

#### Complaint Management Framework

The framework, as summarised in the Administration section of this Code, contained in the Code Commitments, Appendices and Code Resources that are designed to assist in the speedy and cost-effective resolution of complaints.

#### Complaints Management System

The system within an operator's organisation encompassing all aspects of the policies, procedures,

practices, staff, hardware and software used by the Operator for the management of Complaints.

## **Complaints Register**

The system maintained by the Code Administrator for recording and tracking complaints made by residents to the Code Administrator.

## **Compliance Certificate**

The certificate issued by the Code Administrator which certifies that the operator is Code Compliant.

## **Deferred Payment**

Also known as a departure fee, exit fee, deferred management fee, deferred fee, retention amount or outgoing payment. The deferred payment, if applicable, represents the second amount paid for the home which may be deferred until after the resident leaves and, in most cases, is payable as a deduction from any resident exit entitlement under the resident contract.

## **Entry Payment**

The initial amount paid for the purchase, lease or licence of the home at the time of entry into a Retirement Community. It may also be known as a lease premium, loan, licence fee or purchase price.

## **Operator**

Although the definition varies from state to state, this is the person, company or trust that operates a Retirement Community. It may also mean the owner.

## **Peak Bodies**

The peak bodies are the Retirement Living Council (RLC) and Leading Aged Services Australia (LASA). Through their collective membership, the peak bodies represent more than 50% of Retirement Communities across the for-profit and not-for-profit sectors.

## **Relevant Laws**

The relevant laws include State legislation and regulations which specifically regulate Retirement Communities, and Commonwealth legislation and regulations which more generally regulate Retirement Communities. This includes the legislation set out in Appendix D.

## **Retirement Community**

A term used in this Code to capture a broad range of fit-for-purpose housing in a community environment, designed especially to meet the changing needs of older people and includes retirement villages.

## **Retirement Village**

A Retirement Community regulated under relevant state Retirement Village Acts or their equivalent. They generally offer occupancy via a long-term or lifetime lease or licence agreement between the resident and operator but may also offer occupation via a rental tenancy agreement, freehold title or strata title. Retirement village residents typically make an entry payment for the right to reside in the village, pay ongoing fees such as service fees, rates and utilities throughout their stay, and a deferred payment when they leave.

## **Sanction**

A sanction is imposed on a signatory if there is a finding or admission of a breach by the signatory of the Code Commitments.

## Signatory

An operator who subscribes to this Code and agrees to be bound by the Code Commitments.

## APPENDIX B

# Independent Dispute Resolution Services

The follow pages provide a schedule of some publicly funded mediation services in Australia.

### NSW

Mediation is offered through Community Justice Centres (CJC), as governed by the NSW Department of Justice.

Phone: 1800 990 777

Web: [www.cjc.justice.nsw.gov.au](http://www.cjc.justice.nsw.gov.au)

NSW courts offer court-annexed alternative dispute resolution.

Advice available through LawAccess NSW.

Phone: 1300 888 529

Web: [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au)

### Queensland

Mediation is offered through the Dispute Resolution Centre - complete the online questionnaire to determine whether a Dispute Resolution Centre is appropriate for your complaint.

Web: [www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/settling-disputes-out-of-court/mediation](http://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/settling-disputes-out-of-court/mediation)

There are six Dispute Resolution Centres across Queensland.

Web: [www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/settling-disputes-out-of-court/dispute-resolution-centres](http://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/settling-disputes-out-of-court/dispute-resolution-centres)

### Victoria

Mediation is offered through the Dispute Settlement Centre of Victoria (DSCV). The DSCV provides appropriate dispute resolution services for retirement village residents or management who need assistance. There are 14 offices throughout Victoria.

Phone: 1300 372 888

Web: [www.disputes.vic.gov.au](http://www.disputes.vic.gov.au)

### South Australia

Mediation is available through the Courts Administration Authority of South Australia. Either party can contact the mediation unit.

Phone: 08 8204 2444

Email: [mediation@courts.sa.gov.au](mailto:mediation@courts.sa.gov.au)

### Western Australia

Mediation is available through all Western Australian courts and the State Administrative Tribunal. The Citizens Advice Bureau also offers a mediation service as well as legal advice.

Phone: 08 9221 5711

Web: [www.cabwa.com.au](http://www.cabwa.com.au)



## Australian Capital Territory

The Australian Capital Territory Civil and Administrative Tribunal is authorised to deal with disputes regarding retirement villages and does offer mediation as a dispute resolution pathway.

Phone: 02 6207 1740

Web: [www.acat.act.gov.au](http://www.acat.act.gov.au)

The Conflict Resolution Service (CRS) also offers free dispute resolution advice and services.

Phone: 02 6190 7100

Web: [www.crs.org.au](http://www.crs.org.au)

## Northern Territory

The Community Justice Centre is a Northern Territory Government service offering free community mediation at local venues across the Territory.

Phone: 1800 000 473

Email: [cjc@nt.gov.au](mailto:cjc@nt.gov.au)

## Tasmania

Advocacy Tasmania is an independent service offering free community advocacy.

Phone: 1800 005 131

Website: [www.advocacytasmania.org.au](http://www.advocacytasmania.org.au)

Advocacy Tasmania also operate the Tasmanian Elder Abuse Helpline on behalf of the Tasmanian Government.

Phone: 1800 441 169

Email: [eahelpline@advocacy.com](mailto:eahelpline@advocacy.com)

## APPENDIX C

### Schedule of Code Resources

In addition to this core document, the Code Administrator provides additional Code Resources in order to:

- assist Signatories understand and meet the Code Commitments;
- assist stakeholders understand the structure and operation of the Code;
- assist with the promotion and adoption of the Code; and
- generally assist in achieving the Code's objectives.

The Code Administrator has both the authority and intention to periodically update Code Resources as it deems appropriate.

The resources can take the form of summary documents, checklists and forms, policies and procedures, diagrams and protocols. Current resources include the following documents:

- Code of Conduct *Overview*
- Code of Conduct *Annual Compliance*
- Code of Conduct *Complaints Handling Guidelines*

## APPENDIX D

# Legislative Framework

Operators and residents have rights and obligations at both state and federal levels. The relevant jurisdictions are determined by the location of the Retirement Community, the type of Community and the facilities and services offered. Some of the most relevant legislation is scheduled here.

### Federal

- Competition and Consumer Act 2010
- Employment law and regulations
- Work Health and Safety Act 2011 and workplace health and safety laws regulations

### Australian Capital Territory

- Retirement Villages Act 2012
- Residential Tenancies Act 1997

### New South Wales

- Retirement Villages Act 1999
- Residential Tenancies Act 2010
- Residential (Land Lease) Communities Act 2013
- Strata Schemes Management Act 2015

### Northern Territory

- Retirement Villages Act 2016
- Residential Tenancies Act 1999
- Caravan Parks Act 2015
- Unit Title Schemes Act

### Queensland

- Retirement Villages Act 1999
- Residential Tenancies and Rooming Accommodation Act 2008
- Manufactured Homes (Residential Parks) Act 2003
- Body Corporate and Community Management Act 1997

### South Australia

- Retirement Villages Act 2016
- Residential Tenancies Act 1995
- Residential Parks Act 2007
- Strata Titles Act 1988

## Tasmania

- Retirement Villages Act 2004
- Residential Tenancy Act 1997
- Strata Titles Act 1998

## Victoria

- Retirement Villages Act 1986
- Residential Tenancies Act 1997
- Owners Corporations Act 2006

## Western Australia

- Retirement Villages Act 1992
- Residential Tenancies Act 1987
- Residential Parks (Long-stay Tenants) Act 2006
- Strata Titles Act 1985

## APPENDIX E

### About the Peak Bodies

#### Retirement Living Council (RLC)

The Retirement Living Council (RLC) plays a critical leadership role in the ongoing growth and sustainability of the retirement living industry. The RLC is a division of the Property Council of Australia, the leading advocate for Australia's \$600 billion property industry and counts the bulk of the nation's major investors, property owners and developers among its members.

The RLC is the only national organisation solely focused on advocating on the critical issues facing housing and services for older people, supporting and promoting members and the retirement living industry at large.

Our members determine the industry's national priorities and set the advocacy agenda, which includes enabling age pensioners to unlock home equity to allow them to downsize without penalty, improving the planning treatment of retirement communities and promoting the independently proven benefits of retirement community living.

The RLC is dedicated to proactively generating greater understanding about the lifestyle opportunities retirement communities provide for older Australians and the positive impacts they have on the wider community.

#### Leading Aged Care Services Australia (LASA)

LASA is the national peak body representing and supporting providers of age services across residential care, home care and retirement living. Our purpose is to enable a high performing, respected, and sustainable age services industry delivering accessible, affordable, quality care and services for older Australians.

We represent providers of age services of all types and sizes located across Australia's metropolitan, regional and rural areas. Consistent with the overall industry profile, 57% of our Members are not-for-profit providers, 33% are for-profit providers and 10% are government providers.

Our diverse and representative membership gives LASA the ability to speak with credibility and authority on issues of importance to older Australians and the age services industry.

**For more information please contact**

The Code Administrator

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

(03) 9650 8300

[retirementliving@lasa.asn.au](mailto:retirementliving@lasa.asn.au)

(07) 3725 5555