

Housing for the Aged Action Group Inc.
(incorporating the HAAG Caravan and Residential
Park Residents Working Group)



**Submission to Consumer Affairs
Victoria on Residential
Accommodation**

**Options paper:
Tenancy policy framework for residential parks**

Part 1

July 2009

The Housing for the Aged Action Group Inc (**HAAG**) is pleased to submit this response to Consumer Affairs Victoria (**CAV**) on the "Options Paper: Tenancy Policy Framework for Residential Parks" (**Options Paper**).

This submission is made in furtherance to our submission to CAV dated 27 August 2007 (**Previous Submission**) (copy attached).

HAAG wishes to acknowledge the assistance of Justin Lethlean (Partner) and Adam Neylon (Senior Associate) of Middletons in writing and compiling this submission.

The Options Paper sets out a series of options to address the following issues in relation to caravan parks, residential parts and rental villages (**Residential Villages**):

1. Security of tenure;
2. Internal dispute resolution;
3. Resident participation and decision making;
4. Contractual issues relating to resale and disclosure conditions;
5. Deferred management fees;
6. Resale arrangements;
7. Park rules;
8. Rent increases;
9. Capital replacement;
10. Energy charges;
11. Information disclosure; and
12. Repairs and maintenance

Although our previous summary suggests that amending the *Retirement Villages Act 1986 (Vic)* (**RVA**) would be an appropriate method for dealing with Residential Villages, we acknowledge that amending the RVA to allow for Residential Villages used by the elderly, would require two parallel sets of legislation, and could, depending on the disparity between the two branches of legislation, cause some providers of Residential Villages (**Park Owners**) to prefer occupants other than the elderly.

We suggest that Option 1 as set out in the Options Paper does not adequately address the issue of security of tenure or the balance of our concerns identified in the Previous Submission.

We suggest that Options 2, 3 and 4 are essentially different methods of achieving the same result. On balance we believe it is preferable for Residential Villages to be dealt with either under Part 4 of the *Residential Tenancies Act 1997 (RTA)* or under a discrete customised Act.

The amendment to Part 2 of the RTA as contemplated under Option 3 of the Options Paper, requires duplication of numerous provisions within part 4 of the

RTA, and because of its mixing with provisions relating to general residential tenancies, is less user friendly for tenants who may have difficulty segregating provisions relating to Residential Villages and to ordinary residential tenancies.

Our Previous Submission identifies a number of further issues which we believe have not been adequately dealt with in any of the proposed options. We refer you to our Previous Submission, and highlight below a number of those key issues:

1. mediation processes as an alternative to VCAT;
2. provision for the formation of resident committees;
3. provision for the formation of park liaison committees;
4. annual meetings to be held by Park Owners;
5. the tenant's right to select its own estate agent in the event of sale of a dwelling;
6. an obligation on park operators to maintain a sinking fund for maintenance of the Residential Village
7. internal dispute resolution provisions; and
8. introduction of a registration and accreditation system for parks and park managers.

The key issue requiring reform as soon as possible is in the area of security of tenure. For the most part, purchasers in Residential Villages buy existing dwellings on established sites. The implication given by park operators, sometimes genuinely, and sometimes to achieve a sale, is that the purchaser is able to continue to lease the land on which the dwelling is sited indefinitely. Purchasers will purchase dwellings on relatively short term leases (eg 24 months) on the understanding that further terms will be available on the expiration of the existing term. In some cases a park operator will refuse to offer a further term because of a proposed development of the site. More cynical operators may exploit the position by refusing to grant the further lease, forcing the purchaser to either move the dwelling at considerable expense, or, more likely, to sell the dwelling, therefore making the operator entitled to other fees, such as agents' fees, refurbishment fees and deferred management fees.

Where park operators are offering land for use for principal residences on a long term basis, we believe that residents should effectively be receiving rights to the land for the lifetime of that resident. On that basis we suggest that where land is to be leased in Residential Villages for principal residences, the leases should:

- (a) be for a minimum term of 50 years;
- (b) not be capable of assignment without the consent of the lessor (which in relation to assignment to a spouse or de facto partner may not be unreasonably withheld);
- (c) terminate on the death of the lessee; and
- (d) be subject to fixed rent increases in accordance with the Consumer Price Index.

We note that several operators currently offer long term leases on a similar basis in the market. Such rights are not dissimilar to those of residents in retirement villages.

It is a key concern of residents in Residential Villages that they be entitled to stay on a site with certainty as to costs, and without the constant threat of having to pay relocation costs and deferred management fees.

We suggest that such provisions would cause the market to separate into genuine short term accommodation, and genuine long term accommodation. The operators who looked to unfairly benefit by offering short term leases with an implication of further rights to renew and then refusing to grant further terms in order to receive further fees, would be forced to change their business to offer long term security of tenure, or revert to offering renter/renter rather than owner/renter sites.

Having dismissed Options 1, 3 and 5 for the reasons noted above, we comment further regarding options 2 and 4 below and note that such comments below are subject to our overarching comments regarding 50 year personal lease terms with CPI rent increases.

Option 2 - Question 1

Would long term leases resolve the issue of security of tenure so that residents will feel empowered to exercise their rights under the RTA?

Long term leases will go a long way towards satisfying the need for tenants to have security of tenure. We suggest that tenants should be entitled to register their leases against the certificate of title for the Residential Village as this will ensure that any potential purchaser of the Residential Village is fully aware of the existing leases.

The proposed amendments listed under the heading Security of Tenure at Option 2 are appropriate. We suggest the following further amendments:

- (a) Remove the 60 day period within section 145 of the RTA to provide for occupancy rights from the first day of occupancy for caravan park residents who have not entered into a lease with the Park Owner, but intend to use the caravan park as their only main residence;
- (b) If the no-reason notice provisions contained at section 314 of the RTA, are to be retained, the park owner should not only be under an obligation to offer a long term lease to the prospective long term resident at the commencement of the residents occupation, but unless the park owner intends to terminate on the expiry of the relevant period, the park owner should be required to offer a further long term lease for the legislated minimum term at the conclusion of each lease term. Such provision will become especially important if the minimum lease term is set lower than the 50 year period we have suggested.

Option 2 - Question 2

What would be the effect on the industry if park owners were required to enter into long term leases with each of their long term owner-renters?

The park owners would have less flexibility to vary the Residential Villages to operate as short term stays, or to cease operating as Residential Villages. We suggest that any negative effects of this reduction in Park Owners flexibility is

greatly outweighed by the benefit to residents of having security of tenure. As noted above, we suggest that this will cause a clear split between renter/renter accommodation and long term, principal residence, owner/renter accommodation. Imposing minimum lease terms for owner/renter accommodation would also have the advantage of giving greater uniformity to the Residential Villages industry. This would allow for easier comparison between Residential Villages by residents. Currently residents might be advised of the cost of the dwelling and annual charges, but comparing the value of the product offered is more difficult where Residential Villages offer differing lease terms.

Option 2 - Question 3

Should a standard form of lease agreement be set out in the legislation?

Yes, a standard form of lease should be prescribed in the legislation. The standard form lease could contain a schedule including any variations to the standard form or additional provisions. This would be beneficial to residents who would be able to clearly identify any unusual or onerous provisions associated with the specific Residential Village.

Option 2 - Question 4

If a standard form lease agreement is developed, what minimum terms could be specified in the agreement?

We would like the standard form lease to address the issues noted in the Previous Submission including dispute resolution procedures, fee controls and entitlement to quiet enjoyment.

We also suggest that the standard form lease should confirm that the tenant cannot be forced to contribute to a blanket insurance policy and may obtain its own insurance for the dwelling.

The standard form lease should include a disclosure statement which clearly sets out anticipated outgoings and any other fees payable.

Option 2 - Question 5

Should the minimum length of an agreement be specified in the legislation? If so, what should this be?

As noted above, we favour a minimum lease term of 50 years or more. This effectively gives the resident comfort that, provided it complies with the terms of the lease, it may remain in occupation for as long as it likes. This concept is acceptable in the retirement village context and is already being embraced by sectors of the Residential Villages market.

Option 4 - Question 1

What advantages would establishing a separate Act have over amending the existing Residential Tenancies Act 1997? What are the disadvantages?

A new Act would be simpler for residents to refer to rather than having to review the appropriate sections of the RTA. This is because the new Act would only contain provisions relating to Residential Villages.

The new Act would also more closely align the Victorian position with that of other mainland States in Australia which also have discrete legislation in relation to Residential Villages. This will have advantages for residents and Park Owners who have previously, or continue to, operate in other jurisdictions. Reform of similar legislation in other jurisdictions, and studies on the effects of such legislation in other jurisdictions, might also become more pertinent.

There is speculation in the industry that national legislation may be introduced in the long term. Victoria has an opportunity to set the standard for the national scheme to aspire to. A new Act would also be easier to repeal or amend to take into account national legislation, rather than repealing or amending the relevant sections of the RTA.

The disadvantages identified at Option 4 of the Options Paper could similarly occur where provisions of the RTA relating to renter/renter and owner/renter accommodation differed.

There are likely to be additional administrative costs in ensuring that the two Acts remain suitably consistent over time.

Option 4 - Question 2

If a separate Act is established, what issues should be covered in that legislation?

The separate Act would need to deal with the same items that the amended RTA would need to deal with. Option 4 of the Options Paper sets out those matters which the new Act would allow for, and we refer you to our Previous Submission in relation to additional points which we believe should be covered.

We also suggest that the new legislation should prevent park operators from preventing residents selling their own dwellings, or appointing their own agents to sell their dwellings. Such restrictions are currently common place and can allow excessive fees to be charged by park operators, or for park operators to delay the sale of a dwelling, where such sale would compete with the sale of new dwellings by the park operator.

Option 4 - Question 3

How would a separate Act affect the industry if it were established?

We suggest that the method of delivering the amended legislation (ie. either by way of amendment to the RTA, or creation of a new Act) will have little impact on the operation of the industry. What will be material, are the provisions of such new legislation.

The industry would also benefit from the ease of reference to a new Act which contained provisions relevant to Residential Villages and did not include provisions relating to irrelevant types of accommodation, as is the case under the RTA.

Option 3 – Question 4

How would a separate Act affect the interests of owner-renter residents if it were established?

As noted at Option 4 - Question 3 above, the method of delivery is less relevant than the provisions actually delivered. The benefits of discrete legislation are also noted at paragraph 1 above.

Summary

Residents are in desperate need of amendment to the existing legislation, most especially in relation to security of tenure. We strongly support the introduction of a new Act, however we would be receptive to amendment to the RTA in the short term to address the security of tenure and certainty of rent increase issues, if introduction of a new Act would take significantly longer than amending the relevant provisions of the RTA. We have some concern that amending the RTA to take into account the security of tenure and rent increase certainty issues may lead to a delay in drafting the comprehensive new legislation the industry needs.

We reiterate our preference for a new act to be created swiftly so that the urgent issues are dealt with and the necessary overhaul is completed.